

4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

(This policy will take effect Fall Semester, 2020)

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. This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment, or the due process clauses of Fifth and Fourteenth Amendments.

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. For the purposes of this Policy the term Complainant means an individual who is alleged to be a victim of conduct that would violate any Board or other applicable institution policy. The term Respondent means an individual who is alleged to have engaged in behavior that would violate any Board or other applicable institution policy. Other individuals who report information to an institution regarding alleged policy violations are deemed Reporters.

Institutions may establish to what extent the procedures outlined in this Policy may apply to Reporters.

4.6.5.3 Reports of Sexual Misconduct

Initial Evaluation of Sexual Misconduct Reports:

Upon notice of the alleged Sexual Misconduct the institution's Title IX Coordinator ("Coordinator") will assess whether a formal investigation, informal resolution, or dismissal would be appropriate. In making this determination, the Coordinator will assess whether the allegation(s), if true, would rise to the level of prohibited conduct, whether a Formal Complaint must be filed, whether an investigation is appropriate in light of the circumstances, whether the parties prefer an informal resolution, and whether any safety concerns exist for the campus community. The need to issue a broader warning to the community in compliance with the Clery Act shall be assessed in compliance with federal law.

Confidentiality:

Where a Complainant requests that their identity be withheld or the allegation(s) not be investigated, the Coordinator should consider whether or not such request(s) can be honored in a manner consistent with the institution's obligations to promote a safe and nondiscriminatory environment. The institution should inform the Complainant that the institution cannot guarantee confidentiality. Honoring a Complainant's request for confidentiality shall not prevent the institution from reporting information or statistical data as required by law, including the Clery Act.

Retaliation:

Anyone who has made a report or complaint, provided information, assisted, participated, or refused to participate in any manner in the Sexual Misconduct process, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the Coordinator or their designee. Any person found to have engaged in retaliation shall be subject to disciplinary action.

False Complaints/Statements:

Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a system or institution official. Any person found to have knowingly submitted false complaints, accusations, or statements, including during a hearing, shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) under the appropriate institutional process.

Amnesty:

Students should be encouraged to come forward and to report Sexual Misconduct notwithstanding their choice to consume alcohol or to use drugs. Information reported by a student during the Sexual Misconduct process concerning the consumption of drugs or alcohol will not be used against the particular student in a disciplinary proceeding or voluntarily reported to law enforcement; however, students may be provided with resources on drug and alcohol counseling and/or education, as appropriate. Nevertheless, these students may be required to meet with staff members regarding 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 provision shall prevent an institution staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required.

Jurisdiction:

Each institution shall take necessary and appropriate action to promote the safety and well-being of its community. Accordingly, Sexual Misconduct should be addressed when

such acts occur on institution property, at institution-sponsored or affiliated events, or otherwise violates the institution's student conduct policies, regardless as to where such conduct occurs.

Access to Advisors:

1. **For Formal Title IX Complaints:** Both the Complainant and the Respondent, as parties to the matter, shall have the opportunity to use an advisor (who may or may not be an attorney) of the party's choosing. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the Sexual Misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except to conduct cross-examination at the hearing as outlined in the Resolution/Hearing section below. If a party chooses not to use an advisor during the investigation, the institution will provide an advisor for the purpose of conducting cross-examination on behalf of the relevant party. All communication during the Sexual Misconduct process will be between the institution and the party and not the advisor. The institution will copy the party's advisor prior to the finalization of the investigation report when the institution provides the parties the right to inspect and review directly related information gathered during the investigation. With the party's permission, the advisor may be copied on all communications.
2. **For Non-Title IX Sexual Misconduct Complaints:** Both the Complainant and the Respondent, as parties to the matter, shall have the opportunity to use an advisor (who may or may not be an attorney) of the party's choosing at the party's own expense. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the Sexual Misconduct process but may not actively participate in the process. All communication during the Sexual Misconduct process will be between the institution and the party and not the advisor. With the party's permission, the advisor may be copied on all communications.

Interim Measures:

Interim measures may be implemented at any point after the institution becomes aware of an allegation of Sexual Misconduct and should be designed to protect any student or other individual in the USG community. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter Sexual Misconduct and retaliation. Interim measures must be implemented consistent with the provisions in applicable Board and institutional policies and procedures.

