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MEMORANDUM

To: Chancellor's Cabinet
College Presidents/Deans
Secretary to the Board of Trustees
Chief Student Affairs Officers
Campus Counsel
Title IX Coordinators
Student Conduct Officers
CUNY Athletics Conference
Athletic Directors

From: Derek Davis
General Counsel and Senior Vice Chancellor for Legal Affairs

Re: Implementation of The City University of New York's Policy on Student-Athlete Attestation of Serious Misconduct

On August 23, 2022, The City University of New York ("CUNY") Board of Trustees adopted a Policy on Student-Athlete Attestation of Serious Misconduct ("Policy" or "SAASM"), effective August 25, 2022. This is a new policy, necessitated by CUNY's membership in 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.

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, for CUNY to take reasonable steps to confirm the information provided by student-athletes and to take appropriate action. CUNY is also required to maintain a written procedure that specifically directs athletic staff to adhere to CUNY's policy and procedure on this topic.

The Policy was developed by the Office of the General Counsel ("OGC"). Before the Policy was finalized, OGC shared it with various CUNY stakeholders, including CUNY Athletic Conference ("CUNYAC") staff, Athletic Directors, Title IX Coordinators and Student Conduct officers. OGC solicited and considered feedback from the relevant stakeholders and many suggestions were incorporated into the Policy. OGC will continue to work with its partners in Athletics and Student Affairs to implement this Policy.

Below is a summary of the significant elements of the Policy, information regarding Policy implementation, and the action steps each College must take. This Memorandum is designed to serve as a complement to the Policy and to help facilitate implementation, but does not substitute for the Policy itself. As such, please read the Policy in its entirety.

A. OVERVIEW OF THE 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 (discussed in more detail below) must be completed before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship.

The Policy applies to all CUNY athletic programs, including NCAA and National Junior College Athletic Association ("NJCAA") institutions. Currently this includes the following CUNY Colleges:

- NCAA – Division II
 - College of Staten Island
 - Queens College
- NCAA – Division III
 - Baruch College
 - Brooklyn College
 - City College of New York
 - Hunter College
 - John Jay College
 - Lehman College
 - Medgar Evers College
 - York College
- NJCAA

- Bronx Community College
- Borough of Manhattan Community College
- Hostos Community College
- Kingsborough Community College
- Queensborough Community College
- LaGuardia Community College

1. IMPLEMENTATION

This Policy is effective August 25, 2022 and applicable to the 2022-2023 Academic Year and beyond.

NCAA members will each be required to attest to their institution's compliance with the revised Campus Sexual Violence Policy requirements for the 2022-2023 Academic Year. Institutions must attest by the May 15, 2023 deadline. As in prior attestation years, pursuant to the NCAA Campus Sexual Violence Policy, each CUNY College with an NCAA program will submit an attestation on behalf of the specific College (CUNY will not submit an attestation on behalf of any CUNY Colleges).

For the Fall 2022 semester only, to accommodate the roll out of this new Policy, student-athletes will be permitted to participate in CUNY athletics while the Attestation and if necessary, the Due Diligence Review and Eligibility Review are pending. Colleges should work expeditiously to collect completed Attestation forms from student-athletes participating in Fall 2022 sports and thereafter, conduct the Due Diligence Review and Eligibility Review as quickly as possible without sacrificing accuracy and thoroughness.

Beginning with the Spring 2023 semester, the Attestation and, if necessary, the Due Diligence Review and Eligibility Review must be completed before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship. Colleges must plan accordingly to meet this policy directive. See Policy Section IV., p. 5.

2. SCOPE

The Policy applies to all incoming, transfer and currently enrolled students who seek to participate in NCAA or NJCAA athletics ("intercollegiate athletics") at CUNY. The Policy governs eligibility to participate in intercollegiate athletics at CUNY and a determination of athletics ineligibility pursuant to the Policy will not impact a student's admission, academic status or enrollment at CUNY.

The Policy should not be interpreted or applied in a manner that interferes with other CUNY policies, including the CUNY Policy on Sexual Misconduct ("PSM"), Article XV of the CUNY Bylaws or any other policies that govern student conduct or athletics eligibility. For example, if a current student-athlete violates the CUNY PSM, the investigation and any potential discipline will continue to be addressed pursuant to the PSM. If and when that student-athlete is subject to discipline for a violation of the PSM, this Policy requires that the student-athlete

disclose the discipline to CUNY and for CUNY to take appropriate action regarding the student's eligibility to participate in athletics. See Policy Section II., p. 3.

3. DEFINITIONS

The Policy defines relevant terms, including covered student-athlete, transfer student, serious misconduct and discipline. Serious misconduct is an umbrella term which includes conduct constituting interpersonal violence, sexual misconduct and other acts of violence. All convictions and discipline for serious misconduct (including discipline from high school through present) must be disclosed.

The Policy imports the definitions of “interpersonal violence” and “other acts of violence” from the NCAA Campus Sexual Violence Policy but also requires a broader scope of disclosure by using the term “sexual misconduct” rather than “sexual violence” – the term used by the NCAA. For the purposes of this Policy, CUNY’s definition of “sexual misconduct” includes all conduct that constitutes sexual violence, as defined by the NCAA Campus Sexual Violence Policy and all prohibited conduct under the PSM. To be sure, this may necessitate more disclosures by student-athletes and may capture discipline for a broad range of behaviors, like sexual harassment, which is not a disclosure required by the NCAA. Nevertheless, it was important for CUNY to align this Policy’s attestation requirements with CUNY’s PSM and commitment to providing an educational and work environment free from Sexual Misconduct. This broader scope of disclosure will capture other types of concerning misconduct, such as Voyeurism and Stalking, and ensure that CUNY can make informed decisions about athletics eligibility. See Policy Section III., pp. 4-5.

4. REQUIRED DISCLOSURES

Student-athletes are required to disclose annually whether:

1. They have been disciplined through a campus misconduct proceeding for serious misconduct;
2. Whether they have been convicted of, pled guilty to or pled no contest to any crime of serious misconduct; and
3. 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.

With the exception of transfer students, student-athletes should not disclose that they are currently under investigation for serious misconduct - either by an educational institution or law enforcement agency. Additionally, student-athletes should not disclose sealed convictions, that they have been found “not responsible” through a campus misconduct proceeding for serious misconduct, or that they have been found “not guilty” or had charges dismissed without a conviction in a criminal investigation involving serious misconduct. See Policy Section IV.a., p. 6.

The Policy also specifies that student-athletes do not need to re-disclose serious misconduct that has been previously disclosed via an Attestation in accordance with the procedures outlined pursuant in this Policy. The goal of this provision is to streamline the Attestation, Due Diligence and Eligibility Review process each year and avoid unnecessary redundancy.

Student-athletes who make a required disclosure must provide sufficient details about the misconduct, including, but not limited to the date of the incident, a description of the incident, the date of the conviction or campus misconduct proceeding and the court or institution through which the conviction or discipline was imposed. Student-athletes may also submit 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. See Policy Section IV.c., p. 7.

The Attestation process is localized at each campus. Each campus Athletic Director must identify a “Campus Attestation Designee,” who will be the individual responsible for overseeing the Attestation and Due Diligence Review process on their respective campus. The Campus Attestation Designee should be an athletics employee with experience handling compliance matters.

a. ANNUAL DISCLOSURES

Student-athletes are required to make an annual disclosure via a Student-Athlete Attestation Form. See Attachment A. Beginning with the Spring 2023 semester, the Attestation and, if applicable, the Due Diligence Review and Eligibility Review process must be completed before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship.

