

STEPHEN F. AUSTIN

STATE UNIVERSITY

Office of the General Counsel

**POLICY SUMMARY FORM**

**Policy Name:** Student Code of Conduct

**Policy Number:** 10.4

**Is this policy new, being reviewed/revised, or deleted?**    Review/Revise

**Date of last revision, if applicable:** 7/26/2016

**Unit(s) Responsible for Policy Implementation:** Dean of Student Affairs

**Purpose of Policy (what does it do):** Delineates acceptable student conduct and procedures for violations

**Reason for the addition, revision, or deletion (check all that apply):**

☒ Scheduled Review      ☐ Change in law      ☐ Response to audit finding

☐ Internal Review      ☐ Other, please explain:

*Please complete the appropriate section:*

**Specific rationale for new policy:**

**Specific rationale for each substantive revision:**

- Standardize to national language: The term "complainant" was changed to "reporting party."

**Specific rationale for deletion of policy:**

*Additional Comments:*

Reviewers:

Dr. Adam Peck, Dean of Student

Dr. Steve Westbrook, Vice President for University Affairs

Damon Derrick, General Counsel

# Student Code of Conduct

**Original Implementation:** January, 1998

**Last Revision:** ~~July 26, 2016~~ July 25, 2017

Choosing to join the SFA community obligates one to adhere to a code of civilized behavior that embraces academic and personal integrity; respect for the dignity, rights and property of others; and an intolerance of bigotry. In keeping with this obligation, students and student organizations are expected to conform to the standards outlined in the Student Code of Conduct.

Additionally, at SFA, the community holds itself to a standard called The SFA Way. At its basis, The SFA Way encourages the entire university community to “strive for personal excellence in everything we do.” While the Student Code of Conduct articulates the minimum expectations of those in the community, the university encourages students to “hold themselves and others accountable” to the higher standards of The SFA Way.

This document is organized into the following sections:

Article I: Definitions

Article II: Proscribed Conduct

Article III: Procedures

Article IV: Non-Discrimination, Interpretation and Revision

## ARTICLE I: DEFINITIONS

1. The term “university” means Stephen F. Austin State University.
2. The term “student” includes all persons enrolled at the university. Persons who withdraw after allegedly violating the Student Code of Conduct, who are not officially enrolled for a particular term but have a continuing relationship with the university, or participate in university sponsored activities prior to enrollment, are considered “students;” as are persons who are living in university residence halls, although not enrolled.
3. The “vice president for university affairs” is the person designated by the university president to be responsible for the administration of the Student Code of Conduct.
4. The term “student conduct administrator” means a university official authorized by the vice president for university affairs or his/her designee to impose sanctions upon any student(s) found to have violated the Student Code of Conduct.
5. The term “student conduct authority” means any person or persons authorized by the vice president for university affairs or designee to determine whether a student has violated the Student Code of Conduct and to recommend or impose sanctions when a violation has been committed.
6. The term “respondent” means any student accused of violating this Student Code of Conduct.
7. The term “~~complainant~~ reporting party” means any person who submits a charge alleging a student has violated this Student Code of Conduct.
8. The term “due process” means a respondent has or will be given notice of the accusation and an opportunity for a hearing. In a case involving a *reporting party*~~complainant~~, the *reporting party*~~complainant~~ will have the same access to due process as the respondent.

9. The term, “university-recognized medium” refers to means of communicating with students. In most cases, this will mean the student’s official SFA email address.
10. The term “student conduct hearing” means a meeting between the student conduct authority and a respondent(s) to determine, through a sharing of information, whether the student(s) has violated the Student Code of Conduct as well as the need for any sanction.
11. The term “administrative disposition” means a hearing with a Student Conduct Authority to determine whether a student has violated the Student Code of Conduct and imposing sanctions on students found responsible for violations.
12. The term “advisor” means an individual accompanying a respondent or a ~~complainant~~ *reporting party* in a student conduct hearing. An advisor may not participate in the hearing in any capacity other than providing advice to the student they are accompanying.
13. The term “appeal” means the review by the designated appellate authority of the full record of a disciplinary hearing and the sanction imposed by a student conduct administrator or student conduct hearing board to determine the adequacy of the procedures used and the fairness of the sanctioning. The appeal may or may not include a meeting with the respondent and/or ~~complainant~~ *reporting party*.
14. The term “appellate authority” means any person or persons authorized by the vice president for university affairs or designee to consider an appeal regarding a student conduct authority’s determination as to whether a student has violated the Student Code of Conduct or regarding the sanctions imposed by the student conduct administrator.
15. The term “faculty member” means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.
16. The term “university official” includes any person employed by the university while in the act of performing assigned responsibilities.
17. The term “member of the university community” includes any person who is a student, faculty member, university official or other person employed by the university. A person’s status in a particular situation shall be determined by the student conduct administrator.
18. The term “university premises” includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).
19. The term “organization” means any number of students who have met as a group, whether as a registered student organization or not.
20. The term “policy” means the written regulations of the university as found in, but not limited to, the Student Code of Conduct, the student handbook, residence life handbook and/or community guidelines, the university web page and online policy manual, computer use policies, graduate and undergraduate general bulletins and the schedule of classes.
21. The term “complicity” means being present during the planning or commission of any violation of the Student Code of Conduct in such a way as to condone, support, or encourage that violation. Students who anticipate or observe a violation of the Student Code of Conduct are expected to remove themselves from association or participation and are encouraged to report the violation.
22. The term “interim suspension” refers to the suspension of a student after notice but prior to a student conduct hearing.
23. The term “shall” is used in the imperative sense.
24. The term “may” is used in the permissive sense.

