



# University Conduct Board

## Training Manual for the Formal Hearing

Academic Year 2021 – 2022

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# 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 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](mailto:sccs@esu.edu)
- *Website:* [https://www.esu.edu/student\\_conduct/index.cfm](https://www.esu.edu/student_conduct/index.cfm)

## Office Directory

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## 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.

## 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 by Federal law.

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

1. Members acknowledge that University policies and regulations require privacy/confidentiality in all Formal Hearings and we have an obligation to uphold the Family and Educational Rights and Privacy Act (FERPA).
  - 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.
2. 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.
3. 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.
4. A board member challenged for impartiality may be excused. Indiscriminate impartiality challenges shall entitle the panel to proceed without regard to the challenge.
5. 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: \_\_\_\_\_

# 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 to include notice of the alleged violation and an opportunity to be heard
- a student the opportunity to reflect on his/her 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.

## Thoughts on Your Role in Student Conduct

In Student Conduct it is important to maintain perspective while carrying out the functions of the University Conduct Board (UCB). While your responsibility is to help hold students accountable for their behaviors, we also must work to ensure dignity for all the 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** - It is important to know and understand the policies related to your role on the University Conduct Board, and if you are unsure or unclear it is important to ask questions.
- **Trust yourself** – Serving on the UCB is an important responsibility, and at times it may feel overwhelming. Remember that you volunteered and were chosen to serve on this Board because we trust your ability to carry out this role and to serve as an effective member of our community. Believe in your judgement and decision-making skills, but also remember that if you feel overwhelmed or confused we are here to help.

### *With regard to students...*

- **Be kind to all students involved in the process** – This can be a stressful time for the student. We have the ability to help show them kindness, compassion and respect during what can be a pivotal time in their life.
- **Get focused, stay focused** – This is a time to support the students involved in the process and ensure that we are providing our fullest attention to their needs and experiences.

### *Within a hearing...*

- **What happens in a hearing, stays in a hearing** – We should maintain privacy and respect the 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. By giving respect to students it encourages their own ability to show respect and take responsibility for their actions.
- **If you're not sure, ask** – It is important to work towards a full understanding of the situation and the behaviors involved through effective questioning. Ask questions that are purposeful and relevant.
- **“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.

## 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.

## A Few Thoughts...

Although serving on the UCB is an important role, it can be challenging at times. Here are a few quick thoughts to keep in mind during your service:

- You are helping to build a better community at ESU and in the surrounding areas, and providing a very important service to the campus community!
- You can be prepared for this role by continuing with offered trainings, reading and understanding the ESU Student Handbook, as well as the Residence Hall Policies documents.
- You will have to decide who/what to believe, so understanding how to assess credible witness testimony is key.
- You will deal with ambiguity because not all situations will be the same. In these circumstances you must use your best judgment and rely on your training and UCB peers as you talk through any concerns.
- This can be a very difficult role to serve in, so please remember to engage in self-care and get support when needed.

Above all, remember that you have the opportunity to make a positive difference during a challenging time for the student. Use the opportunity to teach and encourage an environment of accountability.

## Differences Between Student Conduct and Criminal Law

The process and terminology is different between Criminal Law and Student Conduct. Here are a few examples to clarify the different roles and outcomes.

<b>Criminal Law</b>	<b>Student Conduct Process</b>
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 evidence” (meaning more likely than not)
Lawyers represent clients in the process	Lawyers (or a chosen party) can advise the students, not represent them

It is important to note that both processes have a “right to due process”, defined by the corresponding system, which must be followed at all times.

The language used is different for each process, and helps demonstrate the primary goals and focus of the 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:

<b>Criminal Law</b>	<b>Student Conduct Process</b>
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	Charged Student, Respondent, Referred Student
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 can we 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.