When a student-athlete makes a required disclosure, they are required to provide a signed FERPA release for any educational institution that may have record of the serious misconduct subject to disclosure. Instructions for the FERPA release and the form itself are included in the Student Attestation Form, Section D. The FERPA release will enable CUNY to conduct its due diligence regarding the disclosure and make an informed decision regarding eligibility.

Each College is responsible for identifying submission deadlines for the annual Attestation and reminding students of their obligation to submit the form in a timely manner. When identifying submission deadlines, a College may consider setting one College-wide deadline for the entire Academic Year, setting different deadlines for each semester or setting sport-specific deadlines. Colleges will also need to account for walk-on and transfer students that may join an athletic team mid-year or mid-season.

Each College is responsible for collecting and reviewing student Attestation forms and identifying any required disclosures that require follow-up.

b. MID-YEAR DISCLOSURES

If a student is found responsible for serious misconduct or convicted of a crime involving serious misconduct between annual Attestation periods, the Policy requires the student-athlete to submit an Attestation “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 process is pending. See Policy Section IV.b., pp. 6-7.

c. SPECIAL RULES FOR TRANSFER STUDENTS

The NCAA Campus Sexual Violence Policy imposes additional disclosure requirements on transfer students which are mirrored in the CUNY Policy. Transfer students are defined in the CUNY Policy as “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.” This is a broad definition which will capture many incoming student-athletes.

In addition to disclosing whether they have ever been disciplined for serious misconduct or convicted of a crime involving serious misconduct, transfer students must disclose whether a campus misconduct proceeding involving serious misconduct *is incomplete or pending at the time of transfer and/or when the Attestation is completed*. Additionally, regardless of whether a disclosure is made, transfer students are required to provide a FERPA release for the institution from which they are transferring or the institution most recently attended. CUNY is required to contact the prior institution to inquire about prior discipline or convictions for serious misconduct and whether there are any open or pending campus misconduct proceedings, including investigations. See Policy Section IV., pp. 5-6.

As with the annual Attestation process, each College is responsible for identifying submission deadlines or general submission guidelines for transfer student Attestations. Colleges are responsible for ensuring that the Attestation, Due Diligence Review and, if applicable, the Eligibility Review process is complete before a transfer student is permitted to participate. Each College should review its intake process for transfer student-athletes and determine if the attestation form should be added to a pre-existing set of procedures. For example, a College may consider adding the Attestation Form to its preexisting “transfer tracer” process.

5. REVIEW PROCEDURES

The review procedures that follow the Attestation process are also localized at the College level. These review procedures include the Due Diligence Review and the Eligibility Review process. The Due Diligence Review is the process by which the College takes reasonable steps to confirm the information provided by student-athletes in an Attestation, including confirming whether student-athletes have been disciplined or criminally convicted for serious misconduct. The Eligibility Review follows the Due Diligence Review and is the process by which the Campus Level Review Panel will review the information available to determine whether any prior serious misconduct impacts a student-athlete’s eligibility to participate in intercollegiate athletics and take appropriate action.

a. CAMPUS ATTESTATION DESIGNEE

Each Athletic Director must identify a “Campus Attestation Designee,” who will be the individual responsible for overseeing the Attestation and Due Diligence Review process on their

respective campus. The Campus Attestation Designee should be an athletics employee with experience handling compliance matters.

The Campus Attestation Designee is responsible for overseeing the Attestation process, including:

- 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.

The Campus Attestation Designee is also responsible for overseeing the Attestation process for transfer students, including:

- 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.

The Campus Attestation Designee is also responsible for managing the College's Due Diligence Review, discussed in more detail below. See Policy Section V., pp. 7-8.

b. DUE DILIGENCE REVIEW

The Due Diligence Review is the process by which the College takes reasonable steps to confirm the circumstances of any serious misconduct disclosed in an Attestation. For transfer students, the Due Diligence Review also requires that the College 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.

For incoming and current students, a Due Diligence Review is only necessary when a student makes a required disclosure on an Attestation Form. For transfer students, a Due

Diligence Review is required for each transfer student, regardless of whether the transfer student makes a required disclosure. See Policy Section V., pp. 8-9.

Reasonable steps

The Campus Attestation Designee must take reasonable steps to confirm the circumstances of serious misconduct and, in the case of transfer students, must also confirm the existence of serious misconduct. These reasonable steps may include contacting the prior institution and reviewing any records it provides, interviewing the disclosing student-athlete, performing criminal background checks and reviewing public records or other publicly available information, including but not limited to, obtaining certificates of disposition for convictions in criminal court.

Campus Attestation Designees must follow the steps outlined below and should utilize the Campus Attestation Designee Checklist as a guide to this process. The Checklist is also a helpful tool for internal recordkeeping. See Attachment B.

➤ **Step one:**

Begin the Due Diligence Review by confirming that a student making a disclosure has provided the necessary details about the serious misconduct, including:

- 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.

See Policy Section IV.c., p. 7. If the student-athlete did not provide these details, or the details provided are unclear, you should immediately reach out to the student and request the information and/or seek clarification about the information provided. You should also review whether the student submitted any additional information for consideration by the Campus Level Review Panel as part of the eligibility determination, for example, a personal statement or other mitigating information. If the student-athlete did not provide additional information of this nature, you may consider contacting the student to remind them that they are permitted to provide additional information for this purpose.

You must also confirm whether a disclosing student provided a signed FERPA release for any institution which may have a record of the serious misconduct. If the student did not provide the signed FERPA release, you must reach out to the student and explain that the Policy requires them to provide a signed FERPA release for this purpose. See Policy Section IV.

➤ **Step two:**

Next, you must contact the student's prior institution and provide the completed/signed FERPA Release and blank Statement of Disciplinary Standing. See Attachment A, pp. 3-6 of the Student-Athlete Attestation Form. Consider calling the prior

institution first, to ensure that the Form is routed to the appropriate employee and in the preferred manner (mail, email, etc.). *The Campus Attestation Designee should utilize the Statement of Disciplinary Standing Cover Letter template when making this request.* See Attachment C.

Check to see whether the other institution's attestation policy is available online and whether a specific individual has been designated to receive and process these requests. If that information is not available, consider reaching out to the following offices, in this order, to determine where the request should be directed:

- Athletics Director and/or Athletics Compliance Officer
- Title IX Coordinator; and
- Director of Student Conduct.

If you are unable to identify the correct contact person before sending the form, consider sending the form to *all three individuals listed above* to ensure that your request is routed to the appropriate office. Set a reminder in your calendar to follow up by phone and email in a few days if you have not received a response from the other institution. Be persistent and remember that NCAA institutions are required to share this information with other NCAA members. If you have made three serious attempts at outreach and have not received a response, consider contacting another office at the institution, for example, the Office of the President, until you make contact with the correct individual. Consider asking your Title IX Coordinator for assistance, if needed.

➤ **Step three:**

If a student discloses a prior conviction, you should seek to confirm the information provided by the student through any available means, including, for example, ordering a criminal background check or ordering a certificate of disposition from the county clerk where the conviction took place. Each campus should weigh available resources and the time sensitivity of a particular Due Diligence Review to determine the most reasonable method of confirmation.

For more information about obtaining a Certificate of Disposition within New York City's five boroughs, including contact information for different courts, refer to this website: <https://nycourts.gov/courthelp/criminal/CD.shtml>. Remember that students should not disclose sealed convictions and therefore, you should not be requesting sealed records.

The New York State Office of Court Administration provides a New York Statewide criminal history record search for a fee of \$95.00. Refer to this website for more information: <http://ww2.nycourts.gov/APPS/chrs/faqs.shtml>. Please note that this search is exclusive to New York state and therefore is not a nationwide background check and does not include federal court case information.

