



University Conduct Board

Training Manual

Academic Year 2022 – 2023

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Office of Student Conduct and Community Standards
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Quick Resource Guide

University Policies and Procedures

- Current [Student Handbook](#)
- [Residential Living Policies](#)
- [University Policies](#)

Student Conduct and Community Standards

- [SCCS Office Website](#)
- UCB Member [Training Materials](#) (UCB Members: See also the Microsoft Teams page for UCB members)
- [Online Reporting Form](#) (ESU Community: Click “logging in” to use your ESU single sign-on)
- [Guardian Login Page for ESU Students, Faculty and Staff](#)

Family Educational Rights and Privacy Act

- [FERPA Information](#) and [Frequently Asked Questions \(FAQs\)](#) for ESU
- United States Department of Education [FERPA Website](#)
- [Protecting Student Privacy – Resources for Officials in Higher Education](#)

Title IX Information

- [Title IX Website](#) and [Sexual Misconduct \(Title IX\) Policy](#)
- Sexual Misconduct (Title IX) [Resolution Process](#)
- Information for [Respondents](#)
- Information for [Complainants](#)

Training Note

This information has been provided to members of the University Conduct Board (UCB) to assist in their role on the board, including general conduct information and effective preparations for a Formal Hearing. At East Stroudsburg University, members of the UCB include Faculty, Staff and Student representatives appointed to serve on the board.

Note that Formal Hearings involving alleged violations of the Sexual Misconduct (Title IX) Policy will have additional steps of preparation and additional considerations for involved parties. Only Faculty and Staff representatives of the UCB are eligible to participate in Formal Hearings involving alleged violations of the Sexual Misconduct (Title IX) Policy.

UCB Training materials are made publicly available in accordance with the Title IX Final Rule, as detailed in 34 CFR Part 106.45(b)(10)(i)(D). Questions about this document can be directed to the Office of Student Conduct and Community Standards.

Office of Student Conduct and Community Standards

The primary focus of Student Conduct and Community Standards (SCCS) is to administer campus disciplinary procedures in support of the university's efforts to promote a safe and civil community. Student Conduct and Community Standards encourages equality, dignity and mutual respect among members of the campus and the adjacent communities.

Office Information

- *Location:* Sycamore Suites (Building 85 on the [ESU Campus Map](#))
Directions to the Office: We are located in the northwest corner on the lower level of Sycamore Suites facing Lenape Hall and Hemlock Suites. If you are standing between Hemlock and Sycamore, our office door is located at the top corner of the Parking Lot next to Sycamore. Parking is available in lots C23 and C25 on the campus map for commuting students.
- *Phone:* (570) 422-3461 *Fax:* (570) 422-3023
- *General Office Email:* sccs@esu.edu *SCCS Website:* https://www.esu.edu/student_conduct/index.cfm

Office Directory

- Maria Zale Cutsinger, Director (mcutsinger@esu.edu)
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- Lynn Heimbach, Secretary (lheimbach@esu.edu)

Mission Statement

To engage students in the recognition of responsibility and commitment to being a productive citizen of the communities in which they belong.

Approach to Conduct

During one to one meetings with students, Student Conduct and Community Standards staff members strive to work toward understanding the student and their behavioral choices. Through meaningful conversations we work to assist students as they overcome mistakes made and learn from their experiences. Our developmental and holistic approach reaches students who may be at a crossroad in their behavioral choices. We strive to assist our students in educating them on ways to correct their behaviors when they violate the Code of Conduct.

Student Conduct and Community Standards serves students, parents, faculty and staff as well as the university's community constituents to address student conduct issues by:

- Assisting in the development, dissemination, interpretation and enforcement of University policies;
- Ensuring that the student's right of due process is applied fairly, consistently and effectively;
- Collaborating with University and community constituents to address student behavioral issues;
- Providing leadership opportunities for students to assist in the University Conduct Board;
- Offering learning opportunities for student violators of University policies and regulations;
- Initiating preventative educational activities that address conflict and potential violations of University policies.

We strive to uphold the values of education, accountability, and responsibility in all aspects on the conduct process.

Our Philosophy on Student Conduct

What is Student Conduct?

The purpose of the Student Conduct process is to provide:

- a fair and just resolution process
- due process for the student, which includes notice of the alleged violation(s) and an opportunity to be heard
- a student the opportunity to reflect on their behavior
- information for responsible decision-making and positive choices
- a student with a learning experience

We are here to help students at a difficult crossroads in their life. By taking a holistic approach we are showing the students that we care about them as members of the ESU community as much as we care about addressing violations to the Student Code of Conduct.

Guiding Principles

(Adapted from the Conduct Training Manual at University of South Florida, 2018)

Our philosophy for Student Conduct is based on a number of guiding principles which help frame the conduct process and the goals that we hope to achieve during this process.

Respect for the Rights of the Individual

Respecting the individual's rights includes giving due process, assuming the student is not responsible for the violation until proven responsible and only imposing sanctions that are appropriate to the violation.

The "Teachable Moment"

Developmental conduct looks for the "teachable moment" – the point at which the student displays an interest in or ability to understand key developmental goals. All conduct processes, from Conduct Conferences to Formal Hearings, must have a goal of working to create the "teachable moment".

Student-Orientated

A developmental conduct process reflects what is best for the student and the community. Questions like: "How can the student benefit from this process?", "What does the student need to learn from this process?", and "What is an appropriate response from us to help the student advance developmentally?" are good points to focus on during the hearing.