## **ARTICLE II: PROSCRIBED CONDUCT**

### **A. Jurisdiction of the Student Code of Conduct**

This Student Code of Conduct shall apply to conduct that occurs on university premises, at university sponsored activities, in electronic communities/instructional sites that exist because of or are associated with the university and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. The Student Code of Conduct shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The vice president for university affairs or designee shall decide whether the Student Code of Conduct shall be applied to conduct occurring off campus, on a case-by-case basis, in his/her sole discretion. Student conduct which may be the result of psychological issues may be reviewed under policy 10.13 (Students Displaying Serious Psychological Problems). Student conduct which may be defined as sexual misconduct will be reviewed under policy 2.13 (Sexual Misconduct).

### **B. Conduct—Rules and Regulations**

Any student found to have committed or to have attempted to commit the following misconduct is subject to disciplinary sanctions:

1. Acts of dishonesty, including but not limited to the following:
  - a. Cheating or plagiarism as defined in university policy 4.1 (Student Academic Dishonesty), or other forms of academic dishonesty or breach of integrity such as but not limited to the distribution or selling of lecture notes, handouts, readers or other instructor-provided materials without permission.
  - b. Furnishing false information to any university official, faculty member, or office.
  - c. Forgery, alteration, or misuse of any university document, record, or instrument of identification.
  - d. Fraud as defined in university policy 2.7 (Fraud).
2. Disorderly conduct, disruption or obstruction of teaching, research, administration, living environments, disciplinary proceedings, other university activities, including public service functions on or off campus, or of other authorized non-university activities when the conduct occurs on university premises. These acts include, but are not limited to:
  - a. Making or causing any false report, warning, or threat of fire, explosion, or other emergency.
  - b. Interfering with police, fire or emergency service.
  - c. Failure to evacuate a building or area when directed.
  - d. Willfully disregarding any emergency or fire alarm signal.
  - e. Disorderly conduct or disruptions in classrooms, other instructional areas and university events.
  - f. Violation of rules set forth in the Residence Life Community Living Guidelines.
3. Physical abuse, fighting, assault, verbal abuse, threats, intimidation, harassment, bullying, coercion, stalking, or other conduct defined in university policies 13.3 (Annual Disclosure of Crime Statistics) or 2.13 (Sexual Misconduct), which threatens or endangers the health or safety of any person that is not an exercise of constitutional rights.

4. Discrimination, as defined in university policy 2.11 (Discrimination Complaints), sexual assault, sexual abuse, and other sexual misconduct defined in university policies 13.3 (Annual Disclosure of Crime Statistics) or 2.13 (Sexual Misconduct).
5. Attempted or actual theft of and/or damage to property of the university or property of a member of the university community or other personal or public property, on or off campus. This includes possession of stolen property and other related conduct defined in university policy 13.3 (Annual Disclosure of Crime Statistics).
6. Hazing, as defined in university policy 10.3 (Hazing).
7. Failure to comply with directions of university officials or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.
8. Wrongful use of university goods, services or information including but not limited to:
  - a. Unauthorized possession, duplication or use of keys to any university premises or unauthorized entry to or use of university premises.
  - b. Unauthorized possession or use of security codes, long distance access codes or calling cards, or cable service.
  - c. Sale or use of university property for personal gain.
  - d. Misuse of proctoring, tutoring, testing or student accommodation services.
9. Violation of any university policy, rule, or regulation published in hard copy or available electronically on the university website.
10. Violation of any federal, state or local law including, but not limited to:
  - a. Arson,
  - b. Robbery,
  - c. Burglary,
  - d. Forgery,
  - e. Gambling, and
  - f. Trespassing.
11. Use, possession, manufacturing, or distribution of any illegal substance as delineated in university policy 13.11 (Illicit Drugs and Alcohol Abuse), or a simulated illegal substance, or drug paraphernalia.
12. Use, possession, manufacturing, or distribution of alcoholic beverages or products (except as expressly permitted by university policy 13.11 regarding Illicit Drugs and Alcohol Abuse), or public intoxication or other alcohol-related crime. Alcoholic beverages or products may not, in any circumstance, be used by, possessed by or distributed to any person under twenty-one (21) years of age.
13. Illegal or unauthorized possession of firearms, ammunition, explosives, fireworks, other weapons, or dangerous chemicals, as outlined in university policy 13.9 (Firearms Explosives and Ammunition) or use of any item, such as a weapon replica, even if legally possessed, in a manner that harms, threatens or causes fear to others. Possession of weapon replicas will be determined on a case-by-case basis.
14. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university sponsored or supervised functions.
15. Theft, destruction or other abuse of computer facilities and resources, as delineated in university policies including, but not limited to: university policies 14.2 (Computer and Network Security), 9.3 (Digital Millennium Copyright), or 9.1 (Computing Software Copyright). Examples of prohibited acts in these policies include:

