



The State University
of New York

Dr. Jim Malatras

Chancellor

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To: All Presidents

From: Chancellor Jim Malatras

Date: September 25, 2020

Re: Uniform Sanctioning in Response to COVID-19 Student Violations

In accordance with the authority vested in me as Chancellor of The State University of New York ("SUNY" or "University") and the COVID-19 public health directives issued by the Governor and the New York State Department of Health relating to the re-opening of SUNY campuses, and after consultation with your campuses, I am instituting this comprehensive emergency directive to address violations of COVID-19 safety protocols occurring at SUNY's State-operated campuses and community colleges.

This emergency directive, which implements a COVID-19 sanctioning policy, is intentionally narrowly tailored to the current public health emergency, and seeks to create uniformity of sanction to help SUNY balance the need to protect public health of students, faculty, staff, and community members, with students' rights to remain within the educational environment. This directive does not supersede the definitions of violations of COVID-19 requirements, where defined by a campus within their Code of Conduct or other policy, but assigns standardized sanctions for such violations, dependent upon gravity and intentionality. All students maintain the due process rights guaranteed to them by the federal and New York State Constitutions, New York State law, SUNY regulations, and University-wide and campus policies. Students are strongly encouraged to follow the reasonable requirements of wearing masks/coverings, socially distancing, avoiding crowds, presenting for COVID-19 testing, filling out daily digital health forms before arrival on campus, reporting positive test results, and following all directives of campus, local, and State health officials.

The Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency on January 31, 2020 in response to the novel coronavirus, COVID-19. New York State Governor Andrew M. Cuomo declared a state of emergency on March 7, 2020, and shortly thereafter SUNY colleges and universities began to shift to remote learning for the remainder of the Spring 2020 semester. For the Fall 2020 semester, pursuant to New York State Department of Health Guidance issued on June 28, 2020, SUNY colleges and universities have reopened on-campus class instruction and activities in a limited fashion with mandatory COVID-19 specific protocols to maintain the health and safety of faculty, staff, and students.

Unlike most policy violations that impact just the accused or a small group of people, a violation of mandatory COVID-19 safety protocols can have a wide application and the impact upon direct, secondary, tertiary, and other infected parties can result in their illness, injury, and/or death. Further, violations of mandatory COVID-19 protocols can aid in the spread of the virus, which can result in the partial or complete closure of a campus, loss of academic

opportunity, and significant economic damage on and off campus. This is an unprecedented time in the history of The State University of New York.

To effectuate a fair and consistent approach to policy violations by students at its State-operated and community colleges, SUNY establishes this COVID-19 sanctioning policy for all State-operated and community college campuses.

Due Process Prior to Conduct and Interim Actions:

By virtue of attending a public higher education institution, SUNY students receive due process before imposition of a sanction or reduction of access to the University, with the process concomitant to the gravity of the potential deprivation. This policy does not modify or reduce access to Constitutional due process, but simply sets standard sanctions for violations, consistent with due process. Sanctions shall be applied following a process dictated by the institution's Code of Conduct, including, but not limited to, any appeals process it incorporates. Consistent with SUNY policy, the standard of evidence shall be preponderance of the evidence. Students are presumed not responsible until the institution makes a finding based upon the evidence. Furthermore, a campus has the authority to consider a student's financial and other exigent circumstances in resolving a violation.

Institutions may use interim suspension or other interim action for students who commit a COVID-19-related violation during the pendency of the investigation and adjudication process as may be provided by its Code of Conduct. Each institution shall determine whether students can participate in their coursework remotely during the investigative and adjudicative process. Due to the continuing health threat presented by a student under investigation enrolling in another institution without such institution's knowledge, during the pendency of such an investigation and adjudication, if allowed under the institution's Code of Conduct, a hold shall be placed on a student's transcript and release thereof.

Amnesty and Good Samaritan policies and principles that are already in campus policy to encourage disclosure of violations of federal, State, or local law or campus policy or participation in an investigation or adjudication of such a violation may be expanded to apply those principles to potential violations of the provisions of this policy.

This policy shall apply only during the emergency response to the COVID-19 pandemic, and shall end upon order of the Chancellor. This policy shall not be precedential for any time outside of this emergency.

Generally, and as it relates to this policy, students shall retain all rights to expression as protected under the First Amendment. This policy shall apply equally to all students, regardless of membership in a protected class.

This policy shall take effect at 8:00 a.m. on October 1, 2020, unless implemented earlier by a campus President. Presidents or their designees shall send students no less than two electronic mail messages using the address on file to notify students of this policy and link to



the policy language. Institutions are encouraged to also use traditional and social media to inform students and community members of the policy.

Multiple findings of responsibility may result in graduated levels of sanction, up to and including permanent dismissal. Additionally, findings of violations during periods when a campus is partially or completely closed (or on pause), under the standards established by the New York State Department of Health and SUNY Chancellor, may result in elevated levels of sanction. All sanctions established in this policy serve as the minimum, and campuses have discretion to enact higher sanctions where merited.