Prompt, Fair and Consistent

Hearings are most effective when held as soon as time permits after the alleged violation. Fairness involves giving individuals on both sides of a conflict time to voice their concerns and to discuss the alleged violations. Board members must not assume that the student was responsible for the violation before hearing all the information. Consistency *does not* necessarily mean equal sanctions for equal violations. Individual life circumstances, attitudes and stressors should be taken into account in a developmental conduct process. Sanctions imposed should be based upon the developmental issue the student needs to address as well as the impact on the community.

Appropriate Sanctions

The most effective sanctions will be those that address the cause of the inappropriate behavior, are non-punitive in nature and directly related to the developmental issues that the student needs to learn. Sanctions imposed will be situational and dependent on the student's attitude, commitment to changing behavior, level of self-responsibility and personal circumstances.

A Win-Win Attitude

Win-win means that the university feels reasonably sure that the inappropriate behavior will not continue and that the accused student involved feels they received an appropriate response from the violation that occurred.

These guiding principles frame each stage of our conduct process. On the University Conduct Board you will help support each principle through your actions, especially in the Formal Hearing.

Differences Between Student Conduct and Criminal Law

For individuals that do not have previous experience with campus conduct, a first point of reference for a similar process may be the criminal justice system. It is important to know that these processes are distinctly different. Some situations may be resolved through a Student Conduct Process and through the Criminal Justice System.

The process and terminology is different between Criminal Law and Student Conduct, we must use language consistent with the conduct process on campus. Here are a few examples to clarify the different roles and outcomes.

Criminal Law	Student Conduct Process
Process is punitive in its nature	Process is designed to be educational
Most severe penalties can include the loss of liberty or life (loss of rights)	Most severe sanction is removal from the academic community (loss of privilege)
Federal rules of evidence apply to information being considered	All reasonable information is considered
Guilt must be established “beyond a reasonable doubt” (must be proven by the prosecution’s evidence)	Responsibility established by “preponderance of the evidence” (meaning more likely than not)
Lawyers represent clients in the process	Lawyers (or another chosen party) can advise the students, not represent them

Both processes have a “right to due process”, defined by the corresponding system. The right to Due Process must be followed at all times. Note that the language used is different for each process. When serving on the UCB, focus on using language consistent with the mission of Student Conduct. Here are some examples of such differences in terminology:

Criminal Law	Student Conduct Process
Crime	Alleged Violations of Community Standards
Laws	Code of Conduct, Rules and Regulations, University Policy
Evidence	Information and Testimony
Trial	Conduct Conference or Formal Hearing
Judge	Hearing Officer or University Conduct Board
Defendant	Referred Student, Respondent
Guilty	Responsible or Not Responsible
Verdict	Decision or Outcome

Instead of looking to prove a student’s “guilt”, we are looking at their “responsibility” for violating University rules and considering how we can work to encourage self-discipline and accountability. As members of the UCB, it is your role to help encourage these values through a developmentally-focused, holistic process.

Your Role on the University Conduct Board

While your responsibility as a member of the UCB is to help hold students accountable for their behaviors, we must simultaneously work to ensure dignity for all individuals involved in the process and to respect our roles within the process. It is important to keep the following in mind:

With regard to your role...

- **Know your role** – Understand the guidelines related to your role on the University Conduct Board. If you are uncertain about policies, procedures or expectations please ask questions.
- **Trust yourself** – Serving on the UCB is an important responsibility. At times the responsibilities and requirements may feel overwhelming. As a volunteer, you were chosen to serve on this Board because we trust your ability to carry out this role and to effectively serve our campus community. Believe in your judgement and decision-making skills. Remember that if you feel overwhelmed or confused the Office of Student Conduct and Community Standards (SCCS) is here to help.
- **Commit to learning** – Ongoing skills development is essential in serving on the UCB. Keep up-to-date on your training activities and contact SCCS if you have ideas for new training topics or activities.

With regard to students...

- **Be kind to all students involved in the process** – This can be a stressful time for the involved student(s). We have the ability to help show them kindness, compassion and respect during what can be a pivotal time in their life. Our process is focused on accountability and development, and we bring this intention into all aspects of student conduct.
- **Get focused, stay focused** – This is a time to support the students involved in the conduct process and ensure that we are providing our fullest attention to their needs and experiences. If there is time where you are unable to give your full attention to a conduct hearing, please notify the staff in SCCS as soon as possible.

Within a Formal Hearing...

- **What happens in a hearing, stays in a hearing** – Maintain privacy and respect FERPA regulations at all times.
- **You have to give respect to get respect** – Treat all students with respect, while seeking to understand what might have occurred. Giving respect to students encourages their own ability to show respect and take responsibility for their actions.
- **If you're not sure, ask** – Ask questions that are relevant and purposeful. Make sure to be prepared for the hearing by developing a list of questions in advance. You will also ask other questions during the hearing to explore new information or clarify responses.
- **"Listen" to the 90% of communication** – Studies have shown that about 10% of communication comes from the spoken word while the rest of the message is conveyed through nonverbal cues, vocal tone and other vocal elements. Be sure to "listen" to the entire message being presented and keep an eye on the nonverbal cues that you are emitting as well!

This training manual is designed to help clarify your role on the UCB, and to help you develop skills that will aid in your service. We hope that this serves as a helpful reference document as you serve.