# Due Process, FERPA & Confidentiality

## Due Process

Due process refers to the rights that students have when charged with a Code of Conduct violation. The 1961 landmark case of *Dixon v. Alabama* established that students need written/oral due process within Student Conduct, extending on the rights provided under the 14<sup>th</sup> Amendment. These statutes and additional cases dictate that students must be given the following:

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

These rights are given at ESU through the processes devised by the Office of Student Conduct and Community Standards, and upheld by you as part of the University Conduct Board. In the Code of Conduct, these rights are phrased 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.*

Depending on the nature of the violation(s), students have the right to choose between a Conduct Conference or a Formal Hearing. It is important to uphold Due Process to ensure that we are following the law, but this framework also provides the following benefit in student conduct:

- 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 and Education Right to 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 ESU, or by an individual/party acting on behalf of ESU. With this in mind, students have the following rights under FERPA during their time at ESU:

- To inspect and review certain education records
- To request an amendment of their education record if 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>)*

Each year, all employees of ESU complete a mandatory FERPA training. This training is also required for members of the University Conduct Board. For students, their rights under FERPA are reviewed each year when preparing for the fall semester.

## Confidentiality

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

Additionally, if a student would like to review their file or would like an outside party to be allowed information about their conduct file, please refer them to the Office of Student Conduct and Community Standards. A student must sign a FERPA waiver form before any information about their conduct record can be released.

## Student Conduct at East Stroudsburg University

### Code of Conduct

The University Code of Conduct explains the conduct process, the community standards for students, and outlines our commitment to student learning and development. It is an essential resource for your role on the UCB.

Student Handbook: <https://www.esu.edu/student-handbook/index.cfm>

Student Conduct Website: [https://www.esu.edu/student\\_conduct/index.cfm](https://www.esu.edu/student_conduct/index.cfm)

### 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. For a visual representation of the student conduct process, refer to the flowchart at the end of this training manual.

## The Formal Hearing Process

### What is a Formal Hearing?

This is a formal conduct process with either an Administrative Hearing Officer (Admin) or the University Conduct Board (UCB) wherein the incident is reviewed, the referred student has the opportunity to be heard, and witnesses participate. At the conclusion of the Formal Hearing the Admin/UCB makes a determination about the student's responsibility and appropriate educational sanction(s) if the student is found responsible. Referred students also have the right to appeal the decision of the Admin/UCB after a Formal Hearing, as outlined in the Student Code of Conduct.

Prior to a Formal Hearing, referred students may make an appointment to review the referral and other pieces of information in their case file. Referred students may also provide the names of witnesses, if applicable. The witness(es) must have pertinent information to the case; character witnesses are not permitted. If a conflict of interest exists (as in, the referred student would like to have a witness who was also charged in the incident) then that witness cannot participate. In addition, a referred student may be advised and accompanied by an advisor of their choice; if the student chooses to hire legal counsel it is at their own expense. The advisor may only consult and interact privately with the student, not with the UCB, except as 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 in the voice-recorded 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 sanctions will be effective.

## Outline of a Formal Hearing

A Formal Hearing will typically follow this structure:

1. Opening statements by the University and the referred student;
2. The violation(s) is stated in the presence of the referred student, unless they are absent;
3. The case shall be presented on behalf of the University, by SCCS designee, offering all supporting evidence and presenting witness testimony;
4. The referred student shall present their case by offering all supporting evidence and presenting witness testimony (note that for Title IX/Sexual Harassment and Misconduct related cases the student's advisor will conduct cross-examination on behalf of the student);
5. Final Statements and close of the Formal Hearing;
6. Admin/UCB deliberations behind closed door;
7. Admin/UCB writes Decision and Outcome Letter;
8. If, during a hearing, additional violations of community standards/policy are brought to light, new charges may be filed with a new hearing scheduled.

It is important to keep in mind that throughout this process we want to be respectful, seek to understand the student and the situation, and remain impartial and objective in order to successfully make a determination about the student's responsibility in the incident. Please note that Formal Hearings related to Title IX/Sexual Harassment and Misconduct have additional provisions and requirements to comply with the current Title IX Federal Regulations.

## Resources for Formal Hearings

The goals of the Formal Hearing Process are to (1) prevent recurrent negative behavior, (2) address the root cause of the behavior, and (3) help the student learn and become a positive contributor to the community. Remember, this process is about student development. To accomplish these goals the UCB will make determinations about whether a student is responsible for the conduct violation, learn how to listen to the information being presented, and understand how to process the information received in a Formal Hearing.

### "Preponderance of Evidence" in Formal Hearings

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

In many hearings, there may be strong, definitive evidence presented to inform you that the student did or did not violate a particular section of the Code of Conduct. At times there may be ambiguities and contradictions, which requires the UCB to decide whom they find more credible. Referred students are considered not responsible until demonstrated otherwise. In the student conduct process the standard of proof is known as the "preponderance of evidence" meaning it 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 state that the student violated the Code of Conduct.

