

4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

(This policy will take effect Fall Semester, 2017)

This Policy establishes minimum procedural standards for investigations and resolutions of alleged student conduct violations, which each institution must incorporate into its respective student conduct policies. The purpose of this Policy is to ensure uniformity in the quality of investigations while providing for due process that affords fairness and equity in all student conduct investigations.

These procedures apply to matters relating to student misconduct, except matters relating to academic dishonesty, which may be covered under separate institutional policies. Institutions shall inform students of their procedures governing student misconduct complaints and investigations.

4.6.5.1 Reports of Student Misconduct

Institutions must provide clear notice to students and other campus community members as to how to file complaints of misconduct.

Complaints to the appropriate department and/or person(s) should include as much information as possible – such as: (1) the type of misconduct alleged; (2) the name and contact information of the individual(s) accused of misconduct; (3) the date(s), time(s), and place(s) of the misconduct; (4) the name(s) and contact information of any individual(s) with knowledge of the incident; (5) whether any tangible evidence has been preserved; and (6) whether a criminal complaint has been made.

Information from complaints may be shared as necessary to investigate and to resolve the alleged misconduct. Complaints shall be investigated and resolved as outlined below. The need to issue a broader warning to the community in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) shall be assessed in compliance with federal law.

Where appropriate, complainants may file a law enforcement report as well as an institutional report, but are not required to file both.

1. Confidentiality: Where a complainant or alleged victim requests that his or her identity be withheld or the allegation(s) not be investigated, the institutions should consider whether or not such request(s) can be honored while still providing a safe and nondiscriminatory environment for the institution and conducting an effective review of the allegations. The institution should inform the requesting party that the institution cannot guarantee confidentiality.
2. Retaliation: Anyone who, in good faith, reports what she or he believes to be student misconduct participates or cooperates in, or is otherwise associated with any investigation, shall not be subjected to retaliation. Anyone who believes he or she has been the target of

retaliation for reporting, participating or cooperating in, or otherwise being associated with an investigation should immediately contact the appropriate department or individual(s) for that institution. Any person found to have engaged in retaliation in violation of the student conduct policy shall be subject to disciplinary action, pursuant to the institution's policy.

3. **False Complaints/Statements:** Individuals are prohibited from intentionally giving false statements to an institution official. Any person found to have intentionally submitted false complaints, accusations, or statements, including during a hearing, in violation of this Policy shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated under the student conduct policy.
4. **Amnesty:** Students should be encouraged to come forward and report violations of the law and/or student code of conduct notwithstanding their own improper use of alcohol or drugs. Any student(s) who voluntarily and in good faith reports information to college or university faculty or staff prior to any investigation concerning use of drugs or alcohol will not be voluntarily reported to law enforcement; nor will information that the individual provides be used against the individual for purposes of conduct violations. Nevertheless, these students may be required to meet with staff members in regard to the incident and may be required to participate in appropriate educational program(s). The required participation in an educational program under this amnesty procedure will not be considered a sanction.

Nothing in this amnesty procedure shall prevent a university staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required.

4.6.5.2 Process for Investigating and Resolving Disputed Reports

Jurisdiction: Each institution shall take necessary and appropriate action to protect the safety and well-being of its community. Accordingly, student conduct should be addressed when such acts occur on institution property, at institution-sponsored or affiliated events, or otherwise violate the institution's student conduct policies, regardless as to where such conduct occurs. If the student has admitted responsibility and has voluntarily decided to participate in the informal process, the procedures outlined in this section will not apply.

Access to Advisors: The respondent and alleged victim (where applicable), as parties to these proceedings, shall have the right to have an advisor (who may or may not be an attorney) of his or her choosing, and at his or her own expense, for the express purpose of providing advice and counsel. The advisor may be present during meetings and proceedings during the investigatory and/or resolution process at which his or her advisee is present. The advisor may advise his or her advisee in any manner, including providing questions, suggestions, and guidance on responses to any questions posed to the advisee, but shall not participate directly during the investigation or hearing process. The institution shall not prohibit family members of a party from attending the hearing if the party requests such attendance, but may limit each participant to having two family members present.