Due Process, FERPA & Confidentiality

Due Process

Due process refers to the rights that students have when charged with an alleged violation of the Code of Conduct. The Case of *Dixon v. Alabama* (1961) established that students need written/oral due process, extending on the rights provided under the 14th Amendment. These statutes and additional cases dictate that students in the conduct process must be given the following:

- notice of the charges;
- the right to a hearing; and
- an opportunity to respond to the charges.

The landmark decision has had a lasting impact on student conduct work in higher education. To learn more about this case and the context behind the decision, check out these resources:

- SUNY Student Conduct Institute SCItations Blogpost – ["Sixty Years Since the Sit-Ins, the Legal Legacy of *Dixon v. Alabama*"](#)
- Justia US Law Record – ["*St. John Dixon et. al., Appellants v. Alabama State Board of Education et. al., Appellees, 294 F. 2d 150 \(5th Cir. 1961\)*"](#)

In the Code of Conduct, a student's due process rights are stated in the following way:

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

- *Notice in writing through the student's university issued email of the charge(s) violating the Student Code of Conduct;*
- *An opportunity to be heard, whether through Conduct Conference or Formal Hearing, where the student is given the opportunity to have the charge(s) discussed and addressed; and*
- *The opportunity for the student to appeal a conduct decision(s) if rendered in a formal hearing.*

(Information from the Student Code of Conduct, Section IV. Rights to Due Process)

Depending on the nature of the alleged violation(s), students have the right to choose to enter into Mutual Resolution in a Conduct Conference or request a Formal Hearing. Upholding due process assists to ensure that we are following the law and assists in achieving the following benefits:

- Increased chance of an appropriate, objective outcome and decreased risk of wrongly accusing students of violations;
- Reassures the community of fairness and general procedures;
- Accountability within systems and administrators;
- Reduced risk of outside scrutiny.

FERPA

(Adapted from ESU Registrar & FERPA Website)

The Family Educational Rights and Privacy Act of 1974 affords certain rights to students and their educational record. An educational record is any record that directly relates to a student and is maintained by the University, or by an individual/party acting on behalf of the University.

Students have the following rights under FERPA during their time at East Stroudsburg University:

- To inspect and review certain education records;
- To request an amendment of their education record believed to be inaccurate or misleading;
- To have control over the disclosure of education records, except to the extent that FERPA authorizes disclosure without consent. The right to restrict access to information identified by the institution to be directory information available to the public without permission from the student;
- The right to extend third party access to education records to whomever is identified by the student in writing;
- To file with the U.S. Department of Education a complaint concerning alleged failures by the University to comply with the requirements of FERPA.

Taken from the ESU Website on FERPA (<https://www.esu.edu/registrar/ferpa/index.cfm>)

Members of the UCB complete regular training on FERPA requirements.

Privacy

FERPA also designates our responsibility to maintain privacy on the information contained in a student's academic record. Student Conduct files are educational records. As an agent of East Stroudsburg University serving on the UCB it is your responsibility to keep what you learn in a hearing private. You are not to discuss any information about the case outside of the hearing room, even if the referred student or another involved party approaches you. If someone approaches you concerning a case or you have questions, please contact SCCS immediately.

The Student Conduct Process at East Stroudsburg University

Code of Conduct

The Student Code of Conduct explains the conduct process, the community standards for students, and outlines the University's commitment to student learning and development. The Student Code of Conduct can be viewed in the Student Handbook or on the SCCS website. Direct links for these resources are included below:

- [Current Student Handbook](#)
- [Student Conduct and Community Standards Website](#)

Members of the UCB must review the entire Student Code of Conduct each year. Annual trainings will review any significant modifications, and members are welcomed to ask questions about the Code as needed.

Student Conduct Process

The University holds meetings for students involved in incidents that may require disciplinary action. A member of the Office of Student Conduct and Community Standards/designee will meet with the student for a Conduct Conference to

review all charges, pertinent information to the incident and discuss hearing options. At this time, the student has the right to choose between resolving the case through Mutual Resolution or choose to participate in a Formal Hearing. (See Student Conduct Process Flowchart at end of Manual.)

UCB Members primarily participate in the Formal Hearing stage of the student conduct process. Faculty and Staff members may also serve as a Process Advisor to students involved in the conduct process.

The Formal Hearing

The formal hearing, with either an Administrative Hearing Officer (Admin) or the University Conduct Board (UCB), is a formal proceeding wherein the alleged incident and relevant information is reviewed, witnesses participate, and the referred student has the opportunity to be heard. At the conclusion of the Formal Hearing the Admin/UCB makes a determination about the referred student's responsibility and if responsible for a violation, appropriate educational sanction(s). The Admin/UCB is a decision-making body and submits an official outcome that will be communicated to the referred student through the Office of Student Conduct and Community Standards. Referred students have the right to appeal the decision of the Formal Hearing, as outlined in the Student Code of Conduct. The appeal outcome is the final University decision related to a conduct matter.

Prior to a Formal Hearing, referred students may meet with SCCS to review the referral and other pieces of information in their conduct file. Referred students may provide the names of witnesses, if applicable, for participation in the Formal Hearing. Witness(es) must have pertinent information to the case; character witnesses are not permitted. If a conflict of interest exists with a witness (as in, the referred student would like to have a witness who was also involved in the incident) then that witness may not participate. Witnesses in cases covered under the Sexual Misconduct Policy can be involved in the referral and character witnesses are allowed in those types of hearings.