- a. Unauthorized entry into a file or account, to use, read, or change the contents, or for any other purpose.
  - b. Unauthorized transfer, copying or download of a file or software.
  - c. Use of another individual's identification and/or password.
  - d. Use of computing facilities and resources to interfere with the work of another student, faculty member or university official.
  - e. Use of computing facilities and resources to send obscene or abusive messages.
  - f. Use of computing facilities and resources to interfere with normal operation of the university computing system.
  - g. Use of computing facilities and resources in violation of copyright laws.
  - h. Violation of any departmental or lab policy.
  - i. Use of any device that interferes with the normal operations of the university computing system.
16. Interfering with the freedom of expression of others on university property or at university-sponsored events.
17. Abuse of the student conduct system, including but not limited to:
- a. Failure to obey the notice from a student conduct hearing board or university official to appear for a meeting or hearing as part of the student conduct system.
  - b. Falsification, distortion, or misrepresentation of information before a student conduct hearing board.
  - c. Disruption or interference with the orderly conduct of a student conduct hearing board proceeding.
  - d. Institution of a student conduct code proceeding in bad faith.
  - e. Attempting to discourage an individual's proper participating in, or use of, the student conduct system.
  - f. Attempting to influence the impartiality of a member of a student conduct hearing board prior to, and/or during the course of, the student conduct hearing board proceeding.
  - g. Harassment (verbal or physical) and/or intimidation of a member of a student conduct hearing board prior to, during, and/or after a student conduct code proceeding.
  - h. Failure to comply with the sanction(s) imposed under the Student Code of Conduct.
  - i. Influencing or attempting to influence another person to commit an abuse of the student conduct code system.
  - j. Retaliating against any party involved in the student conduct process.
18. Violating any rule, regulation, or law for which the university could be penalized including but not limited to fire, safety or environmental codes.
19. Failure to complete required student trainings/assessments within the timeframe determined by university officials.

### **C. Violation of Law and University Discipline**

University disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this Student Code of Conduct (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Student

Code of Conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice president for university affairs or designee.

Determinations made or sanctions imposed under this Student Code of Conduct shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of university rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

When a student is charged by federal, state, or local authorities with a violation of law:

- a. The university will not request or agree to special consideration for that individual because of his or her status as a student.
- b. The university may advise off-campus authorities of the existence of the Student Code of Conduct and of how such matters are typically handled within the university community.
- c. The university will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators provided that the conditions do not conflict with campus rules or sanctions.
- d. Individual students and other members of the university community, acting in their personal capacities, remain free to interact with governmental representatives, as they deem appropriate.

### **ARTICLE III: PROCEDURES**

#### **A. Introduction**

The following rules of procedure in student disciplinary matters are adopted to ensure that the university will fulfill the requirements of procedural due process in student disciplinary proceedings, that the Stephen F. Austin State University Student Conduct Code and Residence Life Community Living Guidelines may be secured to all students and that the disciplinary procedures within Stephen F. Austin State University shall be definite and determinable.

These rules of procedure shall be followed in any disciplinary proceeding, subject to the authority of the Board of Regents and the authority delegated to the president of the university to exercise jurisdiction over disciplinary matters of the university. Cases involving sexual misconduct will be investigated according to university policy 2.13 (Sexual Misconduct). Sanctioning and appeals of sanctions in cases involving sexual misconduct will be conducted under this policy.

#### **B. Overview of the Process**

When a complaint is received in the Office of Student Rights and Responsibilities, the respondent will be contacted through a university-recognized medium or personal delivery. The student will be provided with a notice to appear for an administrative disposition with the student conduct authority. Details of administrative disposition procedures are provided below. Once a decision has been made, either the respondent, ~~complainant~~ *reporting party* or both shall have the right to request a hearing under the hearing procedures after the conclusion of an administrative disposition. Details of hearing procedures are provided below. A student may appeal the finding of the hearing to the dean of student affairs or his/her designee. If a student desires, they may waive their right to a hearing in favor of a hearing with the dean of student affairs or designee so

long as they are appealing the sanction received and not the findings of the student conduct authority. The ruling of the dean of student affairs or designee shall be final. Procedures governing appeals are provided below.