Initial Evaluation of Student Conduct Reports: Regardless of how an institution becomes aware of misconduct, the institution shall ensure a prompt, fair, and impartial review and resolution of

complaints alleging student misconduct. Where a report of student misconduct has been made to the appropriate department and/or person, the institution shall review the complaint to determine whether the allegation(s) describes conduct in violation of the institution's policies and/or code of conduct. If the reported conduct would not be a violation of the institution's policies and/or code of conduct, even if true, then the report should be dismissed. Otherwise, a prompt, thorough, and impartial investigation, and review shall be conducted into each complaint received to determine whether charges against the respondent should be brought.

Where a report of student misconduct alleges sexual misconduct or other forms of harassment and/or discrimination, the report will be referred to and the investigation will be conducted through or as directed by the appropriate office trained and equipped to investigate such matters.

Any report that involves allegation(s) of conduct that could lead to the suspension or expulsion of the respondent(s) in an initial violation must be promptly reported to the System Director by the institution. The System Director will work with the institution to determine whether any interim measure(s) are necessary, to assign an investigator and will collaboratively supervise the investigation with the appropriate institution professional (e.g., the Title IX Coordinator, Dean of Students). If an allegation is not initially identified as one that could lead to suspension or expulsion of the respondent(s), but facts arise during the course of the investigation that would require oversight from the System Director, then the institution shall report that case to the System Director or her designee prior to proceeding.

Interim Measures

Interim measures may be provided by the institution at any point during an investigation and should be designed to protect the alleged victim and the community. To the extent interim measures are imposed, they should minimize the burden on both the alleged victim and the respondent, where feasible. Interim measures may include, but are not limited to:

1. Change of housing assignment;
2. Issuance of a "no contact" directive;
3. Restrictions or bars to entering certain institution property;
4. Changes to academic or employment arrangements, schedules, or supervision;
5. Interim suspension; and
6. Other measures designed to promote the safety and well-being of the parties and the institution's community.

An interim suspension should only occur where necessary to maintain safety and should be limited to those situations where the respondent poses a serious and immediate danger or threat to persons or property. In making such an assessment, the institution should consider the existence of a significant risk to the health or safety of the alleged victim or the campus community; the nature, duration, and severity of the risk; the probability of potential injury; and whether less restrictive means can be used to significantly mitigate the risk.

Before an interim suspension is issued, the institution must make all reasonable efforts to give the respondent the opportunity to be heard on whether his or her presence on campus poses a danger.

If an interim suspension is issued, the terms of the suspension take effect immediately. Upon request, the respondent will have an opportunity to be heard by the respective conduct officer, Title IX Coordinator, or System Director, as appropriate, within three business days in order to determine whether the interim suspension should continue.

Investigation

Throughout any investigation and resolution proceedings, a party shall receive written notice of the alleged misconduct, shall be provided an opportunity to respond, and shall be allowed to remain silent or otherwise not participate in or during the investigation and resolution process without an adverse inference resulting. If a party chooses to remain silent or otherwise not participate in an investigation, the investigation may still proceed and policy charges may still result and be resolved. Additionally, in any investigation involving allegations of sexual misconduct, timely notice of meetings shall be provided to each party of any meeting at which the complainant, respondent or alleged victim may be present. Timely and equal access to information that will be used during the investigation will be provided to the complainant, respondent and alleged victim (where applicable).

Where the potential sanctions for the alleged misconduct may involve a suspension or expulsion (even if such sanctions were to be held “in abeyance,” such as probationary suspension or expulsion) the institution’s investigation and resolution procedures must provide the additional minimal safeguards outlined below.