During the hearing, a referred student may be advised and accompanied by an advisor of their choice. An advisor is an individual chosen by the student to support a student throughout the conduct process. A student may choose a family member, friend, mentor or attorney at their own expense. An advisor may only consult and interact privately with the student, not with the UCB, except as expressly permitted by the Title IX Federal Regulations effective August 14, 2020.

At the conclusion of the Formal Hearing, the adjudicating body has up to three business days to reach a decision. The decision rendered by the Admin/UCB during a Formal Hearing shall be based solely upon the evidence/information presented at the hearing. In certain cases, additional time may be needed to make the decision. Any delayed decisions will be communicated to the referred student; in cases related to Title IX/Sexual Harassment and Misconduct, updates on delayed decisions are also shared with complainants. An Outcome Letter communicating the decision(s) of the Admin/UCB will be sent through university email. If SCCS does not hear from the student within five (5) days from the 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.

Outline of a Formal Hearing

A Formal Hearing will typically follow this structure:

1. Introductory information reviewed by the Admin or Chair of the UCB;
2. The alleged violation(s) are stated;
3. The information from the referral and any accompanying evidence is discussed by the university representative. The referred student has the opportunity to provide information concerning the incident, provide supporting evidence and present witness testimony (*for Title IX/Sexual Harassment and Misconduct related cases the student's advisor will conduct cross-examination on behalf of the student*);
4. Final Statements and close of the Formal Hearing;
5. Admin/UCB deliberations behind closed door;
6. Admin/UCB writes Decision and/or Outcome Letter;
7. If, during a hearing, additional violations of community standards/policy are brought to light, additional alleged violations may be charged following the student conduct process.

Please note that Formal Hearings related to allegations of Sexual Harassment and Misconduct have additional provisions and requirements to comply with the current Title IX Federal Regulations.

“Preponderance of the Evidence” in Student Conduct

(Adapted from the Conduct Training Manual at University of Kansas and the “Preponderance of the Evidence” activity from the Office of Student Conduct at North Carolina State University)

In the student conduct process the standard of proof is the “preponderance of the evidence”, meaning something is more likely to have happened than not. If you imagine weighing the evidence on a scale, the evidence must be more than 50% in weight to determine that the student violated a specific section of the Code of Conduct. Sometimes this is referred to colloquially as ‘50% and a feather’.

Details to consider about the preponderance of evidence standard:

- For most cases, the burden of proof falls on the University – this means that the University must provide adequate information to make a decision. Students are not expected to “prove” their involvement, or lack thereof, in incidents but the information presented by students and witnesses should always be considered.
- You may also need to ask if there is enough information to determine that the alleged violation occurred. Each piece of information should be considered individually, and in the context of the whole situation.
- Sometimes, the preponderance of the evidence can be based on the totality of the circumstances. There may not be an answer immediately clear from one piece of information alone. Preponderance is a relatively low standard of proof, but in each and every situation it is essential to review all information. In some cases, UCB members will also need to report which pieces of information specifically led to a finding of responsibility. UCB members should always consider all pieces of information available and review the evidence carefully.

As a UCB member, you are responsible for obtaining enough information in the Formal Hearing to make a determination of the case using the preponderance of the evidence standard. It is essential for UCB members to be ready to listen to situations and details and determine if the information presented leads to a finding of “responsible” or “not responsible” for the student(s) involved.

Establishing a “Responsible” Finding

(Adapted from the Conduct Training Manual at University of Kansas)

To establish that a violation of the Code of Conduct has taken place, the University must provide information which:

1. Constitutes a violation of the Code of Conduct;
2. Corroborates the alleged behavior; and,
3. Provides evidence of the referred student’s responsibility for the behavior reported.

When determining responsibility, University Conduct Board members may not typically consider:

- Whether or not a student knew that they were violating a policy;
- If a student makes a claim of diminished capacity due to alcohol or other drugs;
- A claim that their behavior was motivated by the unsubstantiated behavior of another as a legitimate defense.

These factors, as well as the student’s intent within the context of the incident, are applicable in the sanctioning process and can help shape appropriate learning outcomes for educational sanctions. However, these factors should not be used as criteria on which to base a determination(s) related to the alleged violation(s).

In the conduct process, each alleged violation will be adjudicated with a finding of either “responsible” or “not responsible”. Decisions of the UCB are documented with rationale statements to support the determination. These determinations are communicated to the referred student in an official Outcome Letter. Faculty and Staff on the UCB participate in additional training related to decision-making in Formal Hearings with alleged violations of the Sexual Misconduct (Title IX) Policy.

Credibility of Information

(Adapted from the Conduct Training Manuals at University of Kansas and University of South Florida)

When reviewing information/evidence in a hearing, the UCB should review its credibility. Some of the information presented will be irrelevant to the hearing. The following is a list of the kinds of information that are useful in a hearing:

- **Ability or Opportunity:** Could the student have been responsible for the alleged violation? If the student has proof that they were taking a test at the time that the alcohol party was broken up, it is more likely than not the student was not present, therefore, not responsible for a violation.
- **Motivation:** Did the student have a reason to violate the policy? For example, if the student had been locked out of their room twelve times and didn't want to get in trouble for forgetting their keys again, then this could be a reason for climbing through a window.
- **Threats, expressions, or earlier similar acts implying or denoting intent:** We may consider patterns or behaviors that happened before the incident took place, as long as it is relevant. For example, suppose a student threatens another student by saying, "I'd be careful about your car if I were you. Nasty things happen in the parking lot." and later that week the other student's car is vandalized in the parking lot. The earlier statements may be relevant to determining whether this student committed the vandalism.
- **Other behavior that tends to shake your belief in a person's testimony:** There may be discrepancies in the information presented. Be cautious to note that there are reasons why an individual may forget some details of an incident, which does not have any bearing on the facts of the incident. Clarifying questions are used to gather enough information to make a determination in this situation.