➤ **Other resources:** Other reasonable steps may include reviewing 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. Use your judgement to determine which of these methods is appropriate and/or necessary in each case.

Timing

This process must be both thorough and efficient. Beginning with the Spring 2023 semester, student-athletes will not be permitted to participate in intercollegiate athletics unless and until they submit an Attestation and, if necessary, the Due Diligence Review and Eligibility Review process are complete. Campus Attestation Designees should consider establishing an internal timeline by which to complete the Due Diligence Review process, keeping in mind that because the Due Diligence Review process is necessarily reliant on confirming information through third party sources, any internal timeline must be flexible. An internal timeline could be fixed, for example, aiming to complete a Due Diligence Review within two weeks or student specific, for example, aiming to complete a Due Diligence Review one week before a specific sport begins practicing or a transfer student is due to begin practicing or competing mid-season. When identifying internal timelines, the Campus Attestation Designee should also consider the time it will take for the Campus Level Review Panel to convene and make an eligibility determination.

Executive Summary & Due Diligence Review Packet

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.

The Campus Attestation Designee should utilize the Executive Summary Coversheet template. See Attachment D. 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.

Distribution to the Campus Level Review Panel

The Campus Attestation Designee must immediately notify the Campus Level Review Panel that the Due Diligence Review packet is ready for review and provide the packet in a secure format. Each campus should consider the most efficient and secure way to share the Due Diligence Review packet with the Campus Level Review Panel. One option is to utilize a secure platform, like One Drive or SharePoint, to share the materials. This method is efficient, secure

and permits the Campus Attestation Designee to remove access to the materials once the eligibility review is complete.

c. ELIGIBILITY REVIEW

Eligibility determinations are made at the College level by the Campus Level Review Panel. Students have the option to appeal an ineligibility determination to a CUNY Wide Review Panel.

i. CAMPUS LEVEL REVIEW PANEL

The Campus Level Review Panel is comprised of three individuals: (1) The CUNYAC Associate Commissioner, (2) The campus Title IX Coordinator and (3) The campus Student Conduct Officer. For CUNY institutions not under the jurisdiction of CUNYAC, the campus Athletic Director shall designate an individual to serve on the Campus Level Review Panel in lieu of the CUNYAC Associate Commissioner. The CUNYAC Associate Commissioner serves on the Campus Level Review Panel to represent an Athletics perspective and to promote continuity of decision-making across CUNY campuses.

Timing

The Campus Level Review Panel must meet promptly to review the Due Diligence Review packet and determine whether, by majority vote, the prior serious misconduct impacts the student-athlete's eligibility to participate in intercollegiate athletics at CUNY. The Campus Level Review Panel can meet in person, over the phone, by web conference, or some combination of the above.

The Campus Attestation Designee should oversee the scheduling of the Campus Level Review Panel to ensure that the meeting occurs promptly and aligns with any external deadlines, for example, the start of a specific team's practice schedule. The Campus Attestation Designee should not attend the meeting, but must remain available to answer any questions about the Due Diligence Review packet.

Eligibility consideration

The Campus Level Review Panel should approach each eligibility determination with the goal of enabling athletics participation. Each eligibility determination will be unique and present different circumstances and considerations. However, the Campus Level Review Panel should always consider these factors:

1. The severity of the conduct;
2. How much time has passed since the serious misconduct;
3. The current risk to the CUNY community, including the student-athlete's teammates, coaches and other Athletics staff; and
4. Any mitigating factors or information, including, but not limited to, additional information provided by the student, such as any accountability the student has taken with respect to the misconduct or relevant trainings or programs that the student participated in since the misconduct occurred.

Written decision

The Campus Level Review Panel must issue a written decision, addressed to the campus Athletic Director, which will identify:

- The eligibility determination;
 - *The Campus Level Review Panel has three options: a) eligible to participate, b) subject to a period of suspension from athletics eligibility (which must be specific and identified) or c) permanently ineligible to participate.*
- The reasoning for the determination.

The Campus Level Review Panel should utilize the templates provided for the Campus Level Review Panel Written Decision and the Eligibility Determination Cover Letter to the Campus Athletic Director. See Attachments E & F. The campus Athletic Director must promptly inform the student in writing of the eligibility decision. The Athletic Director should utilize the template provided for the Eligibility Notification to Student-Athlete by Campus Athletic Director. See Attachment G. 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. Otherwise, the student’s coach should not be notified. When a student is deemed ineligible to participate or subject to a period of suspension from participation, the Athletic Director must also notify the CUNYAC Commissioner. This can be accomplished by copying (i.e., an email “cc”) the coach and/or Commissioner to the determination letter sent to the student.

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. See Attachment H. Upon request, an Athletic Director must promptly provide a copy of the Campus Level Review Panel’s written decision to any student that has been deemed ineligible to participate or subject to a period of suspension from participation.

ii. APPEAL TO THE CUNY WIDE REVIEW PANEL

Students who are deemed ineligible to participate or subject to a period of suspension from participation may appeal to the CUNY Wide Review Panel. All appeals to the CUNY Wide Review Panel must be submitted to the CUNYAC Commissioner. Appeals must be submitted within thirty (30) days of the student’s notification from the Athletic Director that the student is ineligible to participate or subject to a period of suspension from participation. Appeals must be in writing and may not exceed five (5) pages, including any attachments. There are four possible grounds for appeal:

- 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 CUNY Wide Review Panel is comprised of three individuals: (1) The CUNYAC Commissioner, (2) the University Title IX Director and the (3) University Director of Student Conduct. For CUNY institutions not under the jurisdiction of CUNYAC, the campus Athletic Director shall designate an individual to serve on the CUNY Wide Review Panel in lieu of the CUNYAC Commissioner. This individual cannot be the same individual designated to serve on the Campus Level Review Panel. This individual will also assume the responsibilities of the CUNYAC Commissioner described below.

The CUNY Wide Review Panel must meet promptly upon receipt of any appeal and must consider the Due Diligence Review packet, the Campus Level Review Panel’s written decision and the student’s written appeal. The CUNYAC Commissioner is responsible for convening the CUNY Wide Review Panel upon receipt of any appeal and for providing the appeal materials to the panel in a secure format.

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 written decision must identify the outcome of the appeal and the reasoning for the determination. The CUNYAC Commissioner will send the written decision and a cover letter to the student, with a copy to the campus Athletic Director. The campus Athletic Director shall notify the student’s coach of the decision. The decision of the Campus Level Review Panel will remain in effect until an appeal is decided. Decisions by the CUNY Wide Review Panel are final and not subject to appeal. *The CUNY Wide Review Panel should utilize the templates provided for the CUNY Wide Review Panel Written Decision and Appeal Notification to Student-Athlete.* See Attachments I & J.

6. FORMS

Student-Athletes will make their required annual, transfer or mid-year Attestation via a Student-Athlete Attestation Form. The form is part of a six-page packet, which consolidates all of the paperwork required during the Attestation process. See Attachment A. The following are the contents of the Attestation packet:

- **Page 1: Info Sheet for Student-Athletes** – *This page provides students with background information about why CUNY is requiring student-athletes to disclose serious misconduct, what must be disclosed and what should not be disclosed and how CUNY will use the information provided.*
- **Page 2: Student-Athlete Attestation Form of Serious Misconduct** – *This page is the actual Attestation form. There are three sections. In Section A, student-athletes answer “Yes” or “No” to questions about whether they have been disciplined or convicted of serious misconduct and for transfer students, whether*

a campus misconduct proceeding for acts involving serious misconduct is pending or incomplete at the time of the transfer or at the form is being completed. In Section B, student-athletes who answered “yes” to the questions in Section A are directed to provide additional information and complete a FERPA release on the following page. In Section C, student-athletes are required to sign an attestation that the information provided on the form is accurate and complete.

