

**THE CITY UNIVERSITY OF NEW YORK
POLICY ON STUDENT-ATHLETE ATTESTATION
OF SERIOUS MISCONDUCT**

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PREAMBLE

The City University of New York (“CUNY”) is a member of the National Collegiate Athletic Association (“NCAA”). The NCAA Board of Governors Policy on Campus Sexual Violence (“NCAA Campus Sexual Violence Policy”), first adopted in 2017, is designed to reinforce the NCAA’s efforts to address campus sexual violence. As a member of the NCAA, CUNY must attest annually to compliance with the NCAA Campus Sexual Violence Policy. Accordingly, since 2017, CUNY has been committed to

- Ensuring that CUNY athletics departments are informed on, integrated in and compliant with CUNY policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence;
- Distributing the institutional policies and processes regarding sexual violence prevention and adjudication and the name and contact information for the campus Title IX Coordinator to student-athletes and making the same readily available within CUNY athletic departments; and
- Delivering effective education on sexual violence prevention, intervention and response annually to all student-athletes, coaches and staff.

The NCAA Campus Sexual Violence Policy, as revised in 2021, now requires additional obligations of NCAA member institutions beginning with the 2022-2023 Academic Year. These obligations include requiring student-athletes to attest annually whether they have been subject to any prior discipline or conviction for serious misconduct and for CUNY to take reasonable steps to confirm the same. Accordingly, CUNY is committed to:

- Requiring all incoming, continuing and transfer student-athletes to complete an annual disclosure related to their conduct that resulted in discipline through a campus misconduct proceeding or in a criminal conviction, for prior serious misconduct;
- Requiring that all transfer student-athletes also disclose whether a campus misconduct proceeding for serious misconduct was incomplete or pending at the time of transfer;
- Taking reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a campus misconduct proceeding or convicted of prior serious misconduct;
- Maintaining a written procedure that specifically directs athletic staff to adhere to the policy and procedures outlined below; and
- Providing clear guidelines for students and employees about how to adhere to and implement this Policy effectively, fairly and consistent with existing CUNY policies.

CUNY developed this Policy in accordance with the attestation obligations of the NCAA Campus Sexual Violence Policy, which will take effect with the 2022-2023 Academic Year.

I. POLICY STATEMENT

The City University of New York (“CUNY”) is committed to creating a safe and welcoming environment for all students, employees and visitors. CUNY shares the NCAA’s commitment to promoting and developing the NCAA’s core values of academics, well-being and fairness for the thousands of student-athletes who participate in intercollegiate athletics at CUNY.

As a member of the National Collegiate Athletic Association (“NCAA”), CUNY is required to adhere to the [NCAA Board of Governors Policy on Campus Sexual Violence](#) (“NCAA Campus Sexual Violence Policy”). As stated in the NCAA Campus Sexual Violence Policy, “sexual discrimination, sexual harassment and sexual and interpersonal violence violate human decency and the Association’s core values.” CUNY will implement the NCAA Campus Sexual Violence Policy in a manner consistent with these shared values.

This Policy identifies CUNY’s policy and procedures regarding the attestation obligations of the NCAA Campus Sexual Violence Policy, which will take effect with the 2022-2023 Academic Year.

II. SCOPE

This Policy applies to all incoming, transfer or currently enrolled students who seek to participate in NCAA or NJCAA athletics (“intercollegiate athletics”) at CUNY.

This Policy identifies the policy and procedures regarding eligibility to participate in intercollegiate athletics at CUNY, as required by the NCAA Campus Sexual Violence Policy.¹ A determination of ineligibility or loss of eligibility due to failure to comply with this Policy’s requirements shall be binding in all CUNY athletics programs, but will not impact a student’s admission, academic status or enrollment at CUNY.

This Policy requires that covered student-athletes attest to discipline or conviction for serious misconduct. This Policy should not be interpreted or applied in a manner that interferes with other CUNY policies, including the [CUNY Policy on Sexual Misconduct \(“PSM”\)](#)², [Article XV of the CUNY Bylaws](#)³ or any other policies that govern student conduct or athletics eligibility. Any student misconduct in violation of CUNY Policy, including, but not limited to the PSM and Article XV, will be addressed in accordance with, and pursuant to, those controlling policies.

¹ Additionally, please refer to the NCAA eligibility requirements for the applicable division.