Information/Evidence

In the Formal Hearing, UCB members are responsible for reviewing and weighing the information presented in order to make determinations of responsibility. There are different types of information to take into consideration:

- **Direct Evidence:** Evidence that is personally observed (eyewitness); the person's experience; physical evidence. UCB members either believe the person saw or did what they saw/did or they don't. UCB members should ask questions to confirm and clarify this type of evidence, and consider if there are any areas where there are conflicting details around the direct evidence presented.
- **Circumstantial Evidence:** Information which does not include an eyewitness to the actual event but does include enough information to lead a reasonable person to the conclusion that the student did what they are alleged to have done.
- **Documentary Evidence:** Any supportive writings or documents including statements, reports, etc., that support or deny a fact at issue. This often includes Incident Referrals, and can include pictures, video evidence, or email correspondence. In Sexual Misconduct (Title IX) cases, this will include an Investigative Report and accompanying information.
- **Secondhand, or "hearsay" evidence:** Hearsay evidence is evidence that was directly communicated to someone else and they are repeating what they were told. This includes information provided by individuals that do not witness an incident. This type of evidence is not relevant in the student conduct process.

UCB members should prepare for the Formal Hearing by reviewing all information/evidence available in advance. It is recommended to review the information at least three times before the hearing; first to understand the situation, second to develop questions, and third just before the Formal Hearing to be fully prepared. UCB members must also be adaptable and ready to review and weigh information that is introduced within the Formal Hearing, such as information from witnesses and participants.

Considerations for Witnesses

Throughout the hearing, listen carefully to all of the information presented by Witnesses. Ask thoughtful questions to determine how much credence should be given to each individual's information. The task is to find the facts. Here is a list of suggested questions to consider while preparing to make a decision:

- How relevant is the information this witness provided concerning the case?
- How much does this person know about the incident in question?
- How did this person come to know this information?
- Which of the witnesses had the best opportunity to observe the incident?
- In how much detail can the witness recall the incident? Is this witness's recollection of the details consistent with the recollections of other witnesses?
- Are there circumstances which may call the reliability of the witness into question?

- Is there any reason why a witness may not be providing complete and accurate testimony?

Utilize active listening skills. Ask thoughtful questions and direct questions when needed. Ensure that decisions are made based on information gathered during the Formal Hearing. Again, note that Title IX/Sexual Harassment and Misconduct related cases will have additional provisions for the cross-examination process for witnesses.

The Decision-Making Process

(Taken from the Conduct Training Manual at University of Kansas and University of South Florida)

As a University Conduct Board Member, you are expected to actively participate in the deliberation for each case. While the Chair sets the tone for the discussion, their opinions should not dominate the outcome. All UCB members serving in a Formal Hearing have a voice in the decision making process.

The decision-making process has two steps:

1. **Responsibility:** Determine whether the student/student organization is responsible for the alleged violation(s). Only the facts of the present case are considered. Use the preponderance of the evidence as the standard of proof when determining responsibility.
2. **Sanctions:** If there is a finding of responsibility for any alleged violation(s), decide on the appropriate sanction(s). Factors such as past history of conduct issues, attitude, intent, and degree of cooperation can be discussed. Careful consideration is given to what will be the most educational experience for the student/student organization.

The UCB does not need to make a unanimous decision; however, all members present for the Formal Hearing must be satisfied with the decision. The decisions made after a Formal Hearing are documented in the Outcome Worksheet (for general conduct cases) or in the Written Decision document (for Sexual Misconduct related cases). The decision is communicated to the student(s) through an official Outcome Letter, so it is important to have clearly articulated decisions and educational sanctions.

During the decision-making process, it is the responsibility of all members to:

- Encourage member contributions without embarrassment or putting them on the spot
- Help the group make full use of everyone's contributions
- Express one's own opinions and listen to everyone opinions
- Recognize and practice the qualities of effective consensus-seeking groups

A consensus-seeking group attempts to generate as much agreement (or consensus) as possible by discussing each person's ideas and using this information to make the best decision for the student in the conduct case.

Tips for Effective Formal Hearings

During every Formal Hearing remember these tips for being an effective UCB member:

- **Listen:** Carefully listen to everything that is said.
- **Non-Verbal Cues:** Watch for non-verbal behaviors which may indicate attitudes, feelings, or emotions. Make sure that your own non-verbal cues show that you are attentive and ready to hear what they have to say.
- **Clarification:** Be sure to clarify any conflicting information before entering into deliberation. Continue to ask questions until all the necessary facts regarding the incident have been exposed. Do not guess at reasons why the information presented was conflicting.
- **Be Thorough:** Carefully examine the time/date sequence of the incident. Follow-up on contradictions when questioning. Avoid unduly repetitious questioning.
- **Keep it Flowing:** Avoid jumping from one line of questioning to another; attempt to examine an area completely before moving on.
- **Note-Taking:** You are encouraged to take notes, but avoid unnecessary writing during the hearing. Members should be concentrating on the content while developing lines of questioning. Be mindful of when notes are taken, and consider writing brief statements that you want to review during deliberations. The audio recorder will provide a complete record of the hearing, which can be reviewed during decision making if needed.