An interim suspension should only occur where necessary to promote 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 Complainant 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 reasonable efforts to give the Respondent the opportunity to be heard on whether the Respondent's presence on campus poses a danger. If an interim suspension is issued, the terms of the interim suspension take effect immediately. The Respondent shall receive notice of the interim suspension and the opportunity to respond to the interim suspension.

Within three business days of receiving a challenge the institution will determine whether the interim suspension should continue.

4.6.5.4 Process for Investigating and Resolving Sexual Misconduct Reports

Investigation

Throughout any investigation and resolution proceeding, a party shall receive written notice of the alleged Sexual Misconduct, shall be provided an opportunity to respond, and shall be allowed the right 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 the investigation or resolution process, the investigation and resolution process may still proceed, and policy violations may result.

Until a final determination of responsibility, the Respondent is presumed to have not violated the Sexual Misconduct Policy. Prior to the finalization of the investigation report, timely and equal access to information directly related to the allegations that has been gathered during the investigation and may be used at the hearing will be provided to the Complainant, the Respondent, and a party's advisor (where applicable).

Formal judicial rules of evidence do not apply to the investigation process, additionally the standard of review throughout the Sexual Misconduct process is a preponderance of the evidence.

1. The parties shall be provided with written notice of the: report/allegations with sufficient details, pending investigation, possible charges, possible sanctions, available support services and interim measures, and other rights under applicable institutional policies. For the purposes of this provision sufficient details include the identities of the parties involved, if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known. This information will be supplemented as necessary with relevant evidence collected during the investigation. The notice should also

include the identity of any investigator(s) involved. Notice should be provided via institution email to the party's institution email.

2. Upon receipt of the written notice, the parties shall have at least three business days to respond in writing. In that response, the Respondent shall have the right to admit or deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A Complainant shall have the right to respond to and supplement the notice. Throughout the Sexual Misconduct process the Complainant and the Respondent shall have the right to present witnesses and other inculpatory and exculpatory evidence.
3. If the Respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
4. 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.
5. An investigator shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
6. The initial investigation report shall be provided to the Complainant, the Respondent, and a party's advisor (if applicable). This report should fairly summarize the relevant evidence gathered during the investigation and clearly indicate any resulting charges or alternatively, a determination of no charges. For purposes of this Policy, a charge is not a finding of responsibility.
7. The Complainant and the Respondent shall have at least 10 calendar days to review and respond in writing to the initial investigation report and directly related information gathered during the investigation. The investigator will review the Complainant's and the Respondent's written responses, if any, to determine whether further investigation or changes to the investigation report are necessary.
8. The final investigation report should be provided to the Complainant, the Respondent, and a party's advisor, if applicable, at least 10 calendar days prior to the Hearing. The final investigation report should also be provided to all Hearing Panel members for consideration during the adjudication process.

Resolution/Hearing

The Respondent and the Complainant, as parties to the matter, may have the option of selecting informal resolution as a possible resolution in certain cases where the parties agree, and it is deemed appropriate by the institution. Where a matter is not resolved through informal resolution a hearing shall be set. All Sexual Misconduct cases shall be heard by a panel of faculty and/or staff. All institutional participants in the Sexual

Misconduct resolution process shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act and Title IX.

In no case shall a hearing to resolve a Sexual Misconduct allegation take place before the investigation report has been finalized. 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. All directly related evidence shall be available at the hearing for the parties and their advisors to reference during the hearing.

Relevant facts or evidence that were not known or knowable to the parties prior to the issuance of the final investigative report shall be admissible during the hearing. The institution will determine how the facts or evidence will be introduced. The admissibility of any facts or evidence known or knowable by the parties prior to the issuance of the final investigative report, and which were not submitted during the investigation, shall be determined by the institution in compliance with the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence. Notice of the date, time, and location of the hearing as well as the selected hearing panel members shall be provided to the Complainant and the Respondent at least 10 calendar days prior to the hearing. Notice shall be provided via institution email to the parties' institution email. Parties may attend the hearing with their advisor.