² The PSM prohibits Sexual Misconduct that occurs on CUNY property and conduct that occurs off CUNY property but has a reasonable connection to CUNY.

³ Article XV of the CUNY Bylaws identifies the conduct standard expected of all CUNY students (Section 15.1) and identifies applicable student disciplinary procedures (Section 15.3).

III. DEFINITIONS

- a. **Campus Misconduct Proceeding(s):** An umbrella term that refers to investigations,⁴ hearings and/or adjudications, conducted by an educational institution, including high schools.
- b. **Covered Student-athlete:** A “Covered Student-athlete” is any current, incoming or transfer student (as defined below) at a CUNY institution who has been invited to participate, or is currently participating, in NCAA or NJCAA athletics (“intercollegiate athletics”) at CUNY.
- c. **Crime:** A crime refers to a violation of local, state, and/or federal law (also known as an offense) that has resulted in an individual having a, or adding to an existing, criminal record.
- d. **Discipline:** “Discipline” means any final finding of or acceptance of responsibility (including an acceptance of responsibility as the result of an informal resolution).
- e. **Interpersonal Violence:** “Interpersonal Violence,” as defined by the NCAA Campus Sexual Violence Policy, shall mean any violence that is predominantly caused due to the relationship between the victim and the perpetrator, including dating and domestic violence.
- f. **Other Acts of Violence:** “Other Acts of Violence,” as defined by the NCAA Campus Sexual Violence Policy, shall mean crimes including murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury.
- g. **Serious Misconduct:** An umbrella term which includes conduct constituting interpersonal violence, sexual misconduct and other acts of violence (as previously defined in this Policy).
- h. **Sexual Misconduct:** “Sexual Misconduct” shall include all conduct that constitutes Sexual Violence, as defined by the NCAA Campus Sexual Violence Policy,⁵ and all prohibited conducted under the PSM,⁶ including, but not limited to:
 - i. **Sexual Assault: Contact:** any sexual contact, including sexual touching for the purpose of sexual gratification of either party or degrading or abusing such person, without a person’s consent. Sexual touching includes contact under or over clothing with another person’s anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.

⁴ For purposes of this Policy, an investigation shall constitute a “campus misconduct proceeding” at the time the Respondent is notified or otherwise becomes aware of the pending charges for conduct/acts constituting serious misconduct (as defined above).

⁵ As defined by the NCAA Board of Governors Policy on Campus Sexual Violence, the term “sexual violence” includes both forcible and nonforcible sexual offenses, ranging from sexual battery to rape.

⁶ Please refer to the PSM (*see* Section III, Page 5) for a complete list of prohibited conduct and applicable definitions.

- ii. **Sexual Assault: Penetration:** any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue, or finger without a person’s consent. This term includes incest and statutory rape.
 - iii. **Sexual Harassment:** unwelcome verbal or physical behavior based on a person’s sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). Conduct is considered “unwelcome” if the individual did not request or invite it and considered the conduct to be undesirable or offensive.
 - iv. **Stalking:** engaging in a course of conduct, based on sex (including sexual orientation, gender, gender expression and gender identity, including transgender status), directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others or (2) suffer substantial emotional distress.
 - v. **Voyeurism:** unlawful surveillance or otherwise engaging in conduct that violates a person’s right to privacy in connection with their body and/or sexual activity.
- i. **Transfer Student:** A “Transfer Student” is an applicant seeking to enroll at CUNY, who has previously attended any college, university, vocational school, religious school and/or proprietary school since graduating from high school or secondary school.⁷

IV. ATTESTATION POLICY

This Policy requires all covered student-athletes to complete a Student-Athlete Attestation form (“Attestation”) and disclose any serious misconduct that resulted in discipline through a campus misconduct proceeding or in a criminal conviction. The Attestation must be completed annually. The Attestation and if applicable, the Due Diligence Review and Eligibility Review process must be complete before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship.⁸

Student-athletes who make a required disclosure, and who were either attending an educational institution at the time of their conviction or were disciplined through a campus misconduct proceeding, must complete the FERPA Release contained in the Attestation, allowing CUNY to obtain information from every educational institution which may have record of the conviction or discipline.

All transfer student-athletes, regardless of whether the student-athlete makes a required disclosure, must complete the FERPA Release for the institution from which the student-athlete is transferring (or for the institution most recently attended), to allow CUNY to obtain information about the

⁷ An applicant seeking to enroll at CUNY will be considered a transfer student even if they are not seeking transfer credit or have decided to change their major/program of study. Second degree students are also considered transfer students.