### **C. Filing the Complaint**

Any member of the university community may file a complaint against a student alleging a violation or violations of the Student Code of Conduct. Complaints may be submitted in writing to the Office of Student Rights and Responsibilities. Anonymous complaints may be made; however, limited involvement by the ~~complainant~~ *reporting party* could impact the ultimate finding of responsibility.

### **D. Filing a False or Frivolous Complaint**

Knowingly filing a false or frivolous complaint or knowingly providing false information to intentionally mislead university officials who are investigating or reviewing a complaint is expressly forbidden. A frivolous complaint is one that is made in retribution for another student filing a complaint and that can be clearly demonstrated as lacking merit. Violators may face charges up to and including suspension or expulsion. The university is the sole party who may file charges of a false or frivolous complaint.

### **E. Notice of Allegations/Charges**

Upon receiving a report of an alleged violation of the Student Code of Conduct, the student conduct administrator will review the report and, if needed, conduct an initial investigation. If there is sufficient evidence to indicate that a violation may have occurred, a notice of allegations/charges will be sent to the respondent, including the alleged incident date and the nature of the charges, with instructions to appear in person at a designated location within five (5) business days to begin the student conduct process. The official means of contacting a student will be through university email or postal mail. If the student does not respond as instructed, another notice will be sent allowing another five (5) business days to respond. Failure to respond to the second notice may lead to the case being heard in absentia (without the student being present) and holds placed on the student's account. Holds will remain in place at least until the student contacts the student conduct administrator to receive case resolution information or until any sanction has been completed. Appeals to student conduct findings and/or sanctions heard in absentia must be filed within five (5) business days of the student conduct authority or student conduct hearing board's decision.

Where an incident has or can be reasonably expected to greatly disrupt the university environment, falls within the category of a suspendable offense, or occurs at the beginning or very near the end of a semester, the student may be contacted to come in immediately to begin the process. In addition to notices by email and postal mail, attempts will be made to contact the student by phone or by in-person contact by a university employee. This expedited contact is intended to preserve the university living/learning environment and can offer a student found responsible of an infraction options that may be time-limited or time-based, such as withdrawing prior to financial penalties or beginning a suspension period in a timely manner.

Failure by a student to have current contact information on file will not invalidate the notices.



## **F. Immediate Response**

The university reserves the right to take any action as may be reasonably appropriate, upon receipt of a complaint, to protect the ~~complainant~~*reporting party* or university community pending the final outcome of these procedures. These actions may include housing reassignments, class schedule changes, and/or restrictions from entering certain buildings or participation in certain events. These actions will be handled on a case-by-case basis.

## **G. Investigation**

The student conduct administrator, or designee, will begin an investigation of the case as an impartial party, not as a representative of the ~~complainant~~*reporting party*. The investigator will interview the ~~complainant~~*reporting party*, the accused and any other persons who may have pertinent factual information about the case. The process and the potential outcomes will be explained to both the ~~complainant~~*reporting party* and the accused, especially the use of the investigatory results in the student conduct process. All persons interviewed will be advised that this is a confidential investigation.

The investigator will meet with the respondent and provide the student access to the written complaint. The respondent may choose to respond verbally in the interview or in writing within a specified time. If the respondent accepts responsibility for the complaint allegations, the case can be resolved at that time through an administrative disposition or other remediation and the ~~complainant~~*reporting party* contacted with the outcome to the extent allowed by law, as well as the Title IX and ADA coordinators as appropriate. Both students have the right to request a hearing under the hearing procedures after the conclusion of an administrative disposition or to appeal the outcome as outlined in the appeals section of this policy.

The investigator may also gather and examine documents and other evidence relevant to the complaint and may consult with appropriate personnel for advice and guidance as applicable. The investigation should be completed within 20 business days. The investigator will document any reasons for an investigation taking longer than 20 business days. The investigation includes the preparation of the report of findings and recommendations (if appropriate).

## **H. Burden of Proof**

The burden of proof is by a preponderance of the evidence, defined as evidence which leads a reasonable person to conclude something is more probable than not. The rules of evidence do not apply in any hearing nor are the proceedings to be conducted as judicial trials; however, care shall be taken to comply with the intent of the procedural safeguards provided by these guidelines.