1. The alleged victim and respondent shall be provided with written notice of the complaint/allegations, pending investigation, possible charges, possible sanctions, and available support services. The notice should also include the identity of any investigator(s) involved. Notice should be provided via institution email to the address on file.
2. Upon receipt of the written notice, the respondent shall have at least three business days to respond in writing. In that response, the respondent shall have the right to admit or to deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A non-response will be considered a general denial of the alleged misconduct. Any alleged victim shall also be provided three business days to respond to or to supplement the notice.
3. If the respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
4. If at any point the investigator determines there is insufficient evidence to support a charge or to warrant further consideration of discipline, then the complaint should be dismissed.
5. An investigator shall conduct a thorough investigation and should retain written notes and/or obtain written or recorded statements from each interview. The investigator shall also keep a record of any party’s proffered witnesses not interviewed, along with a brief, written explanation of why the witnesses were not interviewed.
6. The initial investigation report shall be provided to the respondent and the alleged victim (where applicable). This report should clearly indicate any resulting charges (or alternatively, a determination of no charges), as well as the facts and evidence in support thereof, witness statements, and possible sanctions. For purposes of this Policy, a charge is not a finding of responsibility, but indicates that there is sufficient evidence to warrant further consideration and adjudication.

7. The final investigation report should be provided to the misconduct panel or hearing officer for consideration in adjudicating the charges brought against the respondent. A copy shall also be provided to the respondent and alleged victim (where applicable) before any hearing. The investigator may testify as a witness regarding the investigation and findings, but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing.

Resolution/Hearing

In no case shall a hearing to resolve charge(s) of student misconduct take place before the investigative report has been finalized.

Where the respondent indicates that he or she contests the charges, the matter shall be set for a hearing and once the investigative report has been finalized and copies provided to the respondent and alleged victim (where applicable); however, the alleged victim (where applicable) and respondent may have the option of selecting informal resolution as a possible resolution in certain student misconduct cases where they mutually agree, except where deemed inappropriate by the Vice President for Student Affairs (or his/her designee) or the System Director.

Where a case is not resolved through informal resolution or informal resolution is not available due to the nature of the charges, the respondent shall have the option of having the charges heard either by an administrator (hearing officer) or a hearing panel. However, all cases involving charges of sexual misconduct that go to a hearing shall be heard by a panel of staff and/or faculty. Sexual misconduct panel members shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act. If an administrative hearing is requested, the respondent shall use his or her discretion to determine whether the case should be heard by a hearing panel. Notice of the date, time, and location of the hearing shall be provided to the respondent, complainant, and alleged victim (where applicable) at least five business days prior to the hearing. Notice shall be provided via institution email where applicable. Additionally, the following standards will apply to any such hearing:

The respondent shall have the right to present witnesses and evidence to the hearing officer or panel. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard. Both parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the hearing officer for consideration. Advisors may actively assist in drafting questions. The Panel shall ask the questions as written and will limit questions only if they are unrelated to determining the veracity of the charge leveled against the respondent(s). In any event, the Panel shall err on the side of asking all submitted questions and must document the reason for not asking any particular questions.

1. Where the hearing officer or panel determines that a party or witness is unavailable and unable to be present due to extenuating circumstances, the hearing officer or panel may establish special procedures for providing testimony from a separate location. In doing so, the hearing officer or panel must determine whether there is a valid basis for the unavailability, ensure proper sequestration in a manner that ensures testimony has not been tainted, and make a determination that such an arrangement will not unfairly disadvantage any party. Should it be reasonably believed that a party or witness who is not physically

present has presented tainted testimony, the hearing officer or panel will disregard or discount the testimony.

In sexual misconduct cases, the hearing officer reserves the right to allow a party to testify in a separate room, so long as no party is unfairly disadvantaged by this procedure. A party must still give testimony in the presence of the Panel, and the opposing party must have the opportunity to view the testimony remotely and to submit follow-up questions.