⁸ Beginning in Spring 2023.

existence of any of convictions for crimes involving serious misconduct, any disciplinary history for serious misconduct or any pending or incomplete campus misconduct proceedings for serious misconduct against the student.

If a current student-athlete is disciplined through a CUNY campus misconduct proceeding involving serious misconduct or is convicted of a crime involving serious misconduct, the student-athlete must complete a mid-year Attestation as soon as practicable.

If, at any time, CUNY has reason to believe that a student-athlete has been disciplined through a campus misconduct proceeding involving serious misconduct or has been convicted of a crime involving serious misconduct, whether or not the student-athlete has reported the same on an Attestation, CUNY will take reasonable steps to gather additional information and, when warranted by the facts, initiate the due diligence and eligibility review process.

a. Required Annual Disclosures

Covered student-athletes should refer to these guidelines when completing the Attestation:

Student-athletes must disclose:

- Whether they have ever been disciplined (as defined in Section III.h) through a campus misconduct proceeding for serious misconduct;
- Whether they have been convicted of, pled guilty to or pled no contest to any crime of serious misconduct; and
- Whether, if a transfer student-athlete, a campus misconduct proceeding involving serious misconduct is incomplete or pending at the time of transfer and/or when the Attestation is completed.

Student-athletes should not disclose:

- That they are currently under investigation for serious misconduct, other than the exceptions for transfer student-athletes listed above;
- That they have been found "not responsible" or "not in violation" through a campus misconduct proceeding for serious misconduct;
- That they are currently under investigation, or have ever been named a suspect, for a criminal matter involving serious misconduct;
- That they have been found "not guilty" or otherwise had charges dismissed without a conviction in a criminal investigation involving serious misconduct;
- Convictions that are sealed; and/or
- Conduct which has been previously disclosed via an Attestation in accordance with the procedures outlined in this Policy.

b. Mid-Year Disclosures

At any point following the submission of the student-athlete's Attestation, and prior to the submission date of the next year's Attestation, student-athletes must disclose, as soon as practicable:

- That they have been disciplined through a campus misconduct proceeding for serious misconduct; and/or
- That they have been convicted of, pled guilty to or pled no contest to any crime of serious misconduct.

c. Disclosure Information

Student-athletes who make a required disclosure must identify the misconduct, including, but not limited to:

- The date(s) of the incident(s),
- The date(s) of the conviction(s) or campus misconduct proceeding(s),
- A description of the incident(s), and
- The court(s) or institution(s) through which the student-athlete was disciplined or convicted.

When making a required disclosure on the Attestation, a student-athlete may submit any additional information which they would like the Campus Level Review Panel to consider as part of the eligibility determination. This additional information may include mitigating information related to the serious misconduct, including, for example, the student’s reflection on what they have learned from the experience.

d. Information Sharing with Other Institutions

In a manner that is consistent with federal and state law, CUNY is obligated by the NCAA to share information with other NCAA institutions regarding a student-athlete's prior disciplinary action at CUNY, whether CUNY is aware of convictions for crimes involving serious misconduct and/or campus misconduct proceedings which are incomplete or pending when a student-athlete withdraws from CUNY and attempts to enroll in a new college or university.

V. PROCEDURES

CUNY will take reasonable steps to confirm the information provided by covered student-athletes in their Attestation, including confirming whether covered student-athletes have been disciplined or criminally convicted for serious misconduct (“Due Diligence Review”). After conducting this due diligence review, CUNY will review the information available to determine whether any prior serious misconduct impacts a student-athlete’s eligibility to participate in intercollegiate athletics (“the eligibility review”) and take appropriate action.

The campus Athletic Director⁹ must identify an individual responsible for overseeing the Attestation and due diligence review process (hereinafter referred to as the “Campus Attestation Designee”). Each campus must ensure the Attestation and if applicable, the Due Diligence Review and Eligibility Review process must be complete before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship.¹⁰

⁹ Any reference to the campus Athletic Director may also include their designee.

¹⁰ Beginning in Spring 2023.