A finding of responsibility and applied sanction of dismissal or suspension shall, consistent with SUNY policy, leave the respondent ineligible for refund of tuition, room, board, or fees, and the student will be responsible for all amounts owed.

I(A)- COVID-Positive Intentional Violations: For students who know that they have tested positive for COVID-19, from one or more positive tests, or students who know they have had close contact to someone who has tested positive for COVID-19 or been treated or is symptomatic for COVID-19, and then intentionally expose other students by any means—including, but not limited to, visiting with the COVID-19 positive tested person in an enclosed area or inviting that person to the student’s room, apartment or other enclosed space, sharing food or other personal items, or hosting a gathering of any size—the available sanctions shall be permanent dismissal or suspension from academic access (including distance learning) and housing for no less than one calendar year. For SUNY campuses that maintain a hospital or public-facing health care facility, suspended or dismissed students shall, consistent with campus policy, remain eligible to enter the campus for health care purposes. A student dismissed or suspended from a SUNY campus for a positive intentional violation shall be ineligible for admission to any other SUNY State-operated or community college during the pendency of their sanction.

I(B)- Failure to Self-Isolate: For students who have been directed by the institution or the State or local Department of Health to self-isolate (because they have tested positive for COVID-19) on or off campus, and then engage in any conduct that would violate such isolation order—including, but not limited to, intentionally leaving isolation, exposing other individuals, including students (whether in isolation or not) by visiting with them in an enclosed area, by inviting them to the student’s room, apartment or other enclosed space, by sharing food or other personal items, or by hosting a gathering of any size—the available sanctions shall be permanent dismissal or suspension from academic access and housing for no less than one calendar year. A student dismissed or suspended from a SUNY campus for a failure to self-isolate violation shall be ineligible for admission to any other SUNY institution during the pendency of their sanction. Failure to follow the directions of State or local health departments or the provisions of Executive Orders (including but not limited to New York State on Pause) may also result in fines, criminal prosecution, or referral to relevant government agencies.

I(C)- Failure to Quarantine: For students who have been directed by the institution or the State or local Department of Health to complete a quarantine period (mandatory or

precautionary), on or off campus, and then engage in any conduct that would violate such quarantine order, the available sanctions shall include a suspension from housing with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and housing suspension, or permanent dismissal from the institution. For non-residential students who fail to quarantine, the available sanctions shall include a suspension from academic access to campus of at least one year with continued access to their academic program via remote learning only (if available and as subject to campus policy and process) and other sanctions detailed above. Failure to follow the directions of State or local health departments may also result in fines, criminal prosecution, and referral to relevant government agencies.

II(A)- Prohibited On Campus Gathering (Hosts): For students who host an on campus gathering of any size, whether indoor or outdoor, that violates or exceeds campus housing policy and/or the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a suspension from housing of at least one year with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and housing suspension of at least one year, or permanent dismissal from the institution. For covered gatherings, all individuals who are on the housing contract/lease (or a member of their family is on the lease), pay rent, or live at the location or otherwise assisted in organizing the event shall be considered a host unless it can be shown that they were not present and played no part in organizing, hosting, promoting, or advertising the event.

II(B)- Prohibited On Campus Gathering (Attendee): For students who attend a gathering of any size (but not as host), whether indoor or outdoor, that violates or exceeds campus housing policy and/or the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a suspension from housing with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and housing suspension, or permanent dismissal from the institution. For non-residential students, the available sanctions shall include a suspension from academic access to campus of at least one year with continued access to their academic program via remote learning only (if available and as subject to campus policy and process) and other sanctions detailed above.

III(A)- Prohibited Off Campus Gathering (Hosts): Acts that occur off campus in violation of social distancing requirements under law, regulation, order, or campus policy present significant health and safety threats on campus and have a nexus to continued functioning of each campus. For students who host an off campus gathering of any size, indoor or outdoor, that exceeds the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a suspension from live attendance at the institution of at least one year with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), a suspension of at least one year, or permanent dismissal from the institution. For non-residential students, the available sanctions shall include a suspension from academic access to campus of at least one year with continued access to their academic program via remote learning only (if available and as subject to campus policy and process) and other sanctions

detailed above. For covered gatherings, all individuals who are on the lease (or a member of their family is on the lease), pay rent, or live at the location shall be considered a host unless it can be shown that they were not present and played no part in organizing, hosting, promoting or advertising the event.

III(B)- Prohibited Off Campus Gathering (Attendee): Acts that occur off campus in violation of social distancing requirements under law, regulation, order, or campus policy present significant health and safety threats on campus and have a nexus to the continued functioning of each campus. For students who attend a gathering of any size (but not as host), whether indoor or outdoor, that exceeds the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a suspension from housing (for students who live on campus) with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), for residential or non-residential students a suspension from live attendance with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and housing suspension, or permanent dismissal from the institution.