### 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:

- Constitutes a violation of the Code of Conduct;
- Corroborates the alleged behavior;
- And provides evidence of the referred student's responsibility for the behavior reported.

When determining responsibility, University Conduct Board members may *not* 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 findings of responsibility for the student. Decisions of responsibility should be developed from the facts and information presented in the Formal Hearing.

## Credibility of Information

*(Adapted from the Conduct Training Manual 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:

- **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, then this could be a reason for climbing through a window.
- **Ability:** Could the student have committed the violation? If the student has proof that they were taking a test at the time that the room party was broken up, it makes it less believable that they were responsible for violating policy.
- **Malice:** The harboring of malice must have some effect on the facts of the incident to be relevant. If the complainant has anything against the student accused then it must be proven to you; however, this has no bearing on whether or not the incident actually occurred. For example, it may be relevant to you if you discover that the student accused particularly dislikes the person they accused of having harassed.
- **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 threat is relevant to determining whether this student committed the vandalism.
- **Other behavior that tends to shake your belief in a person’s testimony**

## Information/Evidence

There are different types of information to take into consideration:

- **Direct Evidence:** Based on personal observation or experience. UCB members either believe the person saw or did what they saw/did or they don’t.
- **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.
- **Secondhand, or “hearsay” evidence:** It is not intended that evidence given by unknown or unidentified persons be accepted, nor be considered when weighing the facts of a case.

## Considerations for Witnesses

Throughout the hearing, listen carefully to all of the information presented by Witnesses. Ask thoughtful questions to help 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, it is a very important 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 have a voice in the decision making process.

The deliberation process has two steps:

1. **Responsibility:** determine whether the student/student organization is responsible for the violation(s) in question. Only the facts of the present case are considered. Use the preponderance of evidence as the standard of proof when determining responsibility.
2. **Sanctions:** If responsible, 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. There is a detailed section on sanctions later in this manual.

The University Conduct Board does not need to make a unanimous decision; however, all members present for the Formal Hearing must be satisfied with the decision.

During Deliberation, 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
- 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. The following are some qualities and attitudes of effective consensus-seeking groups:

### Qualities

- Use synergistic thinking as opposed to either/or thinking
- Generate more ideas than individuals generate independently
- Have a high level of participation
- Develop a climate in which members can be relaxed, open and direct
- Promotes respect for others, even when their ideas may be different
- Are task-oriented and focused

### Attitudes

- Cooperation (*not competition*)
- Common ownership of ideas (*not individually owning ideas*)
- Valuing feelings (*not emphasizing facts at the expense of feelings*)
- Valuing conflict as a cooperative effort to bring out all perspectives (*not suppressing feelings and avoiding conflict*)
- Valuing the contributions of all members (*not allowing social prejudices to reflect in the group’s dynamics*)
- Making an effort to equalize power (*not relying on authority status*)

## Tips for Effective Formal Hearings

During every 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, true feelings, or emotions. Make sure that our own non-verbal cues show that you are listening, 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. Be careful to balance being thorough with undue repetition of information.
- **Keep it Flowing:** Avoid jumping from one line of questioning to another; attempt to examine an area completely before moving on.
- **Note-Taking:** Avoid unnecessary writing during the hearing. Members should be concentrating on the content while developing lines of questioning. The audio recorder will provide a complete record of the hearing.
- **Show Respect:** Note passing or whispering 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 heated arguments. Maintain composure even if others do not.
- **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. If there is any confusion or a lack of clarity on part of the process be sure to ask before the Formal Hearing begins.

## Using Questions & Active Listening Skills

### Active Listening, Verbal and Nonverbal Cues

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

Listening and understanding are important skills that members of the UCB should possess. Pay attention to the words that are shared as well as to the person's attitude and demeanor. Effective listening techniques:

- **Listen to what is being said as well as how it is being said.** Two elements make up a message: the content and the underlying attitude. Be a sensitive listener and try to grasp both the content of the message and feelings of the message sender. Often the feelings expressed in a message are more important than the message content on its own.
- **Be attentive to such nonverbal cues as tone of voice, eye movements, facial expression, gestures, and posture.** Do the verbal, paralinguistic, and body language match? These observations may give you a clue as the witness' credibility and sincerity. Listen and look for non-verbal keys to what may be "between the lines".
- **Be a better listener.** Be sincerely interested, maintain a relaxed and comfortable posture, slightly lean forward, make eye contact with the person speaking, acknowledge what is being said by nodding, and remain aware of your tone of voice.
- **Taking notes.** Taking notes helps to reinforce the message, but in others it can be a distraction. Take notes if the information is needed to be referenced later or if it more clarification is needed on the topic.
- **Summarize in your mind what has been said up to this point.** Don't hesitate to ask questions, but be sure to fully understand what is being said before formulating your thoughts for a retort. It is okay to take a moment to think, just as it is okay for the students to take a moment to respond.
- **Separate facts from opinion.** If it is unclear whether something is a fact or opinion, ask questions to gain clarity. Focus on remaining objective and base decisions on the facts that come out of the process.

- **Silence is golden.** Do not be alarmed when a question is asked and the person does not respond immediately. It is natural to think about a response before speaking. Allow the person ample time to think without undue pressure to respond quickly.

## Asking Questions

Questioning is an important aspect of the hearing process. In-depth questioning helps the board to ascertain the facts of the case and clarify vague issues. However, it is important to be intentional and unbiased in one's line of questioning to ensure equality and fairness.

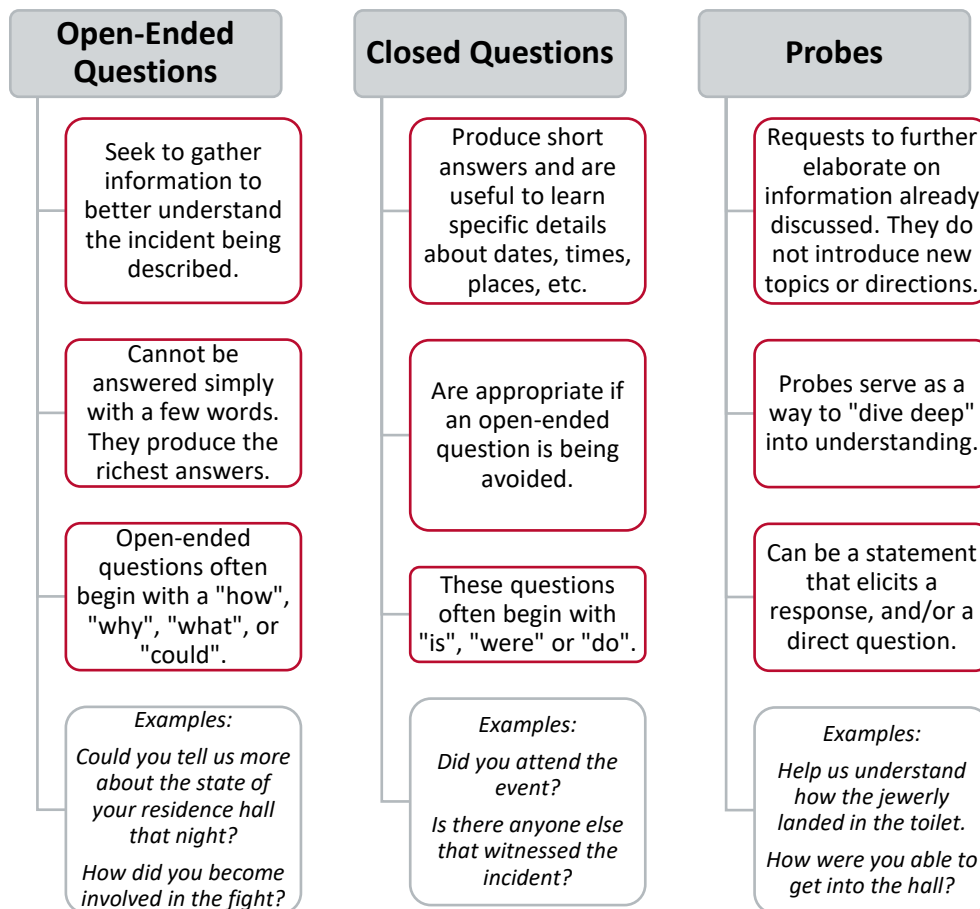
These are several reasons why questions are asked throughout the hearing process:

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

Be thoughtful in the use of different types of questions. Be sure to have an understanding of the different types of questions and how they can be used.