These procedures identify the steps CUNY will take in the Attestation, due diligence review and eligibility review process and identify an appeal procedure for any covered student-athlete who is determined ineligible to participate in intercollegiate athletics due to prior serious misconduct.

a. Annual Attestation

The Campus Attestation Designee is responsible for:

- Reminding covered student-athletes of the annual attestation requirement;
- Informing covered student-athletes of the deadline to submit their annual Attestation;
- Collecting all Attestations from their campus;
- Reviewing all Attestations for completion;
- Identifying any disclosures that will be subject to a due diligence review; and
- Ensuring that any covered student-athlete who has made a disclosure on the Attestation has also provided the signed FERPA Release, if applicable.

b. Transfer Student Attestation

In addition to the above, the Campus Attestation Designee is responsible for:

- Ensuring that transfer student-athletes are aware of the attestation requirement and have timely access to the Attestation;
- Informing transfer student-athletes of the deadline to submit the Attestation;
- Collecting all transfer student Attestations from their campus;
- Reviewing all transfer-student Attestations for completion, including the signed FERPA Release from the institution from which they are transferring (or most recently attended); and
- Ensuring that any transfer-student-athlete who has made a disclosure on the attestation form has also provided a signed FERPA release, if applicable.

Transfer students must complete an Attestation prior to their participation in CUNY athletics.

c. Mid-Year Attestation Requirement

If, after submitting an Attestation but prior to the following year's Attestation submission date, a student-athlete is disciplined through a CUNY campus misconduct proceeding for serious misconduct or is convicted of a crime involving serious misconduct, the student-athlete must complete and submit an Attestation to the Campus Attestation Designee as soon as practicable. Following a mid-year disclosure, a student-athlete will not be permitted to practice or compete while the due diligence and eligibility review is pending.

d. Due Diligence Review

The Campus Attestation Designee, in conjunction with the campus Title IX Coordinator, will take reasonable steps to confirm the circumstances of any serious misconduct disclosed in an Attestation. These reasonable steps may include interviewing the disclosing student-athlete,

contacting the prior institution and reviewing any records it provides, criminal background checks and reviewing public records or other publicly available information, including, but not limited to court documents, social media, news reports or any other source that may possess information regarding the serious misconduct in question.

For transfer student-athletes, the Campus Attestation Designee, in conjunction with the campus Title IX Coordinator, must also take reasonable steps to confirm the existence of any convictions for crimes involving serious misconduct, any disciplinary history for serious misconduct or any pending or incomplete campus misconduct proceedings against the student.

If, at any time, CUNY has reason to believe that a student-athlete has been disciplined through a campus misconduct proceeding involving serious misconduct or that a student-athlete has been convicted of a crime involving serious misconduct, whether or not the student-athlete has reported the same via Attestation, CUNY will take reasonable steps to gather additional information and, when necessary, provide information to the Campus Level Review Committee for an eligibility determination.

The Campus Attestation Designee will compile the relevant information and materials gathered during the due diligence review (“the due diligence review materials”) and prepare an executive summary, which will:

- Identify the serious misconduct, including any relevant details, such as the date the serious misconduct occurred and the institution the student-athlete was attending at the time the serious misconduct occurred;
- Identify the consequences of the serious misconduct, including any specific disciplinary sanctions and/or criminal penalties;
- List the due diligence review materials gathered during the due diligence review process; and
- Include any statement submitted by the student regarding the serious misconduct.

Once the due diligence review materials are compiled and the Campus Attestation Designee’s executive summary is completed (collectively, “the Due Diligence Review packet”), the due diligence review process will be considered completed.

e. Eligibility Review

Once the due diligence review is completed, the Campus Level Review Panel will meet promptly to review the due diligence review packet and make a recommendation, by majority vote, about whether the prior serious misconduct impacts the student-athlete's eligibility to participate in intercollegiate athletics at CUNY.

The Campus Level Review Panel will be comprised of:

- The CUNY Athletics Conference Associate Commissioner;¹¹

¹¹ For CUNY institutions not under the jurisdiction of the CUNY Athletic Conference, the campus Athletic Director shall designate an individual to serve on the Campus Level Review Panel.

- The campus Title IX Coordinator; and
- The campus Student Conduct Officer.

The Campus Level Review Panel will issue a written decision to the campus Athletic Director, which will specify whether, in light of the prior serious misconduct, the student-athlete may continue to participate in intercollegiate athletics at CUNY. The Campus Level Review Panel may determine a) that the student-athlete may participate; b) that the student-athlete will be subject to a period of suspension from participation (to be specified in the decision); or c) that the student-athlete is permanently banned from participation. The decision should also explain the reasoning for the eligibility determination. Decisions made by the Campus Level Review Panel (as modified on appeal, if applicable) will be binding in all CUNY athletics programs.