- **Page 3: FERPA Release** – *This page is a blank FERPA release, to be filled out by a student-athlete who made a required disclosure. The student-athlete must fill in their name, date of birth, address and the name of the institution that will have information about the serious misconduct. Additionally, All transfer students, regardless of whether they made a required disclosure, are required to fill out a FERPA release for the institution they are transferring from or the institution most recently attended. When applicable, students must sign the FERPA release and return it with the Attestation Form.*
- **Page 4: Statement of Disciplinary Standing** – *Student-athletes do not fill out this page. Instead, this blank page will be sent to the institution identified by students in the signed FERPA release, with instructions that it should be completed by a school official who has access to disciplinary records and Title IX records. The questions on this form mirror the questions answered by student-athletes on the Attestation form (page 2). This form, and the information provided by the other institution, is part of CUNY’s due diligence process to confirm the circumstances of serious misconduct after a student-athlete makes a required disclosure.*
- **Pages 5 & 6: Definitions** – *These two pages identify and define the terms used in the packet.*

Colleges should use and not alter the contents of the Attestation packet, although Colleges are encouraged to personalize the packet with their letterhead and relevant contact information. A College may also choose to work with their IT departments to make the packet a fillable PDF or available electronically, at their discretion.

7. PRIVACY

The Policy requires that the information provided by students and gathered by CUNY as part of the Due Diligence Review process 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 otherwise permitted by law.

Student privacy must be a priority. Information gathered during this process must not be disclosed to fellow students, teammates or coaches (except as provided in this Policy, upon a finding of ineligibility). Colleges must identify a secure way to collect, review, record and store this information.

8. REQUESTS FOR INFORMATION FROM OTHER INSTITUTIONS

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. See Policy Section IV.d., p. 7.

Upon request, a College should provide this information to other institutions. See [*The Guidelines for the Implementation of The Student Records Access Policy and The Family Educational Rights and Privacy Act \(FERPA\)*](#), Section. III(C)(3) & (9). Colleges should designate an individual to receive and process these requests. Colleges may consider having the Campus Attestation Designee handle this responsibility. This individual must consult with the College Title IX Coordinator, College Student Conduct Officer and College Director of Public Safety to ensure that the College's response is accurate and complete. If the student was previously subject to discipline at CUNY, the College should only provide the violation committed (including the policy violation committed and essential finding of fact supporting the determination) and the sanction imposed and should not provide any additional documentation. For example, a College could indicate that "Student A was found responsible for Sexual Assault: Contact, for touching a complainant's buttocks without their affirmative consent, a violation of CUNY's Policy on Sexual Misconduct, and subject to a suspension for one calendar year." The College should not provide any additional documentation, for example, an investigative report or a hearing decision letter. The College must also ensure that the disclosure does not include the name or identifying information of any other student, such as a Complainant or Witness.

The College must maintain a copy of all completed forms and information shared with the other institution (regardless of whether a disclosure is made), as well as correspondence between CUNY and the other institution. Once the information is shared with the other institution, the College must give the student written notice of the disclosure. Upon request, the College must also give the student a copy of the completed form and any additional information provided to the other institution. ***Colleges should utilize the Disclosure Notification Letter template for this notification.*** See Attachment K.

9. INFORMATION SHARING WITHIN CUNY

The Policy states that a determination of ineligibility or a loss of eligibility due to failure to comply with this Policy's requirements shall be binding on all CUNY athletics programs, but will not impact a student's admission, academic status or enrollment at CUNY. See Policy Section V.e., p. 10.

The CUNYAC Commissioner is responsible for maintaining a record of all students deemed ineligible to participate or subject to a period of suspension from participation. The CUNYAC Commissioner is also responsible for ensuring that ineligibility determinations are enforced in all CUNY athletics programs.

10. RECORDS RETENTION AND RECORDS MANAGEMENT

Colleges must identify a secure way to collect, review, record and store the information and records collected pursuant to this Policy. The Policy identifies a records retention schedule in Section VII.a. The Campus Attestation Designee is responsible for collecting, maintaining and retaining the necessary records subject to the schedule identified.

Colleges must maintain the following data for each Academic Year and provide the data annually: (a) the total number of Attestation Forms collected and reviewed (including transfer students); (b) the total number of transfer student Attestation Forms collected and reviewed; (c) the total number of Attestations requiring a Due Diligence Review; (d) the total number of matters referred to the Campus Level Review Panel and, of those matters, how many resulted in (d)(1) a determination that the student was eligible to participate, (d)(2) a determination that the student was subject to a period of suspension from participation, and (d)(3) a determination that the student is permanently banned from participation. Further information will be provided about when and where to submit this data.

11. ASSISTANCE FOR STUDENT-ATHLETES

An FAQ for student-athletes is being developed and will be made available shortly. Colleges should make this resource widely available to their student-athletes.

Colleges must identify an employee who may serve as a confidential resource for student-athletes that have questions about how to properly fill out their Attestation form, including specific questions about what conduct they are required to disclose (“Campus Confidential Resource Designee”). These individuals should be familiar with and trained on the Policy before serving in this capacity. This individual may be an Athletics employee, but cannot serve in multiple roles under the Policy. For example, the Campus Attestation Designee or Campus Athletic Director cannot be designated as this resource. College should consider whether the following employees are available and can serve effectively in this role: ombudsperson, Faculty Athletics Representative, Student-Athlete Advisory Committee advisor and/or student services liaison.

B. EDUCATION AND TRAINING

CUNY is committed to providing clear guidelines for students and employees about how to adhere to and implement this Policy effectively, fairly and consistent with existent CUNY policies. A series of training and information sessions are planned to provide student-athletes and employee stakeholders with relevant information. OGC is responsible for providing training on this Policy to impacted students and staff.

TRAINING SERIES FOR EMPLOYEES:

Training will be provided annually for impacted employees.

The following employees must attend training on the Policy:

- Athletic Directors
- Campus Attestation Designees
- Campus Title IX Coordinators
- Campus Student Conduct Officers
- Members of the Campus Review Panel
- Campus Confidential Resource Designees
- CUNYAC Staff

Other campus and CUNY stakeholders are also encouraged to attend.

For Fall 2022, the training series will be divided into two parts: a general session training and a specific session for Campus Attestation Designees. Two dates for each training session will be offered (with the same content, but offered on different dates to accommodate varying schedules). *Campus Attestation Designees must attend both the general session training and the specific session for Campus Attestation Designees.* Other employees, including College Athletic Directors and College Title IX Coordinators are welcome to attend the Campus Attestation Designee session as well. Registration information is forthcoming.

2022 Employee Training Schedule:

General Session I - September 16, 2022: 1PM-3PM

General Session II - September 21, 2022: 10AM-12PM

Campus Attestation Designees Session I – September 23, 2022: 10AM-11:30AM

Campus Attestation Designees Session II – September 29, 2022: 12PM – 1:30PM

An FAQ for employees is being developed and will be made available shortly. Employees can also refer to the NCAA’s general FAQ, available at <https://www.ncaa.org/sports/2021/7/21/ncaa-board-of-governors-policy-on-campus-sexual-violence-administrator-faq.aspx>.

INFORMATION SERIES FOR STUDENTS:

An information series will be hosted for student-athletes over the next several weeks, aimed at explaining the purpose of the Policy and how CUNY will implement it. All student-athletes should attend. Registration information is forthcoming.