## Types of Questions

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.



## 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 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 testimony of the unbiased person is given more weight. For example, more weight should be given to the testimony of an uninvolved bystander or a police officer rather than to the accused student's partner.
- **The "I didn't know" excuse:** Sometimes an accused 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 person admits 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.

## Educational Outcomes – Using Sanctions to Help Students Learn

### What is an Educational Sanction?

Educational sanctions are assigned to further the students' learning, thought, or reflection related to the incident. Some examples of sanctions are: writing assignments, reflection papers, research projects, community service, creating a bulletin board, hosting a program for a building (sports team, Greek organization, etc.), or completing an online course, a suspension or an expulsion.

Educational Sanctions allow for the opportunity to create appropriate learning outcomes for the student. Learning Outcomes will help to justify the particular sanction(s) used by clarifying the goals achieved through the sanction(s). For example, if a student has been involved in an alcohol-related incident and caused a disturbance in the residence halls, a learning outcome might state "The UCB believes that the student will benefit from learning more about the effects of alcohol in the body. The UCB also believes that the student will benefit from a deeper understanding of community and how to engage productively in a residential community." With these Learning Outcomes, possible sanctions could include the Everfi Alcohol Edu for Sanctions (to understand alcohol and be encouraged to better understand personal use patterns with alcohol) and the Civility Course (to better understand engaging with others in the community).

### Creating an Educational Sanction

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

Educational sanctions serve to help students learn rather than be punished for what they have done. As a result, the maximum benefit for both the individual and the community will be obtained. The following guidelines should be used in developing specific educational sanctions:

- **Intent:** What was the intent of the student? What was the student's motivation for behaving inappropriately and in violation of the Code? Did they intentionally violate a policy? 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)? What were the effects of the behavior?
- **Potential Consequences:** What were the potential consequences of the behavior? If not caught, would physical damage or personal harm have occurred? What potential harm could the student have suffered?
- **Alcohol:** Was alcohol a part of the incident? Did the student demonstrate that they are not a responsible drinker? Are they under the legal drinking age? Does the student show a pattern of abusing alcohol?
- **Attitude:** What is the attitude of the student? Are they willing to accept responsibility for the behavior? Do they refuse to cooperate? Do they display any sense of empathy for others?



- **Record:** What is the student’s past record? Is there a trend of this of behavior or other violations? Consider the violation. Does it suggest possible sanctions? Could a sanction be developed which would help prevent future violations of a similar nature? Sanctions should be well defined and clear with a supporting rationale as to why the student is being asked to complete the sanction
- **Individualization:** Consider the individual student being seen. Try to determine what kind of a sanction will have the most beneficial impact on that person as an individual. The same sanction will not necessarily have the same effect on all students.
- **Restitution:** Restitution should be considered when damage to property is involved. This includes damage both to University property and to the personal property of other students.
- **Developmental:** The sanctions are directly related to a developmental stage or skills that the student needs to learn. For example, if a student has exhibited very aggressive behavior when stressed, used abusive language, slammed doors, or even damaged hall property, some of the developmental options are: anger management classes, or learning skills to cope with stress.
- **Appropriate to circumstances and violation:** The sanctions must be in accordance with the seriousness of the violation and the circumstances surrounding the conduct. Doing this will emphasize the goal of educating rather than punishing students. The student will also perceive the sanctions as fair.
- **Explaining “Why”:** In order for the student to understand the purpose of sanctioning, an explanation of why certain sanctions are being imposed is necessary. Discussing why the exhibited behavior was inappropriate or disruptive, how the behavior affected others and what skills are being encouraged in the student are very helpful. Include these explanations in both the conduct hearing process and in the Outcome Letter.

As a final note, all sanctions should have an assigned deadline for completion. Appropriate completion timelines allows for the student to learn and correct behaviors while the issue is still fresh in mind.