- **Show Respect:** Note passing or whispering among the UCB should not occur in the hearing. Respect the process and those in it.
- **Stay Engaged:** Maintain one’s concentration throughout the hearing and remain attentive. Good posture and eye contact should be demonstrated during the hearing
- **Maintain Composure:** Never accuse a student or participate in arguments.
- **Be Prepared:** Carefully prepare questions in advance. Avoid questions that are not relevant to the hearing.

Make sure to take the necessary time to review the case and prepare possible questions so the Formal Hearing can be as productive as possible

Educational Sanctions

What is an Educational Sanction?

Educational Sanctions are utilized to help students develop more productive patterns of behavior, to support the integrity of the academic mission, and to protect the members of the University Community. Educational sanctions are assigned to further the students’ learning and support reflection related to the incident. Examples of educational sanctions include: workshops and reflection papers, online courses, an official warning, disciplinary probation, a suspension or expulsion. Educational Sanctions are based on learning outcomes for the student identified through the formal hearing. *See Appendix for types of sanctions.*

Determining Educational Sanction

(Taken from the Conduct Training Manual at University of South Florida)

Before determining appropriate educational sanctions, the UCB will create learning outcomes for the referred student. The following guidelines should be used in developing learning outcomes for assigning educational sanctions:

- **Intent:** What was the intent of the student, if known? What was the student's motivation for their behavior and actions? Did they intentionally violate a policy or the Code of Conduct? Were they aware of the possible consequences, or was there some plausible explanation?
- **Consequences:** What were the actual consequences of the behavior? Was there physical damage or personal harm (physical, emotional)?
- **Potential Consequences:** What were the potential consequences of the behavior? If the situation had not been intervened, would physical damage or personal harm be likely to occur? What potential harm could the student have experienced?
- **Alcohol and Other Drugs:** Was any substances part of the incident? If alcohol was involved, are they under the legal drinking age? Does the student show a pattern of misuse of alcohol or other drugs? What substance(s) were used in the incident, and how often is the student using the substance(s)?
- **Understanding:** Have they accepted responsibility for the behavior? Have they demonstrated an intentional change in behavior since the incident?
- **Record:** What is the student’s past conduct history and which educational sanctions were already assigned? Is there a behavioral trend for this student? Consider the violation in the current incident. Could a sanction be developed which would help prevent future violations of a similar nature?
- **Individualization:** Consider the individual student and try to determine what kind of a sanction will have the most beneficial impact. The same sanction will not necessarily have the same effect on all students, so tailor the sanction to the student and the identified learning outcomes.
- **Restitution:** Restitution should be considered when damage to University property is involved.
- **Developmental and Appropriate to the Violation:** The sanctions are directly related to a developmental stage or skill that the student needs to learn. The sanctions are in accordance with the seriousness of the violation and the circumstances surrounding the conduct. The goal of the process is to address inappropriate behavior and help educate, rather than punish students.
- **Explaining “Why”:** In order for the student to understand the purpose of sanctioning, an explanation of why certain sanctions are being imposed is necessary. Some of the “why” is included in our statements explaining an educational sanction. The determination and rationale for each alleged violation can support the student’s

development. Ensure that rationale statements can be easily understood by the student. Further, make sure that any educational sanctions connect to the identified learning outcome(s).

All sanctions must have an assigned deadline for completion. Completion timelines allows for the student to learn and correct behaviors while the issue is still fresh in mind.

Additional Information for Faculty and Staff Members of the UCB

Faculty and staff members may serve in other roles during their time on the UCB. Faculty and Staff board members are the Decision Makers in a hearing under the Sexual Misconduct (Title IX) Policy. They may also serve in the capacity as a Process Advisor for a Respondent or Complainant in a Formal Hearing. Additional trainings are required for all Faculty and Staff members serving in these roles. Student members do not participate on the UCB in these types of hearings.

What conduct is covered by the Sexual Misconduct (Title IX) Policy?

(Based on the Title IX Website at East Stroudsburg University)

The Equal Opportunity and Title IX Coordinator reviews allegations of sexual misconduct and harassment through the Sexual Misconduct (Title IX) Policy and defined procedures. This includes (but is not limited to) sex- and gender-based discrimination, sexual assault, sexual harassment, sexual exploitation, stalking, dating violence, and domestic violence. The Title IX Coordinator reviews reports of sexual misconduct and determines if the allegations meet the regulatory or non-regulatory standards. Depending on the evaluation, the case will either move forward in review or be dismissed in Title IX. Student Conduct may review and initiate charges for these types of cases, even after Title IX dismissal. Please see [ESU Title IX website](#) for the most up to date information.

As a Faculty or Staff member on the UCB, you are required to complete annual training for compliance with the Title IX Final Rule, effective August 14, 2020. Specific requirements are communicated on an annual basis by the Office of Student Conduct and Community Standards in conjunction with the Equal Opportunity and Title IX Coordinator.

