

STUDENT SEXUAL OR GENDER-BASED HARASSMENT AND SEXUAL MISCONDUCT DISCIPLINARY PROCEDURES

A. Initial Assessment, Interim Action, and Investigation

1. Upon becoming aware of a potential act of Prohibited Conduct, the Office of Student Life will conduct an initial assessment and preliminary investigation, will provide immediate support and assistance, will explain a Complainant's options to seek remedial or interim protective measures and for initiating or not initiating the formal investigation and report resolution process, and will consider potential risk to the University community. The Office of Student Life will determine the need for any immediate response, such as remedial or interim protective measures or interim suspension. The Complainant will be informed of any initial actions taken. The Respondent will be informed of any initial actions that directly impact the Respondent. A Complainant or Respondent may challenge a decision to impose or not to impose remedial or interim protective measures as either insufficient or unreasonable by contacting the Title IX Coordinator to express any concerns. Following the initial assessment, and based in part on the Complainant's wishes, the Office of Student Life will notify the Complainant in writing whether or not a formal investigation will be initiated. Both the Complainant and Respondent are encouraged to contact the Title IX Coordinator with any questions or concerns related to remedial or protective measures or a decision to commence or not to commence a formal investigation. In such cases, the Title IX Coordinator will consult with the Office of Student Life. Speaking with the Title IX Coordinator in this regard does not constitute a formal appeal of any decision by the Dean of Students.
2. In accordance with Section 4(B) of the policy on *Student Sexual or Gender-Based Harassment and Sexual Misconduct* (the "*Misconduct Policy*"), the Dean of Students may restrict, or may suspend a student for an interim period prior to the resolution of a disciplinary proceeding if the Dean becomes aware of reliable information that supports an allegation of Prohibited Conduct, and determines that the continued presence of the student on campus or at University sponsored events poses a threat of harm or substantial disruption. A decision to restrict or suspend a student for an interim period, and the information on which the decision is based, will be communicated in writing to the student and will become effective immediately as of the date of the written decision. A student who is restricted or suspended for an interim period may, within five (5) business days from the effective date of the interim action, provide information contesting the restriction or suspension. Based upon the information provided, the Dean of Students will determine whether the restriction or suspension should remain in place. The interim action will remain in effect until a final decision has been made on the pending allegations of a University policy violation(s) or until the Dean of Students determines that the reasons for imposing the interim action no longer exist.
3. In cases where a) risk to the University community may exist and/or the Complainant wishes to pursue formal resolution, b) sufficient information including specific name(s), date(s), location(s) and a credible description(s) of the alleged act(s) of misconduct is available, and c) the matter falls within the University's jurisdiction, the Office of Student Life will promptly notify the Complainant and the Respondent in writing of the commencement of a formal investigation. This "Notice of Investigation" will identify the Complainant and the Respondent, will specify the date, time, location, and nature of the alleged misconduct and policy violation in sufficient detail to enable the Respondent to effectively respond, will explain the prohibition against retaliation, will instruct the Parties to preserve potentially relevant evidence, will identify the Investigator, will inform the Parties of their right to challenge the participation of the Investigator on the basis of bias or conflict of interest, will outline the rights, protections and expectations of the Parties (including the stipulation outlined in Paragraph A(6) of these procedures), and will include copies of the applicable University policy and procedure documents.