2022 Student Information Series Schedule:

Student-Athlete Information Session I - October 7, 2022: 10AM-11:30PM

Student-Athlete Information Session II - October 11, 2022: 6PM-7:30PM

An FAQ for student-athletes is being developed and will be made available shortly. Student-athletes can also refer to the NCAA’s FAQ for student-athletes, available at

<https://www.ncaa.org/sports/2021/7/21/ncaa-board-of-governors-policy-on-campus-sexual-violence-student-athlete-faq.aspx>.

TEMPLATES & OTHER RESOURCES:

Templates and guidance materials were developed to help implement this Policy effectively and uniformly throughout CUNY. These templates should be utilized, and the substance should not be edited. Templates may be customized, for example, by placing the templates on College letterhead and including relevant contact information. The following templates and guidance materials are available:

- Templates
 - Executive Summary Coversheet
 - Campus Level Review Panel Written Decision
 - CUNY Wide Review Panel Written Decision
 - Notice of Right to Appeal
- Cover Letters
 - Eligibility Determination Cover Letter to Athletic Director
 - Eligibility Notification Letter to Student-Athlete
 - Appeal Notification to Student-Athlete
 - Statement of Disciplinary Standing Cover Letter
 - Disclosure Notification Letter
- Guidance Materials
 - Campus Attestation Designee Checklist
 - FAQ for Student-Athletes (coming soon)
 - FAQ for Employees (coming soon)

Templates, cover letters and the Campus Attestation Designee Checklist are included with this Memo as Attachments, and will also be made available to stakeholders on a Microsoft Teams Page in .doc and .pdf formats. Additional guidance materials will be available for students and relevant stakeholders in the following weeks. An email listserv is being developed to distribute resources, information and updates to employee stakeholders impacted by this Policy.

C. SUMMARY OF ACTION STEPS REQUIRED BY COLLEGES

Colleges must:

- **By September 12, 2022**, submit the following information using Microsoft Forms (accessed through the QR code below)



- Identify a Campus Attestation Designee;
 - Identify a Campus Confidential Resource Designee;
 - *For CUNY institutions not under the jurisdiction of CUNYAC only* – the campus Athletic Director must designate (1) an individual to serve on the Campus Level Review Panel in lieu of the CUNYAC Associate Commissioner and (2) an individual to serve on the CUNY Wide Review Panel in lieu of the CUNYAC Commissioner; and
 - Identify other employee stakeholders (to be added to forthcoming listserv, to receive updates on training and implementation, etc.).
- **Notify impacted employees** of the 2022 Training Schedule as soon as possible, but by September 12, 2022 at the latest.
 - **Notify Student-Athletes** of the Information Series Schedule as soon as possible, but by October 3, 2022 at the latest.
 - As soon as possible, **establish College-specific timelines** for:
 - **Attestation for Fall 2022 student-athletes;**

***Reminder** - For the Fall 2022 semester only, to accommodate the roll out of this new Policy, student-athletes will be permitted to participate in CUNY athletics while the Attestation, Due Diligence Review and Eligibility Review are pending. Colleges should work expeditiously to collect completed Attestation forms from student-athletes participating in Fall 2022 sports and thereafter, conduct the Due Diligence Review and Eligibility Review as quickly as possible without sacrificing accuracy and thoroughness.*

Suggested Attestation Distribution for Fall 2022 – by October 3, 2022

Suggested Attestation Collection for Fall 2022 – by October 17, 2022

**Note, these suggestions take into consideration that the employee training series will be completed by the end of September 2022 and the student*

information series will be conducted between Attestation distribution and collection.

- **Attestation for Spring 2023 student-athletes;**

Reminder - *Beginning with the Spring 2023 semester, the Attestation, and if necessary, the Due Diligence Review and Eligibility Review must be completed before a student-athlete is permitted to practice, compete and/or receive a CUNY athletic scholarship. Colleges must plan accordingly to meet this policy directive.*

Suggested Attestation Distribution for Spring 2023 – by October 24, 2022

Suggested Attestation Collection for Spring 2023 – by November 7, 2022

- Attestation for Fall 2023 /Spring 2024 and beyond.

If you have questions about the Policy or its implementation, please contact OGC via e-mail (at ogc@cuny.edu), using the subject line: SAASM.

Attachment A



Student-Athlete Attestation Form of Serious Misconduct *Info Sheet for Student-Athletes*

Policy Statement. Pursuant to the City University of New York (“CUNY”) Policy on Student-Athlete Attestation of Serious Misconduct (“the Policy”), CUNY will gather information regarding the prior misconduct of any current, prospective or transfer student-athlete who seeks to participate in intercollegiate athletics at CUNY (“covered student-athletes”) and will do so annually.

How will CUNY use this information? CUNY will review the information provided on this form and take reasonable steps to confirm the circumstances of the serious misconduct. Thereafter, a Campus Level Review Panel will review the available information and determine whether the prior serious misconduct impacts a student-athlete’s eligibility to participate in intercollegiate athletics at CUNY.

Requirement: All covered student-athletes are required to attest annually whether they have been (1) disciplined through a campus misconduct proceeding involving serious misconduct; or (2) have been convicted of, pled guilty to, or pled no contest to a crime of serious misconduct. Covered student-athletes are required to complete the form accurately, completely and to the best of their knowledge.

What must be disclosed? All applicable convictions must be disclosed. Applicable discipline from prior educational institutions, including high school through present, must be disclosed.

Student-athletes must disclose:

- Whether they have ever been disciplined 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.

Additional Requirements for Transfer Students. For transfer students, regardless of whether a disclosure is made, CUNY will request records of: (1) incomplete or pending campus proceedings involving serious misconduct against the student-athlete, and (2) campus misconduct proceedings involving serious misconduct which resulted in discipline for the student-athlete. These records will be requested from the institution from which the student is transferring, or from the institution most recently attended.



Student-Athlete Attestation Form of Serious Misconduct

Prior to completing this form, please read the CUNY Policy on Student-Athlete Attestation of Serious Misconduct and review the definitions in Attachment A.

Section A – Attestation (to be completed by the student-athlete)

If you answer “yes” to any of the below-listed questions, proceed to Section B. Otherwise, proceed to Section C.

Please answer ‘Yes’ or ‘No’ to the following questions	Yes	No
Have you been convicted of, pled guilty to, or pled no contest to any crime involving serious misconduct?		
Have you been disciplined through a campus misconduct proceeding for acts involving serious misconduct? Include every prior educational institution, including high school through present.		
For transfer students: Is a campus misconduct proceeding for acts involving serious misconduct, pending or incomplete at the time of your transfer and/or at the time this form is being completed?		

Note: If you are a transfer student-athlete, regardless of your answers, you must sign the FERPA release (Section D) on the following page to allow the release of records from the institution you are transferring from or from the institution you most recently attended.

Section B – Disclosure Information (to be completed by the student-athlete).

If you answered “yes” to any of the questions in Section A, you must:

- **B1. Provide Additional Information.** On a separate page, identify the misconduct, including, but not limited to: the date of the incident(s), the date of the conviction(s) or disciplinary proceeding(s), a description of the incident(s), and the court(s) or institution(s) through which you were disciplined or convicted. In addition, you may submit any additional information that you would like the Campus Level Review Panel to consider. The information you provide will be considered your complete submission to the Campus Level Review Panel; *and*
- **B2. Complete a FERPA Release.** Complete the FERPA release (Section D) on the following page for every educational institution which may have record of the conviction or campus misconduct proceeding.