Hearings shall be conducted in-person or via video conferencing technology. Where the institution determines that a party or witness is unable to be present in person due to extenuating circumstances, the institution may establish special procedures to permit that individual to provide testimony from a separate location. In doing so, the institution must determine whether there is a valid basis for the individual's unavailability, require that the individual properly sequester in a manner that ensures testimony has not been tainted, and make a determination that such arrangement will not unfairly disadvantage any party. Should it be reasonably believed that the individual presented tainted testimony, the hearing panel will disregard or discount the testimony. Parties may also request to provide testimony in a separate room from the opposing party, so long as no party is unfairly disadvantaged, and they have the opportunity to view the testimony remotely and submit follow-up questions.

At all times participants in the hearing process, including parties, a party's advisor, and institution officials, are expected to act in a manner that promotes dignity and decorum throughout the hearing. Participants are expected to be respectful to others and follow procedural formalities outlined by this Policy and the institution. The institution reserves the right to remove any participant from the hearing environment if the participant refuses to adhere to the institution's established rules of decorum.

Each institution shall maintain documentation of the investigation and resolution process, which may include written findings of fact, transcripts, audio recordings, and/or video recordings. Any documentation shall be maintained for seven years.

Additionally, the following standards will apply to Title IX and Non-Title IX Sexual Misconduct hearings respectively:

A. Title IX Hearings

1. Where a party or a witness is unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross-examination, the hearing panel shall not rely on statements of that party or witness in reaching its determination regarding responsibility. The hearing panel shall not draw an adverse inference against the party or witness based solely on their absence from the hearing or refusal to subject to cross-examination.
2. The parties shall have the right to present witnesses and evidence at the hearing.
3. The parties shall have the right to confront any witness, including the other party, by having their advisor ask relevant questions directly to the witness. The Hearing Officer shall limit questions raised by the advisor when they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of permitting all the raised questions and must document the reason for not permitting any particular questions to be raised.
4. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
5. The hearing panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
6. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
7. Following a hearing, the parties shall be simultaneously provided a written decision via institution email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the evidence relied upon and rationale for any sanction or other administrative action. The institution shall also notify the parties of their right to appeal as outlined below.

B. Non-Title IX Sexual Misconduct Hearings

1. The parties shall have the right to present witnesses and evidence at the hearing. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard.

2. The 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 Hearing Officer shall ask the questions as written and will limit questions only if they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of asking all submitted questions and must document the reason for not asking any particular questions.
3. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
4. The hearing panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
5. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
6. Following a hearing, the parties shall be simultaneously provided a written decision via institution email of the hearing outcome and any resulting sanctions or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the evidence relied upon and rationale for any sanction or other administrative action. The institution shall also notify the parties of their right to appeal, as outlined below.

4.6.5.5 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 institution 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.

For suspension and expulsion, the institution must articulate, in its written decision, the substantial evidence relied upon in determining that suspension or expulsion were appropriate. For purposes of this Policy substantial evidence means evidence that a reasonable person might accept to support the conclusion.

4.6.5.6 Appeals

Appeals may be made in any cases where sanctions are issued, even when such sanctions are held “in abeyance,” such as probationary or expulsion. Where the sanction imposed includes a suspension or expulsion (even for one held in abeyance), the following appellate procedures must be provided.

The Respondent (and in cases involving sexual misconduct or other forms of discrimination and/or harassment, the Complainant) 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 (or appeal), because such information was not known or knowable to the person appealing during the time of the hearing (or appeal); (2) to allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing (or appeal), including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, Conduct Officer, investigator(s), decision maker(s); or (3) to allege that the finding was inconsistent with the weight of the information. The appeal must be made in writing, 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 President or their designee.

The appeal shall be a review of the record only, and no new meeting with the Respondent or any Complainant is required. The President or their designee 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 any lower 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 or their designee’s decision shall be simultaneously issued in writing to the parties within a reasonable time period. The President or their designee’s decision shall be the final decision of the institution.

Should the Respondent or Complainant (where applicable) wish to appeal the final institutional decision, they may request review by the Board of Regents in accordance with the Board of Regents’ Policy on Discretionary Review.

Appeals received after the designated deadlines above will not be considered unless the institution or Board of Regents has granted an extension prior to the deadline. If an appeal is not received by the deadline the last decision on the matter will become final.

4.6.5.7 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.