4. The Investigator will conduct a fair, impartial and thorough investigation. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible for a violation of University policy. This presumption may only be overcome if there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility. The Parties will have an equal opportunity to submit information, to identify witnesses who may have relevant evidence, and to submit questions they believe should be directed by the Investigator to each other or any witness. The Investigator will seek to meet separately with each Party and any witnesses, and will endeavor to gather and assess all relevant and credible information and evidence that may be available.
5. At the conclusion of the investigation, the Investigator will prepare a "Draft Investigation Report" that will include all relevant information and evidence gathered, and that will outline the uncontested and contested information. The Draft Investigation Report will not include any findings. Upon completing the Draft Investigation Report, the Investigator will inform the Parties in writing of their opportunity to review the report and to take notes, but not to copy or otherwise duplicate or remove the report. The Investigator will provide a secure and private means for the Parties to view the Draft Investigation Report, such as by providing a hard copy for in-person viewing in a secure location. Given the sensitive nature of the information, neither Party (nor their advisors or family members) may copy, photograph, record or by any other means possible duplicate or remove the Draft Investigation Report from the secure location. A student, advisor or family member who violates this prohibition may be subject to discipline and/or may be excluded from further participation in the disciplinary process. After reviewing the Draft Investigation Report, the Complainant and Respondent will each have a period of five (5) business days to submit to the Investigator any additional comments, questions, information, evidence or to identify any other Party or witness who may have information relevant to the investigation.
6. In the absence of extraordinary circumstances, information discoverable through reasonably diligent, persistent effort by a Complainant or Respondent that is not provided to the Investigator by the conclusion of the investigation response period described in Paragraph A(5) of these procedures will not be considered in the determination of responsibility for an alleged violation of University policy.
7. The Investigator will conduct any additional investigation that may be warranted in light of additional input from the Complainant and/or Respondent. If the Investigator conducts significant additional investigation, the Investigator will revise the Draft Investigation Report accordingly to include any additional information and will again arrange for the Parties to have the opportunity to review and comment on the newly finalized Draft Investigation Report. After the investigative and Complainant and Respondent review and response period concludes, the Investigator will prepare a "Final Investigation Report" for consideration by the Dean of Students by adding to the Draft Investigation Report the Investigator's recommendation as to whether a preponderance of the evidence does or does not support a finding of responsibility for the alleged University policy violation(s).

B. Determination and Appeal

1. The Dean of Students will review the Final Investigation Report, any written submissions by the Parties, and all other case materials to a) ensure that the Investigator conducted a fair, reliable, and impartial investigation, and b) to determine whether the Dean concurs with the Investigator's recommended finding(s) of responsibility or no responsibility. The Dean may agree with or overrule the Investigator's finding(s), or request additional investigation. When the Dean determines that the Respondent is responsible for a violation of University policy, the Dean will determine the appropriate sanction. The Dean will document these decisions in a "Memorandum of Findings and Sanction" to be concurrently transmitted to the Complainant, Respondent, and the Title IX Coordinator. The memorandum will restate the alleged policy violation(s), will state the finding(s) of responsibility or no responsibility and describe how and why this decision was reached, will in cases of a finding of responsibility state the sanction and will provide the Dean's rationale in support of the sanction, will explain the Parties' rights of appeal to the University Hearing Board, and will stipulate the deadline for filing an appeal, and will include instructions for accessing a copy of the Final Investigation Report, which will be redacted as necessary to protect the privacy interests of those involved. The effective date of a suspension or expulsion may be no sooner than five (5) business days following the date of the memorandum.

2. The Complainant and/or Respondent may appeal a finding of responsibility or no responsibility and/or the sanction as insufficient or excessive by filing a written notice with the Office of Student Life within five (5) business days of the date of the Memorandum of Findings and Sanction. The Dean of Students will inform the opposite Party of any appeal. If there is no appeal by either the Complainant or Respondent within the prescribed timeframe, the decision of the Dean will become final and effective immediately. Filing a timely notice of appeal will suspend the imposition of disciplinary sanctions (except for interim suspension) pending the outcome of the disciplinary process. If the sanction is suspension or expulsion and the decision of the Dean of Students is appealed, the Respondent will not be permitted to graduate until the disciplinary process has concluded.

C. Review by the University Hearing Board

1. Purpose

- a. The University Hearing Board conducts hearings and makes recommendations concerning suspensions, expulsions, and degree revocations. The Hearing Board is advisory to the Vice President for Student Affairs who will make the final decision. The Hearing Board's recommendation may have two parts depending on the nature of the appeal. First, the Hearing Board may make a recommendation as to whether, based upon a preponderance of the evidence, it is more likely than not that the Respondent violated University policy. Second, the Hearing Board may make a recommendation as to whether the sanction imposed by the Dean of Students should be affirmed or modified.
 - b. The University Hearing Board is typically limited to reviewing decisions of suspension, expulsion, or degree revocation. As provided for herein, however, the Hearing Board shall also hear appeals by a Complainant or a Respondent as provided for in Paragraph B(2) of these procedures. Only trained members of the University community will be selected to serve on panels hearing cases involving allegations of sexual misconduct.
2. Each Party will have an equal right to participate in the appeal hearing. While in person participation by the Appellant is mandatory, the absence of the opposite Party will not prevent the hearing process from proceeding. Each Party may submit a written statement prior to the hearing and/or may make brief opening and closing statements. The University shall make alternative arrangements for Complainants or Respondents who do wish to participate but who do not wish to be present in the same room with the opposite Party.