## **I. Administrative Disposition**

Administrative dispositions will be conducted with a single-member student conduct authority who will review the initial report, allow the student to respond or offer additional evidence, render a decision and determine sanctions as deemed appropriate. The ability to present witnesses to the alleged incident may be limited in this format. If the student conduct authority is unable to render a decision, or if the details of the case make a hearing more advisable, he/she may refer the case to the student conduct hearing board for a hearing. Otherwise, a student must request a hearing under the hearing procedures after the conclusion of an administrative disposition or appeal the sanction to the dean of student affairs or designee within five (5) business days of the decision or

the decision becomes final.

### **J. Hearing**

A multi-member board composed of at least three individuals (typically two faculty/staff and one student) will conduct hearings. The faculty/staff members will be selected from a pool of appointees from the vice president for university affairs. The students will be selected from and representative of the general student population with input from the student government association president. A respondent will be advised of the board members in the hearing notification described below and have one business day to challenge a board member's participation based on known facts that would impact impartiality or conflict of interest. The university may replace the student member of the board for certain cases that require additional training or involve sensitive student information. Any alterations to the typical board composition will follow the same notification procedure.

### **K. Notice of Hearing**

The hearing board chair will provide notice of the hearing, transmitted either through a university-recognized medium or personal delivery to the respondent. The notice will set forth the date, time and place of the alleged violation, the conduct in question, and the date, time and place of the hearing before the student conduct hearing board. The respondent will be informed that an advisor may accompany the respondent to the hearing. The student must notify the student conduct hearing board chair if an attorney is chosen as an advisor to allow the university's attorney to also be present. Failure by the respondent to have a current local address on record with the university or to access notifications transmitted through a university-recognized medium shall not invalidate the notice. The notice shall be given at least five (5) consecutive calendar days prior to the hearing, unless a shorter or longer time is fixed by the chair for good cause. Any request for continuance shall be made in writing to the chair, who has the authority to reschedule the hearing if it is determined the request is timely and for good cause.

If a new hearing must be set for either the failure of the respondent to show or for a continuance, the chair will notify the student conduct administrator and the respondent of the new date for the hearing. Failure to appear for the newly scheduled hearing will lead to the case being heard in absentia (without the student being present) and holds placed on the student's account. Holds will remain in place at least until the student contacts the student conduct administrator to receive case resolution information or until any sanction has been completed.

Appeals to student conduct findings and/or sanctions must be filed within five (5) business days of the student conduct authority's decision as outlined in the appeal section of these procedures.

### **L. Role of the Chair in Hearings**

The chair manages the hearing according to the procedures outlined in this document and ensures it is conducted in a manner consistent with the ascertainment of the truth and the orderly process of justice. Each person in attendance is expected to exhibit proper dignity, courtesy, and respect. The chair may dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the rulings of the chair.

Procedural questions which arise during the hearing not covered by these general rules shall be

determined by the chair, whose ruling shall be final unless the chair presents the question to the committee at their request, in which event the ruling of the committee by majority vote shall be final. The chair may also seek guidance from the general counsel prior to or during the hearing on procedural issues.

#### **M. Role of the Student Conduct Administrator**

In serving both the student conduct hearing board and the respondent, the role of the student conduct administrator is impartial and supportive in nature and there is no involvement in the final determination of the board. The student conduct administrator provides a summary of the case and initial investigations and can also be called to testify about the outcomes of previous similar cases and the conduct background of the respondent for consideration by the student conduct hearing board for sanctioning if the student is found responsible for a violation of the student code of conduct.

#### **N. Order of Proceedings**

The student conduct hearing board chair will preside at the hearing, determine the presence or absence of the respondent, verify the receipt of notices of charges by the respondent, call for or report any continuances (rescheduling) requested or granted, determine the presence of any advisor of the respondent and explain any special or extraordinary procedures to be employed during the hearing. The hearing will be recorded in either voice or video format.

The student conduct administrator will begin the process by presenting a general overview of the case to the board outlining the basic nature of the case, the types of evidence to be used, and the findings of any investigation prior to the hearing. This information is prepared at the direction of the student conduct hearing board chair after a review of the initial report of the alleged incident. The student conduct administrator is not a part of the student conduct hearing board and serves to provide the board and the respondent with assistance in obtaining the information necessary for as full a hearing of the facts as possible.

The respondent can choose to make opening remarks after the student conduct administrator gives the overview or wait until any defense witnesses or evidence are presented. The respondent's advisor may advise the respondent, but may not participate in the hearing, for example by questioning witnesses or addressing the board.

The student conduct hearing board and the respondent may call and cross-examine witnesses and present evidence. The respondent may address the board and inspect and copy the board's findings and determinations. The respondent can, but cannot be required to, testify. Any person testifying, including the respondent, shall be subject to cross-examination, subject to other provisions specified in this policy.

The respondent will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The student conduct administrator will assist in securing the cooperation of witnesses. The student conduct administrator cannot compel other students to appear at a hearing but can assist students being called as witnesses with class absence notifications when necessary. The student conduct administrator will make available any necessary documents and other evidence within the university's control, to the extent allowed by law. Depending on the nature of the evidence, it may be made available to the respondent during normal university business hours but not released to the respondent and/or in an alternate format such as a photograph or recording.