2. Formal civil rules of evidence do not apply to the investigatory or resolution process.
3. The standard of review shall be a preponderance of the evidence; however, any decision to suspend or to expel a student must also be supported by substantial evidence at the hearing.
4. Institutions should maintain documentation of the proceedings, which may include written findings of fact, transcripts, audio recordings, and/or video recordings.
5. Following a hearing, both the respondent and alleged victim (where applicable) shall be simultaneously provided a written decision via institution email (where applicable) of the outcome and any resulting sanctions. The decision should include details on how to appeal, as outlined below. Additionally, the written decision must summarize the evidence in support of the sanction. The same form will be completed, regardless of whether the student opts for a hearing panel or an administrative proceeding.

Possible

Sanctions

In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community. The hearing panel, hearing officer or administrator that found that a policy violation occurred will determine sanctions and issue notice of the same, as outlined above.

The broad range of sanctions includes: expulsion; suspension for an identified time frame or until satisfaction of certain conditions or both; temporary or permanent separation of the parties (e.g., change in classes, reassignment of residence, no contact orders, limiting geography of where parties can go on campus) with additional sanctions for violating no-contact orders; required participation in sensitivity training/awareness education programs; required participation in alcohol and other drug awareness and abuse prevention programs; counseling or mentoring; volunteering/community service; loss of institutional privileges; delays in obtaining administrative services and benefits from the institution (e.g., holding transcripts, delaying registration, graduation, diplomas); additional academic requirements relating to scholarly work or research; financial restitution; or any other discretionary sanctions directly related to the violation or conduct.

4.6.5.3 Appeals

Where the sanction imposed includes a suspension or expulsion (even for one held in abeyance), the following appellate procedures must be provided. The alleged offender (and in cases involving sexual misconduct or other forms of discrimination and/or harassment, the alleged victim) shall have the right to appeal the outcome on any of the following grounds: (1) to consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original

hearing, because such information was not known or knowable to the person appealing during the time of the hearing; (2) to allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing, including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by bias; or (3) to allege that the finding was inconsistent with the weight of the information.

Appeals may be made for the above reasons in any case where sanctions are issued, even when such sanctions are held “in abeyance,” such as probationary suspension or expulsion.

The appeal must be made in writing, and must set forth one or more of the bases outlined above, and must be submitted within five business days of the date of the final written decision. The appeal should be made to the institution’s Vice President for Student Affairs or his/her designee.

The appeal shall be a review of the record only, and no new meeting with the respondent or any alleged victim is required. The Vice President, or his or her designee, may affirm the original finding and sanction, affirm the original finding but issue a new sanction of lesser severity, remand the case back to the decision-maker to correct a procedural or factual defect, or reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand. The Vice President or his or her designee shall then issue a decision in writing to the respondent within a reasonable time period.

The decision of the Vice President or his or her designee may be appealed in writing within five business days (as determined by the date of the decision letter) to the President of the institution solely on the three grounds set forth above.

The President may affirm the original finding and sanction, affirm the original finding but issue a new sanction of greater or lesser severity, remand the case back to the decision maker to correct a procedural or factual defect, or reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand. The President’s decision shall be simultaneously issued in writing to the complainant, the respondent and the alleged victim (where applicable) within a reasonable time period. The President’s decision shall be the final decision of the institution.

Should the respondent or alleged victim (where applicable) wish to appeal the President’s decision, he or she may request review by the Board of Regents in accordance with the Board of Regents’ Policy on Discretionary Review.

4.6.5.4 Recusal/Challenge for Bias

Any party may challenge the participation of any institution official, employee or student panel member in the process on the grounds of personal bias by submitting a written statement to the institution’s designee setting forth the basis for the challenge. The designee shall not be the same individual responsible for investigating or adjudicating the conduct allegation. The written challenge should be submitted within a reasonable time after the individual knows or reasonably should have known of the existence of the bias. The institution’s designee will determine whether to sustain or deny the challenge and, if sustained, the replacement to be appointed.