

HERKIMER COUNTY COMMUNITY COLLEGE BOARD POLICY

TITLE: Sexual Violence Prevention and Response Policy

POLICY #: HR 14-16

DATE OF BOARD OF TRUSTEES APPROVAL: May 13, 2015

RESOLUTION #: 14-16, 14-16A

POLICY STATEMENT: Sexual Assault and the Law - Herkimer College has programs in place to protect all members of the Herkimer College community from sexual assault, including programs for prevention and prosecution of these crimes that occur within the jurisdiction of Herkimer College Campus Safety. Herkimer College does not condone any type of sexual activity without proper consent. As defined, **Consent** is clear, unambiguous and voluntary agreement between the participants to engage in specific sexual activities.

NYS Law contains the following legal provisions defining the crimes related to sexual assault:

Section 130.20—Sexual Misconduct. This offense includes sexual intercourse without consent and deviate sexual intercourse without consent. The penalty for violation of this section includes imprisonment for a definite period to be fixed by the court up to one year.

Section 130.25/30/35—Rape. This series of offenses includes sexual intercourse with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes sexual intercourse with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed four years up to imprisonment for a period not to exceed 25 years.

Section 130.40/45/50—Criminal Sexual Act. This series of offenses includes oral or anal sexual conduct with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes oral or anal sexual conduct with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed four years up to imprisonment for a period not to exceed 25 years.

Section 130.52—Forcible Touching. This offense involves the forcible touching of the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. Forcible touching includes the squeezing,

grabbing, or pinching of such other person's sexual or other intimate parts. The penalty for violation of this section includes imprisonment for a period of up to one year in jail.

Section 130.55/.60/.65—Sexual Abuse. This series of offenses includes sexual contact with a person by forcible compulsion, or with a person who is incapable of consent due to physical helplessness, or due to the person being under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed three months up to imprisonment for a period not to exceed seven years.

Section 130.65-a/.66/.67/.70—Aggravated Sexual Abuse. This series of offenses occurs when a person inserts a finger or a foreign object in the vagina, urethra, penis or rectum of another person by forcible compulsion, when the other person is incapable of consent by reason of being physically helpless, or when the other person is under the age of consent. The level of this offense is enhanced if the insertion of a finger or foreign object causes injury to the other person. The penalties for violation of these sections range from imprisonment for a period not to exceed seven years up to imprisonment for a period not to exceed 25 years.

Definition of Affirmative Consent

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.”

Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. Herkimer College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Herkimer College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Herkimer College officials or law enforcement will not be subject to Herkimer College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Campus Climate Assessment Policy

Climate assessments afford institutions the opportunity to better understand their campus and to make informed decisions when it comes to providing a safe educational environment. Beginning in the 2015-2016 academic year, each State University of New York State-operated and community college will conduct a uniform climate survey that ascertains student experience with and knowledge of reporting and college adjudicatory processes for sexual harassment, including sexual violence, and other related crimes.

The survey will address at least the following:

- Student and employee knowledge about:
 - The Title IX Coordinator's role;
 - Campus policies and procedures addressing sexual assault;
 - How and where to report sexual violence as a victim/survivor or witness;
 - The availability of resources on and off campus, such as counseling, health, academic assistance;
 - The prevalence of victimization and perpetration of sexual assault, domestic violence, dating violence, and stalking on and off campus during a set time period (for example, the last two years);
 - Bystander attitudes and behavior;
 - Whether victims/survivors reported to the College/University and/or police, and reasons why they did or did not report.
 - The general awareness of the difference, if any, between the institution's policies and the penal law; and
 - The general awareness of the definition of affirmative consent.

Every institution shall take steps to ensure that answers remain anonymous and that no individual is identified. Results will be published on the campus website providing no personally identifiable information shall be shared.

Beginning in the spring semester of 2015, the Chancellor or designee will convene a group of scholars and practitioners to review methods of assessing campus climate, specific questions asked in past surveys, relevant data on responses and response rates, issues and problems encountered in survey implementation, and lessons learned from past surveys. The Chancellor or designee will gather this data and seek to develop a standardized survey, with the advice of relevant members of the SUNY community and knowledgeable outside entities, that uses established measurement tools, to be implemented every two years by all SUNY State-operated and community colleges beginning in the 2015-2016 academic year. This policy may be changed by the Chancellor or designee should federal and/or State legislation require a different process or duplicate efforts to assess campus climate via survey.

Students' Bill of Rights

The State University of New York and Herkimer County Community College are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and./or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
8. Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination¹;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;²
11. Exercise civil rights and practice of religion³ without interference by the investigative, criminal justice, or judicial or conduct process of the College.

Sexual Violence Response Policy

The State University of New York and Herkimer County Community College wants you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. In accordance with the Student's Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

Reporting:

- To disclose confidentially the incident to a college or community official, who by law may maintain confidentiality, and can assist in obtaining services:
 - Counseling Center – 315-866-0300 (x8284). College Center, Room 302.