The hearing is meant to be an exchange of information and a presentation of facts and evidence by witnesses having direct knowledge of the alleged infraction. The student conduct hearing board chair may limit the number of, or disallow completely, character witnesses that have no knowledge of the alleged incident. Witnesses are called beginning with those the student conduct hearing board requested. The board members and the respondent may both ask questions.

The board chair may direct the respondent to direct questions to the chair to be asked on the respondent's behalf at the chair's discretion. When this process is completed, the respondent may call any witnesses or present any additional evidence or information relevant to the current complaint.

After all witnesses and evidence has been presented, the respondent may make a closing statement, if desired. The chair may then call on the student conduct administrator for a range of sanctions for the alleged infraction. At this time, the student conduct administrator, the respondent, and any advisor are excused, the recording stopped, and the student conduct hearing board analyzes the information gathered, determines what it believes are the facts of the case, renders a finding of responsible or not responsible, and an appropriate sanction, if necessary. These findings are to be delivered to the student conduct administrator within 3 business days where an outcome letter will be prepared for the respondent. The respondent may appeal the decision within five (5) business days of the date of the letter of findings as outlined in the appeal section of these procedures.

Hearings are closed to the public. The general counsel may be consulted in procedural matters of the student conduct hearing board and may be present at hearings. All information presented in the hearing is confidential and restricted to only those who have an absolute need to know.

#### **O. Hearing Procedures with a Complainant/Reporting Party**

When a hearing is held with a student complainant/reporting party, the process will follow the general pattern of the regular hearing in this manner:

- a. Summary of the case and initial investigations by the student conduct administrator
- b. Opening statement by the complainant/reporting party (five minutes)
- c. Opening statement by the respondent if the respondent chooses (five minutes)
- d. Presentation of witnesses and evidence by complainant/reporting party
- e. Presentation of witnesses and evidence by respondent
- f. Closing statement by the complainant/reporting party (five minutes)
- g. Closing statement by the respondent if the respondent chooses (five minutes)

The burden of proof is by a preponderance of the evidence. Cross-examination of the witnesses is allowed by both parties. In cases of alleged victimization, the parties shall not be permitted to directly question each other. The student conduct hearing board is permitted to question the parties and/or witnesses at any time during the proceeding. At the conclusion of the complainant/reporting party's closing statement, the student conduct administrator, the complainant/reporting party, the respondent, and any advisors are excused, the recording stopped, and the student conduct hearing board analyzes the information gathered, determines what it believes are the facts of the case, renders a finding of responsible or not responsible, and an appropriate sanction, if necessary. These

findings are to be delivered to the student conduct administrator within three (3) business days where an outcome letter will be prepared and sent to the respondent and the ~~complainant~~*reporting party* to the extent allowed by law and to the Title IX and/or ADA coordinator as appropriate. Any appeal to the board's decision must be made within five (5) business days of the date of the letter of findings as outlined in the appeal section of these procedures.

Hearings are closed to the public. The general counsel may be consulted in procedural matters of the student conduct hearing board and may be present at meetings. All information presented in the hearing is confidential and restricted to only those who have an absolute need to know.

In addition to the procedures outlined elsewhere, the following will also apply:

- a. Both the respondent and the ~~complainant~~*reporting party* will receive the notice of the hearing.
- b. Both the respondent and the ~~complainant~~*reporting party* will have the right to challenge a board member's participation based on known facts that would impact impartiality or conflict of interest. This selection must be made prior to the hearing, within one day of receiving the notice.
- c. Both the respondent and the ~~complainant~~*reporting party* have the right to have an advisor present.
- d. Both the respondent and the ~~complainant~~*reporting party* may ask for a continuance.
- e. Both the respondent and the ~~complainant~~*reporting party* will have the same opportunity to obtain witnesses and evidence and have the assistance of the university as described.
- f. Both the respondent and the ~~complainant~~*reporting party* will have the right to testify or refuse to testify.
- g. Both the respondent and the ~~complainant~~*reporting party* will have opportunity to cross-examine all witnesses and are subject to cross-examination if choosing to give testimony. An intercom or other remote audio or video device may be used in hearings to allow a ~~complainant~~*reporting party* to testify and respond to questions and cross-examinations without face-to-face contact with the respondent.
- h. Both the respondent and the ~~complainant~~*reporting party* will have the ability to submit a written response to the charges.

## **P. Appeal Procedures**

Students have one level of appeal for every student conduct case. The final appellate authority shall be the vice president for university affairs or his/her designee. There shall be two grounds for appeal. The first is appealing the findings of responsibility and the second is an appeal of the sanction received. Respondents sanctioned under this policy for violation of the Sexual Misconduct policy (2.13) may only appeal the sanction(s) administered under this policy.