3. Composition

Student disciplinary hearings will be conducted by a Hearing Board composed of five (5) trained members, to include two (2) students, two (2) faculty members, and one (1) non-faculty employee. The Vice President for Student Affairs will appoint the hearing board members and will designate one member as Chair, who will serve as the Hearing Board's presiding officer.

4. Pre-Hearing Procedures

- a. The Vice President for Student Affairs will notify the Hearing Board members and the Chair in writing of their selection.
- b. In a manner consistent with Section 4(P) of the *Misconduct Policy*, the Chair will prepare and transmit a written "Notice of Hearing" to the Complainant, Respondent and the Dean of Students no less than twenty (20) calendar days prior to the scheduled hearing date that will include:
 - i. A statement of the date, time, location, and nature of the hearing;
 - ii. A statement of the Hearing Board's legal authority and jurisdiction;
 - iii. A statement of the alleged policy violation(s) that specifies the allegations of misconduct in sufficient detail to enable the Respondent to effectively respond;

- iv. Notice of the right to be assisted by an advisor in a manner consistent with Section 4(F) of the *Misconduct Policy*;
 - v. A copy of or hyperlink to the *Student Code of Conduct*, any other applicable rule or policy document, and this *Student Sexual or Gender-Based Harassment and Sexual Misconduct Policy and Procedures* document;
 - vi. The names of the Hearing Board members and the name and title of the University Representative who will present the matter on behalf of the University;
 - vii. An explanation of the pre-hearing information exchange requirement and notice that the Hearing Board will not accept or consider evidence not previously disclosed in accordance with Paragraph C(4)(d) of these procedures;
 - viii. The University business address of the Chair; and
 - ix. Notice of the Complainant's and Respondent's right to challenge the participation of any Hearing Board member or the University Representative on the basis of bias or conflict of interest, and the deadline and procedure for doing so.
- c. A Complainant or Respondent who cannot attend the hearing on the date scheduled due to extraordinary circumstances must notify the Hearing Board Chair in writing. The Chair will determine whether to approve or deny the request to reschedule the hearing.
 - d. No later than five (5) business days prior to the hearing, the Parties will exchange and provide the Hearing Board Chair with the following information in writing:
 - i. The names of all witnesses who may be called to speak at the hearing;
 - ii. A concise summary of the anticipated statements of each witness;
 - iii. Copies of all documents and copies or a description of all other evidence to be presented at the hearing; and
 - iv. The name of any advisor who may be present to provide support.
 - e. Either the Complainant and/or the Respondent may challenge the participation of any member of the Hearing Board or the University Representative on the grounds of bias or conflict of interest by submitting a written statement to the Chair setting forth the basis for the challenge no later than five (5) business days prior to the hearing. The Chair will determine whether to sustain or deny the challenge. If the challenge is sustained, the Vice President for Student Affairs will appoint a replacement member to serve on the panel. If a challenge is filed against the Chair, the Vice President will rule on the challenge.
 - f. Members of the University community are expected to comply with any reasonable request issued by the Hearing Board Chair in connection with a disciplinary proceeding. At the request of the Complainant, Respondent or the University Representative, the Chair may send a written communication to a University community member requesting their participation at a disciplinary hearing and providing notice of the University's expectation of their participation.
 - g. The Hearing Board Chair may choose to conduct a pre-hearing conference with the Parties to clarify the hearing procedures, to prepare, and to facilitate the process. A Complainant or Respondent who cannot attend the pre-hearing conference on the date scheduled due to extraordinary circumstances must notify the Chair in writing, who will determine whether to approve or deny the request to reschedule the pre-hearing conference.
 - h. For good cause shown by either Party, the Chair may extend the Hearing Board appeal process timeframes and deadlines by notifying all Parties in writing.