Section C –Signature (to be completed by the student-athlete)

By signing below, I attest that, to the best of my knowledge and belief, that all information attested to on this form is accurate and complete, and that providing purposefully false information on this form could result in penalties by CUNY and the NCAA, including jeopardizing my eligibility and/or scholarship receipt.

Student Name: _____ **Signature:** _____ **Date:** _____

ID#: _____ **Athletic Status (circle one):** First-Year Transfer Returning

Sport/s: _____



Student-Athlete Attestation Form of Serious Misconduct
FERPA Release

Section D - FERPA Release (to be completed by ALL transfer students and any student-athlete who made a disclosure in Section A)

For Incoming Student-Athletes Under the Age of 18 ONLY: a parent or guardian signature is required.

First Name:	Last Name:
Date of Birth:	Address:
<p>Release of Records: The Family Educational Rights and Privacy Act of 1974) prohibits access to, or release of, educational records or personally identifiable information contained in such records (other than directory information) without the written consent of the student, with certain exceptions. I hereby authorize (School Name) _____ to release the information requested on the following page (in Section E), from my educational records, to the City University of New York.</p>	
Student Signature:	Date:
Parent/Guardian Signature (FOR INCOMING STUDENT-ATHLETES UNDER THE AGE OF 18 ONLY): Relationship to Student-Athlete:	Date:



**Student-Athlete Attestation Form of Serious Misconduct
Statement of Disciplinary Standing**

Section E – Statement of Disciplinary Standing (Section E should not be filled out by student-athletes. This section should be completed by a school official, at the educational institution attended by the student-athlete, who has access to disciplinary records and Title IX records).

Please answer the following questions as they relate to the student-athlete referenced on the prior page (Section D). Prior to completing this form, please review the definitions in Attachment A.

- 1) Was the student ever disciplined through a campus misconduct proceeding for conduct constituting serious misconduct?
Yes No

- 2) Are any campus misconduct proceedings currently pending, or incomplete, against the student?
Yes No

- 3) To your knowledge, was the student ever convicted of, pled guilty to, or pled no contest to a crime of serious misconduct?
Yes No

If you answered “yes” to any of the above questions, please identify the misconduct, including, but not limited to: the date of the incident(s), a description of the incident(s), and the court(s) or institution(s) through the student was disciplined or convicted. Attach additional pages as necessary.

This institution has a policy which prevents me from responding _____

I would prefer to discuss this student over the phone _____

Official’s Signature:	Date:
Title:	Contact:

Please return this form and direct any questions to _____.

Student-Athlete Attestation Form of Serious Misconduct

Attachment A - Definitions

- **Campus Misconduct Proceeding(s):** An umbrella term that refers to investigations,¹ hearings and/or adjudications, conducted by an educational institution, including high schools.
- **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.
- **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.
- **Discipline:** “Discipline” means any final finding of or acceptance of responsibility (including an acceptance of responsibility as the result of an informal resolution).
- **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.
- **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.
- **Serious Misconduct:** An umbrella term which includes conduct constituting interpersonal violence, sexual misconduct and other acts of violence (as previously defined in this Policy).
- **Sexual Misconduct:** “Sexual Misconduct” shall include all conduct that constitutes Sexual Violence, as defined by the NCAA Campus Sexual Violence Policy,² and all prohibited conducted under the PSM,³ including, but not limited to:
 -

¹ For purpose 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).

² 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.

³ Please refer to the PSM (see Section III, Page 5) for a complete list of prohibited conduct and applicable definitions.

- **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.
 - **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.
 - **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.
 - **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.
 - **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.
- **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.⁴

⁴ 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.

Attachment B

Campus Attestation Designee Checklist

Enclosed please find a checklist to be utilized by the Campus Attestation Designee upon receiving a completed Attestation. The checklist is designed to be a useful tool to keep an organized record and can be used as a quick reference, if necessary. This checklist should be completed for each Attestation to ensure compliance with the Policy. Once completed, the checklist should be kept on file with a copy of the student's Attestation.

The first page is titled the "Initial Review" and contains instructions and reminders for reviewing a completed Attestation. The first page must be completed for all Attestations.

The second page is titled the "Due Diligence Review" and will only be applicable if the student-athlete is a transfer student, as defined in the Policy on Student-Athlete Attestation of Serious Misconduct, or if a student-athlete made a required disclosure on the Attestation. Use the first column in each box to check off the action items as completed (or utilize the N/A box if applicable).

The third page lists the necessary steps and documents that must be compiled before the matter is referred to the Campus Level Review Panel. Consult this list before referring the matter to the Campus Level Review Panel for the Eligibility Review process.

CUNY Policy on Student-Athlete Attestation of Serious Misconduct

Campus Attestation Designee Checklist

Section 1 - Initial Review

Student-Athlete Information

Student-Athlete

Name _____

Sport _____

Athletic Status:

- First-Year
- Transfer
- Returning

Reviewed By:

Attestation Received:

Cleared for Eligibility:

Initial Review (Date _____)

Attestation submitted and fully completed:

- Yes
- No

For All Transfer Student-Athletes:

- FERPA Form completed and signed

Required Disclosure made?:

- Yes
- No

If yes, Disclosure Type:

- Conviction
- Disciplinary Action after Campus Misconduct Proceedings
- Incomplete/Pending Misconduct Proceedings

Follow-up needed?:

- Yes (for disclosures and All Transfer Student-Athletes)
- No

If the student is a transfer student and/or if the student made a required disclosure, proceed to Section 2 – Due Diligence Review. If no follow-up is required, check the “cleared for eligibility” box above – no further steps needed.

CUNY Policy on Student-Athlete Attestation of Serious Misconduct

Campus Attestation Designee Checklist

Section 2 – Due Diligence Review

For Disclosures Involving Campus Disciplinary Proceedings:

	Action Item	Date of Completion
	Student supplied required information. <u>See</u> Policy, Section IV.c., p. 7.	
	FERPA Form completed and signed.	
	Section E - Statement of Disciplinary Standing, sent to appropriate educational institution with cover letter (Template 1) and completed/signed FERPA release. *Note: for mid-year disclosures involving CUNY proceedings, gather information from College Student Conduct Officer and/or College Title IX Coordinator.	
	Completed Statement of Disciplinary Standing Form received from other institution. -OR- Reasonable number of good faith attempts to obtain information conducted (record dates and manners of attempt in Date of Completion Column)	
	Gather additional information if needed/available. <u>See</u> Policy, Section V.d., pp. 8-9.	
	N/A	

For Disclosures Involving Criminal Conviction:

	Action Item	Date of Completion
	Student supplied required information. <u>See</u> Policy, Section IV.c., p. 7.	
	Criminal conviction confirmed via court records or criminal background check.	
	Gather additional information if needed/available. <u>See</u> Policy, Section V.d., pp. 8-9.	
	N/A	

If conviction occurred while attending an educational institution:

	Action Item	Date of Completion
	FERPA form completed and signed.	
	Section E - Statement of Disciplinary Standing, sent to appropriate educational institution with cover letter (Template 1) and completed/signed FERPA release.	
	Completed Statement of Disciplinary Standing Form received from other institution. -OR- Reasonable number of good faith attempts to obtain information conducted (record dates and manners of attempt in Date of Completion Column)	
	N/A	

For All Transfer Student-Athletes:

	Action Item	Date of Completion
	FERPA Form completed and signed.	
	Section E - Statement of Disciplinary Standing, sent to appropriate educational institution with cover letter (Template 1) and completed/signed FERPA release.	
	Completed Statement of Disciplinary Standing Form received from other institution. -OR- Reasonable number of good faith attempts to obtain information conducted (record dates and manners of attempt in Date of Completion Column)	
	Gather additional information if needed/available <u>See</u> Policy, Section V.d., pp. 8-9.	
	N/A	

When all relevant steps are completed, proceed to Section 3 – Referral to Campus Level Review Panel

CUNY Policy on Student-Athlete Attestation of Serious Misconduct

Campus Attestation Designee Checklist

Section 3 - Referral to Campus Level Review Panel

	Action Item	Date of Completion
	Executive Summary	
	Due Diligence Review Materials	
	Campus Level Review Panel Notified	
	Due Diligence Review Packet shared with Campus Level Review Panel	
	Campus Level Review Panel Scheduled	
	Eligibility Determination	
	Student Notification	

Attachment C

Template 1: Statement of Disciplinary Standing Cover Letter

Enclosed please find a template that should be utilized by the Campus Attestation Designee, to contact a student-athlete's prior institution. This should serve as a cover letter, signed by the Campus Attestation Designee, to accompany the FERPA release and Statement of Disciplinary Standing (see pp. 3-6 of the Student-Athlete Attestation Form of Serious Misconduct packet).