Decision Making in Sexual Misconduct (Title IX) Cases

Cases involving sexual misconduct have additional requirements for the Formal Hearing process based on the Title IX Final Rule. Training is provided through SUNY SCI and the Office of Student Conduct and Community Standards. When serving as a Decision Maker, your focus is on determining if there was a violation of the Sexual Misconduct (Title IX) Policy and/or violations of the community standards included in the Student Code of Conduct. Here are a few considerations for serving as a Decision Maker:

- Was there consent between the complainant and the respondent?
- Was the complainant incapacitated to the degree of being unable to give consent?
- Focus on the alleged policy violation *not* whether the complainant was irresponsible
- The respondent has the right to not participate in the process – inferences cannot be made based on a lack of participation and does not denote responsibility
- Focus on information gathered at the hearing
- Is there enough evidence to make a determination of “responsible”?
- The standard of proof is based on preponderance of the evidence (more likely than not it occurred)
- Be aware of your own biases and recuse yourself if you are unable to participate in the hearing
- Be aware of the possible neurobiological reasons for gaps in memory and other responses to trauma

Faculty and Staff members serving as a Decision Maker in a Sexual Misconduct (Title IX) Formal Hearing are encouraged to review SUNY SCI training modules and additional training.

Appendices

University Conduct Board – Statement of Ethical Standards

Members of the University Conduct Board for East Stroudsburg University understand that their purpose is to serve the campus community by working to uphold the Student Code of Conduct with educational redirection of behavior and protecting the rights of students throughout the conduct process. Members provide a fair conduct process by upholding the values of respect for students involved in the process, ethical behavior throughout the process, and protecting privacy to the extent required.

As a member of the Board, it is understood that you have a responsibility to observe the following ethical standards:

1. Members acknowledge their responsibility in upholding a fair conduct process. Members serving on the Board agree to complete all required trainings, including: Orientation/New Member Training, Online Modules (primarily through SUNY Student Conduct Institute), and Ongoing Educational Workshops.
2. Members acknowledge that University policies and regulations require privacy in all Formal Hearings. Members have an obligation to uphold the Family and Educational Rights and Privacy Act (FERPA) in all stages of the conduct process.
 - a. The nature or status of any student disciplinary situation is not to be discussed outside the hearing. This includes if a student involved in the process contacts/approaches you about their hearing. If this happens, please refer the student to the Office of Student Conduct and Community Standards.
 - b. The disciplinary record of any student is not to be shown, discussed, or shared in any way with anyone outside the membership of the board. If a student would like to review their file or would like to have another party view their conduct file, then the student will need to contact the Office of Student Conduct and Community Standards.
 - c. Any information given in confidence at a hearing should not be discussed outside the meeting, not copied, electronically distributed or otherwise communicated. The guidelines of FERPA will be strictly followed and enforced for all matters related to each case.
 - d. Members agree to protect student records when using Guardian (the student conduct database management system) by using a secured internet connection in a private location. Members should contact Office of Student Conduct and Community Standards immediately if there is an error, or breach, in accessing a case file on Guardian.
3. After deliberation, decisions of the Board are assumed to be of the Board as a whole. All decisions are to be supported by all members of the Board, even dissenting members.
4. Members should not make accusations or statements of any kind, which cannot be supported. Board members should attempt to gain necessary information without appearing to pry into personal matters, without showing prejudice, and without showing hostility. Questions should be asked in a non-condescending fashion.
5. A board member challenged for impartiality may be excused. Indiscriminate impartiality challenges shall entitle the panel to proceed without regard to the challenge.
6. In general, board members should be conscious of their status as a representative of the University and should avoid involvement in situations which may lessen the perceived credibility or objectivity of the Office of Student Conduct and Community Standards.

By signing this document and submitting it to the Office of Student Conduct and Community Standards you acknowledge the above Code of Ethics and hereby will execute ethical standards as a member of the University Conduct Board to the best of your ability. Failure to comply may result in removal from the Board and potential violations of university policies.

Printed Name: _____

Signature: _____

Date: _____

Types of Questions

Questioning is an important aspect of the hearing. In-depth questioning helps the board to ascertain the facts of the case and clarify vague issues. Be intentional and unbiased in questioning to ensure equality and fairness. We ask questions to:

- determine the facts of the case and decide if an individual is responsible or not;
- assess the student's awareness and understanding of the violation;
- assess the student's acceptance of responsibility and the sense of respect for others' rights;
- teach or provoke thought about a particular perspective or issue;
- determine what type of sanctions are appropriate for the violation.

In general, there are three types of questions that will be helpful in Formal Hearings. Try to avoid asking multiple choice questions as this makes it more likely for the student to choose the answer that seems the least incriminating, rather than share the truth. There is always a way to phrase such a question differently in order to leave it open for a truthful answer from the student.

- **Open Ended-Questions:** Seek to gather information to better understand the incident being described. These questions cannot be answered with a general "yes" or "no". Open-ended questions provide an opportunity for the individual to elaborate on the incident.
- **Closed Questions:** Produce short answers and are useful to learn specific details about dates, times, places, etc.
- **Probes:** Requests to further elaborate on information already discussed. They do not introduce new topics or directions. Probes can be phrased as a question, or introduced as a statement that the individual can respond to.

A best practice for UCB members is to develop a list of possible questions for each party involved in a Formal Hearing. New questions can be added based on the information in the hearing, but this list can serve as a starting point.