5. Conduct of the Hearing

- a. In order to preserve the confidential nature of the disciplinary process, and to protect the privacy interests of the Complainant, the Respondent who is charged with the violation, and the witnesses who may provide information, the hearing will be closed to non-participants.
- b. The Chair will preside at the hearing and will rule on all procedural matters. Formal rules of evidence will not apply, although the Chair may consider objections to specific statements or evidence. The Chair will exclude irrelevant, immaterial, privileged, or unduly repetitious information or testimony and will bar argumentative or belligerent questioning. The Chair may establish reasonable time limits for presentations and the examination of evidence.
- c. If a student is represented by an attorney, the University Representative may also be represented by an attorney.
- d. The University Representative will present the information that supports the decision under appeal and the sanction imposed, if any. In cases where the Dean of Students has found a student responsible for a violation, the University Representative will have the burden of proof. In an appeal of a decision by the Dean to find a student not responsible for a violation, or in an appeal of a sanction as insufficient, the Complainant/Appellant will have the burden of proof. The Hearing Board will not consider the question of sanction until the Respondent either accepts responsibility for the alleged violation(s) or the Hearing Board concludes that the Respondent is responsible for the alleged violation(s).
- e. Information regarding prior misconduct will not be used as proof of a current violation, but may be admitted for other purposes, such as to show that the Respondent had prior experience relevant to the alleged policy violation(s) or to show that the Respondent had previously been informed that the conduct was not acceptable. The Hearing Board may consider evidence of prior misconduct in determining an appropriate sanction.
- f. An Appellant who fails to appear or refuses to participate at the hearing will be deemed to have abandoned their request for an appeal, unless in the judgment of the Chair, the Appellant can demonstrate that extraordinary circumstances prevented their appearance.
- g. The hearing will be recorded by electronic device. The recording will be available for transcription in whole or in part upon request. The requestor will pay the cost of the transcript.
- h. Except as otherwise permitted by the Chair, witnesses will be excluded from the hearing except during their own testimony. However, any victim, as defined by and provided the right to attend such hearings by law, will be permitted to attend the hearing in its entirety.
- i. The Complainant and Respondent will not be allowed to directly confront each other, but may present questions to be directed to the opposite Party by the Chair after the Chair has screened the questions for appropriateness and relevance. The Chair shall read into the record any questions deemed inappropriate and the Parties shall have the opportunity to respond on the record to the Chair's decision to exclude a question.
- j. Following an introductory statement by the Chair stating the nature and scope of the hearing and any stipulations agreed to by the Parties, the order of presentation will be as follows:
 - i. The University Representative will present an opening statement to summarize what the gathered information and evidence is expected to show, followed by the Parties. The Appellant will speak last, or in the alternative, may reserve their opening statement until beginning the presentation of their response.
 - ii. The University Representative will call witnesses to provide statements under oath. At the conclusion of each witness statement, the Appellant and the opposite Party will have the opportunity to question each witness.

- iii. Following any questioning by the University Representative, the Appellant and the opposite Party, the Hearing Board members may ask further questions of each witness, and the University Representative and the Parties may ask follow-up questions.
- iv. Following the testimony of all witnesses called by the University Representative, the Appellant will present their response.
- v. Each witness for the Appellant will be called to testify. The procedure will remain the same as described above.
- vi. Following the close of the Appellant's presentation, the University Representative and the opposite Party may call witnesses to refute statements made by the Appellant or the Appellant's witnesses. If such witnesses are called, they will be subject to the same procedure outlined above.
- vii. The Appellant will have the opportunity to respond to any rebuttal witnesses or information presented by the University Representative or the opposite Party.
- viii. The University Representative and the Parties may only call witnesses or introduce other evidence previously disclosed in accordance with Paragraph C(4)(d) of these procedures. In the absence of extraordinary circumstances as determined by the Chair, the Hearing Board will not accept or consider testimony by witnesses or other evidence that was not properly disclosed prior to the hearing.
- ix. Following the presentation of witnesses and all other allowable evidence, the University Representative and both Parties may deliver closing statements that summarize the information presented. The University Representative will present their closing statement first and the Appellant will speak last.