The campus Athletic Director will promptly inform the student in writing of the Campus Level Review Panel's decision regarding eligibility. If the decision renders the student ineligible to participate or subject to a period of suspension from participation, the Athletic Director must simultaneously notify the student's coach. When a decision renders the student ineligible to participate or subject to a period of suspension from participation, the Athletic Director's notification must include information about how the student may appeal to the CUNY Wide Review Panel.

f. Appeal of Ineligibility to the CUNY Wide Review Panel

When a decision of the Campus Level Review Panel renders a student-athlete ineligible to participate or subject to a period of suspension from participation, the student-athlete is permitted to:

- Request and promptly receive a copy of the Campus Level Review Panel's written decision; and
- Appeal the Campus Level Review Panel's decision to the CUNY Wide Review Panel.

A student-athlete may submit an appeal to the CUNY Wide Review Panel within thirty (30) days of notification from the Athletic Director of the Campus Level Review Panel's determination. A student-athlete may appeal on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the Campus Level Review Panel made the eligibility determination, which could affect the outcome of the matter;
- The Campus Level Review Panel had a conflict of interest or bias that affected the outcome of the matter; or
- The disproportionate nature of the eligibility determination.

The appealing student must submit their written appeal to the CUNY Athletics Conference Commissioner. Written appeals may not exceed five (5) pages, including any attachments.

The CUNY Wide Review Panel will be comprised of:

- The CUNY Athletics Conference Commissioner¹²
- The CUNY University Title IX Director; and
- The CUNY University Director of Student Conduct.

The CUNY Wide Review Panel will meet promptly upon receipt of any appeal and will consider the due diligence review packet, the Campus Level Review Panel's written decision and the student's written appeal. The CUNY Wide Review Panel may a) determine that the student is eligible to participate; b) modify the eligibility determination, or c) uphold the determination of the Campus Level Review Panel. The decision of the Campus Level Review Panel will remain in effect until an appeal is decided. The CUNY Wide Review Panel will issue a written decision to the student, with a copy to the campus Athletic Director.

Decisions by the CUNY Wide Review Panel are final and not subject to appeal.

g. Privacy

Any information provided by students and gathered by CUNY pursuant to this Policy will be deemed private and will only be revealed to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required or permitted by law. Athletic Coaches will only be notified if and when a student-athlete is deemed ineligible to participate by the Campus Level Review Committee.

h. Exceptional Circumstances

Nothing in this Policy prevents CUNY, in exceptional circumstances, from restricting a student's participation in intercollegiate athletics.

VI. CONSEQUENCES FOR FAILURE TO COMPLY WITH POLICY

Failure to make a timely, full and accurate disclosure, as required by this Policy, could result in loss of eligibility to participate in intercollegiate athletics at CUNY, as determined by the Campus Athletic Director. Such loss of eligibility will be binding on all CUNY colleges and will not be subject to appeal. Such loss of eligibility will be in effect through the next annual attestation period.

¹² For CUNY institutions not under the jurisdiction of the CUNY Athletic Conference, the campus Athletic Director shall designate an individual to serve on the CUNY Wide Review Panel.

VII. CUNY OBLIGATIONS UNDER THIS POLICY

a. Records Retention

The following records must be maintained for six years after the student's graduation or date of last attendance: Submitted Attestation Forms, including any supporting documentation and FERPA releases; the Due Diligence Review packet, including Due Diligence Review materials and the executive summary; the Campus Level Review Panel's written decision; the Athletic Director's eligibility notification to the student; appeal materials submitted to the CUNY Wide Review Panel; and the CUNY Wide Review Panel written decision and notification to the student regarding the decision on appeal. The Campus Attestation Designee is responsible for collecting, maintaining and retaining the records.

b. Compliance

Campus Athletic Directors are responsible for implementing this Policy on their campuses and ensuring that staff and students comply with its procedures. The CUNY Athletics Conference Commissioner is responsible for overseeing the implementation of this Policy at CUNY and will review this Policy annually for compliance with applicable CUNY and NCAA policies.

Policy adopted by the Board of Trustees on 8/23/2022 Cal. 3, effective date of 8/25/2022.