### *Appeal of the Findings of Responsibility*

The respondent may appeal the finding of responsibility to the dean of student affairs. The student must file a signed and dated written appeal in the Office of the Dean of Student Affairs no later than 5 p.m. the day of the deadline. The written appeal must contain: the respondent's university identification number, date of the disciplinary action being appealed, the nature of the charges, the grounds which merit an appeal, any extenuating circumstances the respondent wishes to have considered and a request(s) to continue to reside on campus and/or attend classes during the appeal process.

### *Appeal of the Sanction*

The respondent may accept the finding of responsibility and appeal the sanction to the vice president for university affairs or his or her designee. The signed and dated written appeal must be filed in the Office of the Dean of Student Affairs no later than 5 p.m. the day of the deadline. The written appeal must contain: the respondent's university identification number, date of the disciplinary action being appealed, the nature of the charges, the grounds which merit an appeal, any extenuating circumstances the respondent wishes to have considered and a request(s) to continue to reside on campus and/or attend classes during the appeal process.

### **Q. Confidentiality and Records**

All hearings and records (written, electronic, audio or video recording, etc.) pertaining to hearings will be considered education records and will be treated as designated by current law. Student conduct records are kept for two years beyond a student's final enrollment at the university. Records for cases where a student has been suspended or expelled are held permanently. Disciplinary actions are not noted on a student's academic transcript.

There will be no disclosure of file contents outside of the university without the written permission of the student, unless required or allowed by law. Disclosure within the university is limited to those employees having legitimate need of the information to conduct university business. Incident reports are generally not released to students to protect the privacy rights of other students involved in the incident. A student may make a written request for a personal copy of their incident report and receive a redacted copy. Disclosure to victims of violent crimes, nonforcible sex offenses or other offenses with reporting requirements will be handled according to current law.

Hearings are audio and/or video recorded. All hearings are closed to the public.

### **R. Rights of Students in Disciplinary Proceedings**

The rights outlined below will be accorded to any student in an administrative disposition or hearing for an alleged violation of the student code of conduct. Both respondent and ~~complainant~~ *reporting party* shall have the same rights under this Student Code of Conduct unless additional rights are provided to either party under the law.

- a. to be present at the hearing;
- b. to meet with the student conduct administrator to discuss the disciplinary process;
- c. to submit a written account of the alleged incident;
- d. to be advised of the date, time and location of the disciplinary hearing, and to request rescheduling (a continuance) for good cause;
- e. to be present at the hearing and to be accompanied by an advisor of the student's choosing during the hearing process, although the advisor will not be permitted to speak for the student during the hearing;
- f. to testify at the hearing;
- g. to decline to testify, with knowledge that all relevant evidence will be considered and the alleged violation adjudicated;
- h. to hear or examine evidence presented against the respondent;

- i. to have and cross-examine witnesses, as specified in this policy;
- j. to make any statement in mitigation or explanation of the conduct in question;
- k. to be informed in writing of the finding and any sanction imposed to the extent allowed by law;
- l. to appeal the finding and/or sanction to the proper authority;
- m. to waive hearing deadlines as outlined in these procedures.

#### **S. Additional Rights of ~~Complainant~~*Reporting Parties* in Disciplinary Proceedings Involving Victimization**

Some actions that violate university policy involve victimization of one or more students by another student(s). This behavior may include physical violence and other acts that endanger the safety of others in the university community. Individuals initiating a complaint involving victimization or respondents in these cases are entitled to certain rights during the disciplinary process. Cases involving victimization defined as sexual misconduct will be investigated according to university policy 2.13 (Sexual Misconduct).

If a complaint is filed with the student conduct administrator, it is important to remember that the respondent is being charged with violating a university rule or regulation; therefore, the university is ultimately responsible for investigating, initiating charges, imposing sanctions if the respondent chooses to admit the violation, implementing the hearing process, and determining sanctions following a finding of responsibility. Although a ~~complainant~~*reporting party*'s input may be sought during the disciplinary process, the ultimate disposition of the case rests with the university. If a ~~complainant~~*reporting party* withdraws a complaint during the course of the disciplinary proceeding, the university reserves the right to proceed with the case on the basis of evidence other than the testimony of the ~~complainant~~*reporting party*.

During the course of a disciplinary proceeding, a ~~complainant~~*reporting party* in cases involving victimization has the following rights:

- a. to meet with the student conduct administrator to discuss the disciplinary process;
- b. to have reasonable assistance from the university in remediating any situation where the victim must be in contact with the respondent, such as a change in residence hall or course section assignment or restrictions on entering specific buildings or attending certain events;
- c. to make an impact statement, either in person or in writing, to the student conduct hearing board for consideration during the sanctioning phase;
- d. to know the outcome of the process as allowed by laws related to the particular incident.