D. University Hearing Board Deliberations and Recommendation

1. Immediately following the conclusion of the hearing, the Hearing Board members will carefully deliberate. Only the members of the Hearing Board, and its legal advisor if any, may be present during the Hearing Board's private deliberations, which will not be recorded or transcribed.
2. Based solely upon the information presented during the hearing, the Hearing Board will formulate a recommendation to the Vice President for Student Affairs as to whether, based upon a preponderance of the evidence put forth, a violation was more likely than not to have been committed by the Respondent, and if so, what sanction should apply. A minimum of three supporting votes is necessary to make any recommendation.
3. The Hearing Board will not deliberate on the appropriate sanction unless and until it determines that the Respondent is responsible for the violation or the Respondent has accepted responsibility for the violation. In determining the appropriate sanction, the Hearing Board may consider any relevant mitigating or aggravating circumstances.
4. The Hearing Board will render its recommendation after conclusion of the hearing and its deliberations. The Chair will communicate the Hearing Board's recommendation in writing to the Complainant, the Respondent, the Dean of Students, and the Vice President for Student Affairs within three (3) business days of the hearing. The recommendation will include findings of fact and a statement explaining and supporting the Hearing Board's recommendation, and will be signed by the Chair on behalf of the Hearing Board members.

E. Review and Decision by the Vice President for Student Affairs

1. Following a review of the Hearing Board's recommendation and the related case materials, the Vice President for Student Affairs will render a written decision that either affirms, denies or modifies the Hearing Board recommendation. If the Vice President does not accept the Hearing

Board's recommendation, the Vice President will explain any variance from the recommendation in the final decision outcome letter. The Vice President will also provide notice of the Parties' right to seek judicial review within thirty-five (35) calendar days pursuant to the Arizona Administrative Review Act, A.R.S. § 12-901, *et seq.*

2. The Vice President for Student Affairs will issue the final outcome letter concurrently to all Parties no later than ten (10) business days following receipt of the Hearing Board's recommendation, except when it becomes necessary to conduct further investigation or to remand the matter back to the Hearing Board, in which case the written decision will be transmitted no later than ten (10) business days following completion of any subsequent investigation or recommendation by the Hearing Board.

F. Request for Review or Rehearing

1. The decision of the Vice President for Student Affairs will become final and effective after fifteen (15) calendar days from the date it is issued, unless the Complainant and/or the Respondent requests a review or rehearing. A Complainant or Respondent who is dissatisfied with the decision reached by the Vice President for Student Affairs may request a review or rehearing by filing a written notice with the Executive Vice President and Chief of Staff within fifteen (15) calendar days of the date of the final outcome letter issued by the Vice President.
2. A request for review or rehearing is not an appeal. Instead, it is solely an opportunity for the Complainant and/or the Respondent to make the Executive Vice President and Chief of Staff aware of any irregularities or illegalities in the proceedings or of significant new material evidence that could not have been provided earlier for consideration. A request for review or rehearing must be based on one or more of the following grounds:
 - a. Irregularities in the proceedings or any abuse of discretion or misconduct by a University official that has deprived the student of a fair and impartial disciplinary process;
 - b. Newly discovered material evidence which could not have been presented during the fact-finding or hearing process;
 - c. Excessive severity or insufficiency of the sanction, rendering it grossly disproportionate to the violation(s) committed when considering all relevant aggravating and/or mitigating factors; or
 - d. The decision is not reasonably justified by the evidence or is contrary to law.
3. The Executive Vice President and Chief of Staff will first determine whether the student's request sets forth proper grounds for requesting a final review or rehearing, and will then undertake or direct whatever additional investigation, review or rehearing the Executive Vice President and Chief of Staff determines is necessary to resolve the issue(s).
4. The Executive Vice President and Chief of Staff will respond in writing to a request for review or rehearing within ten (10) business days of receipt of the request. The Executive Vice President and Chief of Staff may uphold or modify the previous decision, or grant a rehearing in light of issues raised by the request. The decision of the Executive Vice President and Chief of Staff is final.