For more information and a discussion of best practices regarding requesting information from a student athlete's prior institution, please see Step Two of Section A(5)(b) of the Implementation Memo. Additionally, see Section V.d of the Policy on Student-Athlete Attestation of Serious Misconduct.

CAMPUS LETTERHEAD

[Date]

Dear [name or title]:

[Student name] is seeking to be a student-athlete at [School name]. Pursuant to CUNY's Student-Athlete Attestation of Serious Misconduct Policy, [school name] is seeking information from your institution.

Attached please find a signed FERPA Release and a Statement of Disciplinary Standing form requesting information to determine the student's eligibility to participate in intercollegiate athletics. Please provide the information requested on the Statement of Disciplinary Standing form as soon as possible. Prior to completing the Statement of Disciplinary Standing form, please refer to the definitions in Attachment A of the Student-Athlete Attestation of Serious Misconduct Form packet.

Please scan the completed form, as well as any other relevant information/documents, and return the materials to me, via e-mail at [insert e-mail address]. Please do not hesitate to reach out with any questions or concerns. In addition to e-mail, I can be reached at [insert phone number].

Sincerely,

[insert signature block]

Attachment D

Template 2: Executive Summary Coversheet

Enclosed please find a template that should be utilized, by the Campus Attestation Designee, as a coversheet when referring a matter to the Campus Level Review Panel.

This template should accompany the Due Diligence Review materials, when the materials are submitted to the Campus Level Review Panel. In addition to identifying the Due Diligence Review materials, the coversheet is meant to provide a description of and the consequence/sanction for the serious misconduct. As indicated on the coversheet, feel free to use separate or additional pages if necessary or desired.

For more information on preparing the Due Diligence Review Packet, including the Executive Summary Coversheet, please see the Executive Summary and Due Diligence Review Packet portion of Section A(5)(b) of the Implementation Memo. Additional information can be found in Section V.d of the Policy on Student-Athlete Attestation of Serious Misconduct.

CUNY Policy on Student-Athlete Attestation of Serious Misconduct
Executive Summary Coversheet
(For submission to the Campus Level Review Panel)

Campus _____ Submitted By _____

Date Submitted to Campus Review Panel _____

Student-Athlete Information

Student-Athlete Name _____

Sport _____

Athletic Status (circle one):

- First-Year
- Transfer
- Returning

Disclosure Information

Disclosure Type:

- Conviction
- Disciplinary Action after Campus Misconduct Proceedings
- Incomplete/Pending Misconduct Proceedings

Description and Consequences of Serious Misconduct (attach additional sheets, if necessary):

Date(s) of Serious Misconduct: _____

Date(s) of Conviction/Misconduct Proceeding: _____

Due Diligence Review Materials Provided to Panel:

- Attestation Form
- Submission by Student-Athlete (including all information required by Policy Section IV(c))
- Submission by Educational Institution
- Criminal Background/Court Documents
- Other Information: _____

Attachment E

Template 3: Campus Level Review Panel Written Decision

Enclosed please find a template that should be utilized by the Campus Level Review Panel to record their eligibility determination. This form serves as the written decision that the Campus Level Review Panel is required to issue. The written decision should be sent to the campus Athletic Director, along with the cover letter included as Template 4. As indicated on the enclosed document, the Campus Level Review Panel should feel free to utilize and attach additional pages for the reasoning section, if necessary.

For more information on the written decision, see the Written Decision portion of Section A(5)(c)(i) of the Implementation Memo and Section V.e of the Policy on Student-Athlete Attestation of Serious Misconduct.

CUNY Policy on Student-Athlete Attestation of Serious Misconduct
Campus Level Review Panel Written Decision

Campus _____

Date Submitted to Campus Review Panel _____

Campus Level Review Panel Decision Date _____

Student-Athlete Information

Student-Athlete Name _____

Sport _____

Athletic Status:

- First-Year
- Transfer
- Returning

Disclosure Information

- Conviction
- Disciplinary Action after Campus Misconduct Proceedings
- Incomplete/Pending Misconduct Proceedings

Campus Level Review Panel Members

Eligibility Determination

- Eligible for participation in athletics
- Period of suspension (length: _____)
- Ineligible for participation in athletics

Reasoning for Eligibility Determination: (explanation of eligibility determination and evidence relied upon; *attach additional sheets, if necessary*)

Attachment F

Template 4: Eligibility Determination Cover Letter to Campus Athletic Director

Enclosed please find a template that should be utilized by the Campus Level Review Panel, following their eligibility determination. This cover letter should accompany the written decision issued by the Campus Level Review Panel, included as Template 3.

All highlighted text should be deleted prior to being sent to the Athletic Director. If the student-athlete is **determined to be eligible** to participate in intercollegiate athletics, delete **all** text following the yellow highlighted text. If the student-athlete is at an institution that is not under the jurisdiction of CUNY AC, delete the green highlighted text.

CAMPUS LETTERHEAD

[Date]

[Campus Athletic Director]
[email address]

Re: Eligibility Determination of [Student-Athlete]

Dear [Athletic Director]:

This letter is to inform you that, pursuant to CUNY's Policy on Student-Athlete Attestation of Serious Misconduct, the Campus Level Review Panel has made a determination as to [student-athlete]'s eligibility for participation in CUNY intercollegiate athletics.

[Student-Athlete] is a [current/incoming/transfer] student who is seeking to [participate in [CUNY sport] during the [fall/spring] semester] or [was participating in [CUNY sport] during the fall/spring] semester. [Student-Athlete] submitted an Attestation on [date], after which a due diligence review was performed by the Campus Attestation Designee, [name]. An eligibility review was conducted by [3 panel members], and a decision as to eligibility was made on [date].

After careful review, the Campus Level Review Panel has determined [Student-Athlete] to be [eligible/ineligible/ineligible for a period of time] to participate in CUNY intercollegiate athletics.

The Campus Level Review Panel's written decision is enclosed. [Student-Athlete] is permitted to request, and promptly receive a copy of the written decision, if they are deemed ineligible to participate or subject to a period of suspension from participation. Please notify [Student-Athlete] of this determination as soon as possible, and if they have been deemed ineligible/ineligible for a period of time, please include a Notice of Appeal (Template 6).

[Include if student-athlete is deemed ineligible/ineligible for period of time]: Since this student was deemed [ineligible/ineligible for a period of time] to participate in CUNY intercollegiate athletics, there are additional notifications that you must make, including to the student's coach [and CUNYAC Commissioner]. For more information on [this/these] notification/notifications, please see the Written Decision portion of Section A(5)(c)(i) of the Implementation Memo.