### Common 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:

- Restitution – a payment to help replace/repair damaged property
- Campus/Community Service – service work related to the conduct issue
- Educational Programs – Referrals to courses such as:
  - BASICS – Brief Alcohol Screening and Intervention for College Students
  - CASICS – CAnnabis Screening and Intervention for College Students
  - Time Management Education
  - Emotions Management Education
  - Civility Workshop
  - Writing a paper
  - Attending a workshop
  - Designing a bulletin board or a workshop
- 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.
- Expulsion – student is permanently removed from the University and is not able to attend ESU functions or receive a refund for University fees
- Administrative Hold – limits the student’s ability to register for courses, receive transcripts or diplomas until the hold is released if educational sanctions are not completed in the specified time-frame

# Title IX

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

Sexual harassment and misconduct is reportable offense under Title IX and includes all forms of harassment and violence that are sexual in nature. This includes (but is not limited to) sex- and gender-based discrimination, sexual assault, sexual harassment, sexual exploitation, stalking, dating violence, and domestic violence. When a report of sexual misconduct is brought to the Title IX Coordinator that person will determine if it meets 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 at <https://www.esu.edu/sexual-harassment/index.cfm>

Students should also be aware of their specific rights in the resolution and/or conduct process:

- Rights for Respondents: <https://www.esu.edu/sexual-harassment/accused.cfm>
- Rights for Complainants: <https://www.esu.edu/sexual-harassment/assaulted.cfm>

As a member of the University Conduct Board you are required to complete annual training on the specific requirements of Title IX-related cases and additional factors required for compliance with the 2020 Title IX Federal Regulations.

## Things to Keep in Mind with Sexual Harassment/Sexual Misconduct Cases

When working with a case of sexual misconduct, there are a number of considerations to keep in mind. The focus is on finding if there is 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:

- 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
- Focus on information gathered at the hearing *not* on what you do not know
- Is there enough evidence to determine a decision 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

## Confidential & Non-Confidential Resources

Employees have a duty to report any incidents of sexual harassment/sexual misconduct that they are aware of as mandated reporters. If a student would like to speak to a confidential resource, or a different non-confidential resource, there are options are available.

### Non-Confidential Resources

- Student Conduct and Community Standards
- Equal Opportunity and Title IX Coordinator
- University Police
- Residential and Dining Services
- Office of Accessible Services Individualized for Students (OASIS)
- ESU Human Resources
- Stroud Area Regional Police Department
- Pocono Medical Center Emergency Room

### Confidential Resources

- ESU Counseling and Psychological Services (CAPS)
- ESU Health Center
- Women's Resources of Monroe County Crisis Hotline/Counseling
- V.O.I.C.E.S. Women's Center

For more information, please contact the current Equal Opportunity and Title IX Coordinator or refer to the ESU Website: <https://www.esu.edu/sexual-harassment/index.cfm>

## Quick Resource Guide

### ESU Policies and Procedures

- Student Handbook  
<https://www.esu.edu/student-handbook/index.cfm>
- Residential Living Policies  
[https://www.esu.edu/residential\\_dining\\_services/safety\\_policies.cfm](https://www.esu.edu/residential_dining_services/safety_policies.cfm)
- University Policies  
[https://www.esu.edu/university\\_policies/list/index.cfm](https://www.esu.edu/university_policies/list/index.cfm)

### Student Conduct and Community Standards

- Main Website  
[https://www.esu.edu/student\\_conduct/index.cfm](https://www.esu.edu/student_conduct/index.cfm)
- UCB Member Training Page (also see Microsoft Teams page for UCB members)  
[https://www.esu.edu/student\\_conduct/training-materials.cfm](https://www.esu.edu/student_conduct/training-materials.cfm)

### FERPA

- FERPA Information for ESU  
<https://www.esu.edu/registrar/ferpa/index.cfm>
- FERPA FAQs  
<https://www.esu.edu/registrar/ferpa/faqs.cfm>
- Department of Education FERPA Website  
<https://studentprivacy.ed.gov/ferpa>
- Protecting Student Privacy – Resources for Officials in Higher Education  
<https://studentprivacy.ed.gov/audience/school-officials-post-secondary>

### Title IX Information

- Title IX Information for ESU  
<https://www.esu.edu/sexual-harassment/index.cfm>
- Sexual Misconduct (Title IX) Policy and Procedure  
[https://www.esu.edu/university\\_policies/list/ESU-2020-01.cfm](https://www.esu.edu/university_policies/list/ESU-2020-01.cfm)
- Sexual Misconduct (Title IX) Resolution Process  
<https://www.esu.edu/sexual-harassment/process.cfm>

# Student Conduct Flowchart – Overall Process for SCCS