- YWCA Mohawk Valley – Child Advocacy Center & Sexual Violence Services, 284 West Main Street, Ilion, NY 13357 (315) 866-4120, 24-hour hotline.
- To disclose *confidentially* the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through:
 - SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
 - Legal Momentum: <https://www.legalmomentum.org/>;
 - NYSCASA: <http://nyscasa.org/responding>;
 - NYSCADV: <http://www.nyscadv.org/>;
 - Pandora’s Project: <https://pandys.org/>
 - RAINN: <https://www.rainn.org/get-help>.
 - Safe Horizons: <http://www.safehorizon.org/>.(note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).
- To disclose the incident to one of the following college officials who can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the information contained in the Students’ Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal just process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney,:
 - Campus Safety – 315-866-0300 (x8616) or call 911.
 - Dean of Students (Title IX Coordinator) – 315-866-0300 (x8276). CA Building, Room 264.
 - Director of Campus Safety – 315-866-0300 (x8336). CA Building, Room 264.
- To file a criminal complaint with Campus Safety and/or local police and/or state police:
 - Campus Safety - 315-866-0300 (x8616) or call 911.
 - Herkimer Police Department - 120 Green St, Herkimer, NY 13350. (315) 866-4330

- Dial 911 (for surrounding municipalities).
- State police 24-hour hotline to report sexual assault on a NY college campus: 1-844-845-7269.
- To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with Herkimer County Community College policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may call the Dean of Student's office (315-866-0300, x8276) anonymously to discuss the situation and available options.
 - Dean of Students (Title IX Coordinator) – 315-866-0300 (x8276). CA Building, Room 264.
- When the accused is an employee, a reporting individual may also report the incident to the Human Resources Office and/or may request that one of the above referenced confidential or private employees assist in reporting to the Human Resources Office. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.
 - Human Resources Office – 315-866-0300, x8332, College Center, Room 239.
- You may withdraw your complaint or involvement from the process at any time.
- At the first instance of disclosure by a reporting individual to a college representative, the following information shall be presented: “You have the right to make a report to Campus Safety, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

Resources:

- To obtain effective intervention services:
 - Herkimer County Community College Counseling Center – (315) 866-0300, Ext. 8284, College Center, Room 302
 - YWCA Mohawk Valley – Child Advocacy Center & Sexual Violence Services, 284 West Main Street, Ilion NY 13357 – (315) 866-4120, 24-hour hotline
- Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available at:
 - Bassett Healthcare - 321 E. Albany St., Herkimer, NY (315) 867-2700.
 - Planned Parenthood, Utica - 1424 Genesee St., Utica, NY 13502 (315) 724-6146

- Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services.
 - Little Falls Hospital - 140 Burwell St., Little Falls, NY 13365 (315) 823-1000
 - Saint Elizabeth Medical Center - 2209 Genesee St. Utica, NY (315) 798-8100
 - Faxton St. Luke's Healthcare - 1676 Sunset Ave. Utica, NY (315) 624-5462

The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here:

<https://ovs.ny.gov/sites/default/files/brochure/ovs-crime-victim-brochure-2018-web-final-3-18.pdf> or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims>.

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

Protection and Accommodations:

- When the accused is a student, to have the College issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with Herkimer County Community College policy. Parties may submit evidence in support of their request. The campus will promptly review existing no contact orders at a party’s request, including requests to modify the terms of or discontinue the order. The parties can submit evidence to support their requests. If the campus finds it appropriate, it can even make a schedule for parties who seek to use the same facilities without running afoul of the no contact order.
- To have assistance from Campus Safety or other college officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
- To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official who can explain the order and answer questions about it, including information from the Order about the accused’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).

- The campus will promptly review existing interim measures and accommodations at the request of the party who is affected by that interim measure or accommodation. The parties can submit evidence to support their request.
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have assistance from Campus Safety in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of Campus Safety or, if outside of the jurisdiction or to call on and assist local law enforcement in effecting an arrest for violating such an order.
- When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process. The campus will promptly review existing interim suspensions at a party's request, including requests to modify the terms or discontinue it. Parties can submit evidence to support their request.
- When the accused is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and Herkimer County Community College policies and rules.
- When the accused is not a member of the college community, to have assistance from Campus Safety or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.
- To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.
 - Dean of Students (Title IX Coordinator) – 315-866-0300 (x8276). CA Building, Room 264.

Student Conduct Process:

- To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the Herkimer County Community College Student Code of Conduct (<http://www.herkimer.edu/experience/student-handbook/>), as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.
- Throughout conduct proceedings, the respondent and the reporting individual will have:
 - The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related

hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;

- The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner.
- The right to an investigation and process conducted in a manner that recognizes the legal and policy requirement of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
- The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
- The right to offer evidence during an investigation and to review available relevant evidence in the case file.
- The right to present evidence and testimony at a hearing, where appropriate.
- The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
- The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the hearing officer, and via the hearing officer, indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding where the hearing officer is deliberating on appropriate sanctions.
- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanction(s), and the rationale for the decision and any sanctions.
- The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.

- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
 - The right to have access to a full and fair record or a student conduct hearing, which shall be preserved and maintained for at least five years.
 - The right to choose whether to disclose or discuss the outcome of a conduct hearing.
 - The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.
 - In student disciplinary proceedings involving domestic violence, dating violence, stalking, or sexual violence, the campus will allow parties to review available evidence held by the campus in accordance with college/university policy. Parties can also present available evidence as appropriate under campus policies.
- *For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act⁴ established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.*

Educational Programs

Educational programs to promote awareness of rape, acquaintance rape, and sexual offenses are presented to the campus community. Campus Safety and Student Services staff provide programs for the benefit of all students, including Residence hall students.

Other Resources:

Director of Campus Safety, CA, Room 264, x8336

Dean of Students Office, CA, Room 262, x8276

YWCA Sexual Violence

Services Hotline (315) 866-4120

Herkimer Police Department (315) 866-4330

New York State Police (315) 866-7111

Emergency 911

BACKGROUND: It is recognized that sexual violence is a national problem, and Higher Education is not immune to sexual violence. By implementing campus policies and procedures that seek to prevent sexual violence, as well as educating the campus on proper reporting and response, the campus of Herkimer County Community College will be safer for both students and staff. Due to recently enacted legislation within the State of New York, and upon the recommendation of the State University of New York, this policy was amended on September 23, 2015 to reflect current New York State Law.

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