Sincerely,

[Campus Level Review Panel
Member #1]
[Campus Level Review Panel
Member #2]
[Campus Level Review Panel
Member #3]

Encl.
Campus Level Review Panel Eligibility Determination

Attachment G

Template 5: Eligibility Notification to the Student-Athlete by Campus Athletic Director

Enclosed please find a template that should be utilized by the Campus Athletic Director, to notify a student of the eligibility determination made by a Campus Level Review Panel.

The Notice of a Right to Appeal (included as Template 6) should be included as an enclosure, if the student-athlete has been deemed ineligible/ineligible for a period of time.

Regarding CC's: Additionally, when – **and only when** – a student is deemed ineligible/ineligible for a period, you must cc: the student's coach and, if applicable, the CUNYAC Commissioner. For more information, please see the Written Decision portion of Section A(5)(c)(i) of the Implementation Memo.

Regarding Highlighted Text: All highlighted text should be deleted prior to being sent to the student-athlete. If the student-athlete is **determined to be eligible** to participate in intercollegiate athletics, delete **all** text following the yellow highlighted text. If the student-athlete is determined to be eligible to participate in intercollegiate athletics, do not list, or include, the Notice of Right to Appeal as an enclosure.

CAMPUS LETTERHEAD

[Date]

[Student Name]
[email address]

Re: Eligibility Notification

Dear [Student]:

This letter is to inform you that, pursuant to CUNY's Policy on Student-Athlete Attestation of Serious Misconduct, the Campus Level Review Panel has made a determination as to your eligibility for participation in CUNY intercollegiate athletics.

You submitted an Attestation on [date] and a Due Diligence Review was performed by the Campus Attestation Designee, [name]. An Eligibility Review was conducted by [3 panel members], and a decision as to eligibility was made on [date].

After careful review, the Campus Level Review Panel has determined you to be [eligible/ineligible/ineligible for a period of time] to participate in CUNY intercollegiate athletics.

If student-athlete is deemed ineligible/ineligible for a period of time: You have the right to appeal this decision on certain grounds. A Notice of the Right to Appeal is enclosed.

Sincerely,

[Athletic Director]

Enclosures:
Notice of Right to Appeal

CC: Student's Coach,
[CUNYAC Commissioner]

Attachment H

Template 6: Notice of the Right to Appeal

Athletic Directors should include the enclosed Notice of the Right to Appeal with their eligibility notification to the student-athlete whenever the student-athlete has been deemed ineligible/ineligible for a period of time.

For institutions that are not under the jurisdiction of CUNYAC, please change any and all references to the CUNYAC Commissioner, in the enclosed document, to the individual your Athletic Director has designated to serve in lieu of the CUNYAC Commissioner on the CUNY Wide Review Panel.

NOTICE OF THE RIGHT TO APPEAL THE DECISION OF THE CAMPUS LEVEL 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 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:

- CUNY Athletics Conference Commissioner
- CUNY University Title IX Director; and
- 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 determine that the student is eligible to participate, modify the eligibility determination or 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 college Athletic Director.

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

Attachment I

Template 7: CUNY Wide Review Panel Written Decision

Enclosed please find a template that should be utilized by the CUNY Wide Review Panel, following a decision on student-athlete's appeal of the eligibility determination rendered by the Campus Level Review Panel. This form serves as the CUNY Wide Review Panel's written decision.

This decision should be issued by the CUNYAC Commissioner (or other designated individual for those institutions not under the jurisdiction of CUNYAC), to the student, on behalf of the CUNY Wide Review Panel, with the cover letter included as Template 8.

As indicated on the enclosed document, the CUNY Wide Review Panel should feel free to utilize and attach additional pages for the reasoning section, if necessary.

For more information on this written decision, see Section A(5)(c)(ii) and Section V.f of the Policy on Student-Athlete Attestation of Serious Misconduct.

CUNY Policy on Student-Athlete Attestation of Serious Misconduct
CUNY Wide Review Panel Written Decision

Campus: _____

Date Appeal Submitted: _____

CUNY Wide Review Panel Decision Date: _____

Student-Athlete Information:

Student-Athlete Name: _____

Sport _____

Athletic Status:

- First-Year
- Transfer
- Returning

Disclosure Information:

- Conviction
- Disciplinary Action after Campus Misconduct Proceedings
- Incomplete/Pending Misconduct Proceedings

Campus Level Review Panel Eligibility Determination:

- Period of suspension (length: _____)
- Ineligible for participation in athletics

CUNY Wide Review Panel Members:

Basis for Appeal

- Procedural Irregularity
- New evidence
- Conflict of interest/bias
- Disproportionate nature of eligibility determination

Appeal Determination

- Eligible to Participate
- Modification to eligibility determination _____
- Campus Level review Panel determination upheld

Reasoning for Appeal Determination (*attach additional sheets, if necessary*):

Attachment J

Template 8: Appeal Notification to Student-Athlete

Enclosed please find a template that should be utilized to notify a student-athlete of the outcome determination of their appeal to the CUNY Wide Review Panel. For more information on this step, please see Section A(5)(c)(ii) of the Implementation Memo and Section V.f of the Policy on Student-Athlete Attestation of Serious Misconduct.

**For CUNY institutions not under the jurisdiction of CUNYAC only:* As per the Implementation Memo, the campus Athletic Director must designate an individual to serve on the CUNY Wide Review Panel, in lieu of the CUNYAC Commissioner. This designated individual will send this letter.

This letter should be on CUNYAC letterhead (or campus letterhead for those institutions not under the jurisdiction of CUNYAC).

Enclose the CUNY Wide Review Panel Written Decision.

CUNYAC OR CAMPUS LETTERHEAD

[Date]

[Student Name]
[email address]

Re: Appeal Notification

Dear [Student]:

The CUNY Wide Review Panel considered your appeal submitted on [date] and after a thorough review, determined to [grant/deny] your appeal. Therefore, you [are now eligible to participate in CUNY intercollegiate athletics / remain ineligible to participate in CUNY intercollegiate athletics / are subject to a period of suspension from participation in CUNY intercollegiate athletics for – amount of time].

This decision is final and not subject to appeal. Please feel free to contact me with questions or concerns.

Sincerely,

[CUNYAC Commissioner or Other
Designated Individual (for institutions
not under the jurisdiction of CUNYAC)]

CC: Campus Athletic Director

Enl.
CUNY Wide Review Panel Written Decision

Attachment K

Template 9: Disclosure Notification Letter

This letter must be sent to the student-athlete **after** a disclosure to another institution.

This letter will be sent by the Campus Attestation Designee, or other designated individual.

Upon request, the student must be provided with the information and/or document(s), if any, provided to the requesting institution.

For more information, please see Section A(8) of the Implementation Memo.

CAMPUS LETTERHEAD

[Date]

[Student Name]
[email address]

Re: Disclosure Notification

Dear [Student]:

This letter is to inform you that [name of requesting institution] contacted [College] to request information related to your enrollment or transfer. Pursuant to this request, [the College] provided the requested information on [date].

The information was provided in accordance with CUNY's Guidelines for the Implementation of The Student Records Access Policy and The Family Educational Rights and Privacy Act (FERPA), Section III(C)(3) & (9).

You may request a copy of the information and/or document(s), if any, provided to [name of the requesting institution] by sending a request to me, via e-mail, at [e-mail address], with the following language in the body of the e-mail: *I request any information and/or documents, including completed forms, provided to [name of requesting institution].*

Please feel free to contact me with any questions.

Sincerely,

[Campus Attestation Designee
or other designated employee]