#### **T. Penalties**

**Admonition:** is a warning.

**Conduct Probation:** is for a specified period of time and requires that a second offense will result in disciplinary probation or suspension.

**Disciplinary Probation:** is for a specified period of time and may carry with it other conditions to be met (e.g., restriction of participation in extracurricular activities, holding student office, pledging or joining campus organizations).

**Special Action:** is a sanction designed to enhance the educational intent of the disciplinary process. Examples of sanctions include the requirement of a special program or class (the cost of this program will be paid by the student), removal from university housing, payment of damages, extracurricular activity restrictions, community service, educational sanctions, counseling referrals, removal from any class or program, or restrictions on enrollment in any class or program.

**Suspension of an Individual:** is a bar from attending the university for a specific period of time and begins at the date and time specified by the student conduct authority considering the case. A suspension also carries with it the following conditions:

- A. The respondent must remain off the campus during the period of suspension, except when summoned by a university official or when an appointment with an official has been arranged in advance.
- B. A student under suspension may not live or board in university facilities.

**Suspension of a Student Organization:** is loss of university recognition for a specified period of time as outlined in university policy 10.9 (Student Organization Formation and Recognition). Student organizations are required to cease all activities during the specified period. Student organizations that continue to function during the suspension will be considered in violation of their suspension. Special Actions may also be attached to the suspension to enhance the educational intent of the disciplinary process. Suspended student organizations must submit a new application as an organization at the end of the suspension period.

**Expulsion:** is a permanent bar from attending the university whereby the student is not eligible for readmission to the university and begins at the date and time specified by the student conduct authority considering the case. An expelled student's status will also carry the following conditions:

- A. The expelled student must remain off the campus, except when summoned by a university official or when an appointment with an official has been arranged in advance.
- B. A student under expulsion may not live or board in university facilities.

**Debarment:** is equivalent to suspension from the university applied to persons not currently registered at the time the penalty is imposed.

**Interim Suspension:** The student conduct authority may, with the approval of the vice president for university affairs, suspend a student for an interim period pending disciplinary proceedings when there is evidence that the continued presence of the student on the university campus poses a substantial threat of harm or bodily injury, damage to property, or threat to the stability and continuance of normal university functions. The student conduct authority may provide for the interim suspension to become immediately effective without prior notice to the student. However, the student conduct authority shall provide notice to the student at the first reasonable



opportunity.

The student conduct authority shall inform the student that he/she is entitled to a hearing to be held within five (5) university business days from the effective date of the interim suspension. If the student desires a preliminary hearing shall then be held on the following issues only:

- A. the reliability of the information concerning the student's conduct, including the matter of his/her identity;
- B. whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on the university campus poses a substantial threat of harm or bodily injury, damage to property, or threat to the stability and continuance of normal university functions.

If the student conduct authority finds the information concerning the respondent's conduct is unreliable or that the respondent has been misidentified, charges may be dismissed. If the student conduct authority finds that allowing the respondent to remain on campus poses no threat or disruption, the student may be allowed to remain on campus pending the completion of the hearing process.

#### **U. Status during Appeal**

In cases of suspension or expulsion where an appeal is filed within the required time, a respondent may petition the Office of the Dean of Student Affairs in writing for permission to continue to reside on campus and/or attend classes pending final determination of the appeal. The officer may permit either of these requests under such conditions as may be designated pending completion of appellate procedures, provided such continuance will not seriously disrupt the university or constitute a danger to the health, safety or welfare of the university community.

### **ARTICLE IV: NON-DISCRIMINATION, INTERPRETATION AND REVISION**

Decisions under this policy will be made based on observations of a student's conduct, actions and statements and not on the basis of a student's race, color, religion, national origin, sex, age, disability, genetic information, citizenship, veteran status, sexual orientation, gender identity, or gender expression.

Any question of interpretation or application of the Student Code of Conduct shall be referred to the vice president for university affairs or designee for final determination.

The Student Code of Conduct shall be reviewed annually under the direction of the vice president for university affairs or designee.

**Cross Reference:** Fraud (2.7); Discrimination Complaints (2.11); Sexual Misconduct (2.13); Student Academic Dishonesty (4.1); Computing Software Copyright (9.1); Digital Millennium Copyright (9.3); Hazing (10.3); Students Displaying Serious Psychological Problems (10.13); Annual Disclosure of Crime Statistics (13.3); Computer and Network Security (14.2); Illicit Drugs and Alcohol Abuse (13.11); Firearms Explosives and Ammunition (13.9)

**Responsible for Implementation:** Vice President for University Affairs

**Contact for Revision:** Dean of Student Affairs

**Forms:** None

**Board Committee Assignment:** Academic and Student Affairs