IV- Face Mask and Social Distancing Requirements: For students found to have committed repeated and/or intentional violations of face mask/covering or social distancing requirements of the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a suspension from academic and/or housing access with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and/or housing suspension, or permanent dismissal from the institution.

V- Contact Tracing: For students who repeatedly fail to comply, whether intentionally or unintentionally (unless it can be shown that the student was genuinely not reached by contact tracers through no failure on their part), with COVID-19 contact tracing efforts conducted by the institution or the State or local Department of Health, the available sanctions shall include a suspension from academic and/or housing access with continued access to their academic program via remote learning only (if available and as subject to campus policy and process), an academic and/or housing suspension, or permanent dismissal from the institution.

VI- Failure to Comply with Campus Health Protocols: For students who fail to attend at least two scheduled appointments, without sufficient excuse, to obtain diagnostic or surveillance COVID-19 testing under the institution's published protocol, the institution shall undertake disciplinary action to enforce compliance, which may include interim suspension, or take administrative measures to electronically deactivate card access (or equivalent) and restrict access to any buildings with the exception of access required to obtain health care services pursuant to campus policy. For students whose access has been restricted, they shall be ineligible to attend live classes (though they may continue in remote coursework only, if available and as subject to campus policy and process), and their parking privileges on campus may be temporarily revoked such that their car may be ticketed or towed if parked on campus. Restricting access to the campus and revoking parking privileges are administrative actions that are not disciplinary in nature, and the affected student may revive full access by

obtaining a diagnostic or surveillance test or by submitting negative results of a diagnostic or surveillance test, as applicable. The institution shall notify the student of their reduction of access. Coming to campus or seeking access to a campus building or course without curing this deficiency shall be considered trespassing and may result in investigation and discipline.

For students who fail to submit their daily health screening via the institution's supplied portal for at least three consecutive days, without sufficient excuse, the institution shall undertake disciplinary action to enforce compliance, which may include interim suspension, or take administrative measures to electronically deactivate card access (or equivalent) and restrict access to any buildings. For students whose access has been restricted, they shall be ineligible to attend live classes (though they may continue in remote coursework only, if available and as subject to campus policy and process), and their parking privileges on campus may be temporarily revoked such that their car may be ticketed or towed if parked on campus. Restricting access to the campus and revoking parking privileges are not disciplinary in nature, and the affected student may revive full access by submitting their daily health screening. Coming to campus or seeking access to a campus building or course without curing this deficiency shall be considered trespassing and may result in investigation and discipline.

VII- Student Athletes: For student athletes, in addition to the other provisions of this policy, a finding of responsibility for any violation detailed above in Sections I, II, and/or III, or repeated violations of other provisions above, may also include, at a minimum, a loss of the privilege of competing in intercollegiate athletics at the institution in the current academic year or longer, temporary or permanent removal of leadership roles, and loss of scholarship (where applicable). For student athletes found responsible for any violation detailed above in Sections I(A), I(B), I(C), the consequences may also include permanent loss of the privilege of competing in intercollegiate athletics at the institution, temporary or permanent removal of leadership roles, and loss of scholarship (where applicable). Such consequences may also impact NCAA, NCJAA, or other conference or association eligibility (pursuant to applicable rules).

VIII- Student Organizations: Where applicable, for recognized or registered student organizations, whether on or off campus, academic, social, athletic, or of any other nature, that have one or more members who know that they have tested positive for COVID-19, from one or more positive tests, or members who know they have had close contact to someone who has tested positive for COVID-19 or been treated or is symptomatic for COVID-19, and are found to have hosted a gathering of any size, indoor or outdoor, on campus or off campus, that exceeds the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include de-registration or de-recognition and a report to a national organizing body (if applicable) or may also include permanent ineligibility for recognition or registration.

Where applicable, for recognized or registered student organizations, whether on or off campus, academic, social, or of any other nature, that are found to have hosted a gathering of any size, indoor or outdoor, that exceeds the current limitation published by the institution, Executive Order, or the State or local Department of Health, the available sanctions shall include a de-registration or de-recognition, a report to a national organizing body (if

applicable), organizational suspension of at least one year, or permanent ineligibility for recognition or registration.

Student members of an organization found to have engaged in conduct described in either paragraph of this Section, who themselves individually organized or participated in such a gathering shall, in addition to the sanctions described above, be subject to loss of their membership and/or officer status (where applicable) in an organization found to have so violated.

Questions on interpretation of this policy shall be directed to campus counsel. The SUNY Student Conduct Institute is directed to continue to provide technical assistance upon request to SUNY State-operated and community colleges, in coordination with campus counsel, and consistent with this directive, which may include webinars or additional written guidance.