Weighing Information

(Taken from Eastern Carolina University's Hearing Board Manual and the University of Kansas Training Manual)

All information presented at a hearing is not equivalent in value. Some information may have a certain degree of bias or tend to lead the listener toward a single interpretation of a fact or situation. Here are some general guidelines for weighing the importance and relevance of presented information:

- **One person's words vs. another person's words:** Typically, the statements from an unbiased person is given more weight. For example, more weight could be given to the testimony of an uninvolved bystander or a police officer rather than to the accused student's partner. In either case, be sure to ask sufficient and effective questions to fully review the information presented.
- **The "I didn't know" excuse:** Sometimes a referred student will claim to have not known they were breaking a rule in an effort to distract the listener, so that the listener will accept the student's failure to assume accountability for their role in the alleged violation. Only in exceptionally rare cases should this type of testimony be given value (i.e. an act that occurred before it was prohibited or a rule of regulation that was not given reasonable distribution). Missing a residence hall meeting should not be accepted as an excuse for not knowing a rule or policy.
- **When a student takes responsibility:** If a student takes responsibility for the violations, there is less need for the hearing board to ask questions about the facts, unless the board needs clarification on what happened. The hearing board should instead address the student's perception of the seriousness of the violation.

When weighing information, consider credibility and the context of the information. Remember that hearsay evidence or information is not used in making determinations.

Educational Sanctions

While each situation and each student may be different, there are a number of sanctions commonly used to help students learn at East Stroudsburg University. Here are a few examples of sanctions:

- Educational Programs – Referrals to courses such as:
 - "Get Inclusive" Alcohol and Other Drugs Module
 - BASICS – Brief Alcohol Screening and Intervention for College Students
 - CASICS – CAnnabis Screening and Intervention for College Students
 - Marijuana 101
 - Anger and Emotions Management Education
 - Civility Workshop
 - Ethics Workshop
 - Writing a paper on a specified topic
 - Academic Integrity Seminar
- Restitution – A payment towards damaged University property, based on an assessment of the damage and repair costs.
- Parental Notification – A letter sent to parents/guardians about the incident, for students under 21 found responsible for alcohol/illegal drug violations
- Official Warning – An official notice that warns students that additional incidents during a specified time frame may lead to additional sanctions
- Residence Hall Suspension – Student will not be eligible to stay in/live in University Housing
- Restriction(s) – Student will not be eligible to hold leadership roles, executive positions or participate in campus-sponsored organizations
- Disciplinary Probation – Denotes that a student/organization is not in good standing
- Suspension – Student is not affiliated with the University for a specific amount of time, but may be able to reapply to ESU once the time period is over with approval from the Office of Student Conduct and Community Standards/designee. Suspensions typically last between one (1) semester to four (4) semesters.
- Expulsion – Student is permanently removed from the University and is not able to attend ESU functions or receive a refund for University fees.

Students that do not complete an assigned educational sanction in the specified time frame may be placed on an Administrative Hold, which limits the student's ability to register for courses and conduct business with the University. Administrative Holds are issued by SCCS and typically not released until the educational sanction(s) have been successfully completed.

Student Conduct Process Flowchart

Student Conduct Incident Referral Submitted to SCCS

Referral submitted to SCCS Staff through Guardian, a conduct management system

If there is an immediate threat to a person's safety/campus, the student may be placed on an interim suspension pending review.

Referrals related to alleged violations of Sexual Misconduct and Harassment will be sent to the Equal Opportunity & Title IX Coordinator for processing.

Initial Review of Referral

SCCS staff reviews Incident Referral(s) for alleged violations of community standards as described in the ESU Student Code of Conduct. If there are alleged violations, the referred student is provided notice through an Appointment Letter sent via ESU email.

The referred student has five days to make an appointment with SCCS. Student attends appointment to review the case and chooses an option for case adjudication.

Student Schedules Appointment

Student schedules appointment with SCCS Staff for the opportunity to review the case.

Note: If student does not make an appointment, the case may be moved into the Formal Hearing process.

Conduct Conference

The case and evidence is reviewed with the student by SCCS.

Student may elect to enter mutual resolution with SCCS (typically by accepting responsibility for some or all of the alleged violations).

Formal Hearing

Student will have their case heard by the University Conduct Board (UCB) or Administrative Hearing Officer (Admin)

Note: Formal Hearings involving alleged violations of the Sexual Misconduct and Harassment Policy have additional provisions based on the Title IX Federal Regulations.

Conflict Resolution Session

When appropriate, this option may be used in lieu of the adjudication process.

Note: The decision to use Conflict Resolution sessions will be made by SCCS. Students must voluntarily agree to participate.

If SCCS and student reach mutual resolution, then SCCS adjudicates case with student. With mutual resolution the student waives their right to the Formal Hearing and any appeal.

Students, witnesses, and campus officials involved in the case will be invited to participate in the Formal Hearing. Participants may be questioned during the hearing. UCB/Admin adjudicates the case based on information presented.

Students will meet for conflict resolution session(s) to work through conflict and find ways to communicate together.

Outcome Letters are sent to students at the conclusion of the process.

If found responsible, student will receive an Outcome Letter with sanctions to complete.

If found not responsible, student will receive an Outcome Letter noting this decision.

Outcome Letter sent to student within 3 days of Formal Hearing. This letter articulates a decision of either Responsible or Not Responsible for each alleged violation reviewed in the hearing.

If there is an outcome of Responsible, this letter will also include educational sanctions.

Student will need to complete sanction(s) by assigned due date(s) included in their Outcome Letter.

Student should contact SCCS to verify completed sanctions.

Students participating in the Formal Hearing process have the right to appeal the Outcome within five days of the decision.

Appeals must be based on (1) lack of due process, (2) lack of substantial evidence, (3) significant new evidence, or (4) sanction severity if it includes loss of campus housing, suspension or expulsion.

Appeals are heard by specific designees based on the type of case, and appeal decisions are final university action.