



**A Developmental Framework for a Code of Student Conduct:
The NCHERM Group Model Code Project**

September 2013

Authored Collaboratively By:

William Fischer, J.D.

W. Scott Lewis, J.D.

John Wesley Lowery, Ph.D.

Sandra K. Schuster, J.D.

Brett A. Sokolow, J.D.

Daniel C. Swinton, J.D., Ed.D.

Project Intern: J. Trent Kennedy (J.D. anticipated 2014)

© The NCHERM Group, LLC. 2013.

All rights reserved except for the perpetual and express permission that is granted to all colleges and universities to reproduce, adapt and incorporate revised versions of this document within codes of student conduct, with citation. All other uses require the written permission of The NCHERM Group, LLC.

Suggested Citation: The NCHERM Group Model Code Project, 2013.

Required Attribution if Any Portion of This Model Is Used:

The [Your University/College] Code of Student Conduct is adapted from The NCHERM Group Model Developmental Code of Student Conduct and is used here with permission.

www.ncherm.org

Authors' Note, September 2013

Dear Reader,

You now possess the fruits of two years of our collective labor of love, A Developmental Framework for A Code of Student Conduct: The NCHERM Group Model Code Project. This project was borne from intense internal debate within The NCHERM Group about the merits of model codes, as a concept. We were torn. We've written more than seventy-five codes of conduct for various college and university clients. All are different, and were custom crafted in a collaborative process of identifying goals, needs, and the unique qualities of each campus culture. One size-fits-all was not the NCHERM way.

Yet it was clear to us that previous model codes had contributed immensely to the progress of the field of student conduct. Campus conduct systems would not have evolved as effectively as they have without models to show the way. However, we also recognized that model codes fostered conformity rather than reflecting the nuanced differences between campuses. Some campuses took short cuts, and did not adapt the models to fit their campus cultures and climate, despite the warnings of previous model code authors. Model codes gave premature momentum to ideas that weren't fully explored, such as high standards of proof. And, model codes unintentionally contributed to the quickening pace of creeping legalism in the field, a trend that began prior to the publication of the first model codes.

We decided to write a model code to help shape the future evolution of the field because model codes have become the primary conduit for doing so. But, our work rests on the foundations laid by Gary Pavela, Ed Stoner and John Wesley Lowery, and the work their model codes began. We could not offer ours if they had not offered theirs, and we are in their debt.

We set out with manifold guiding precepts to craft a model:

- That stemmed the tide of legalistic codes by putting the developmental voice first, while still quietly heeding the necessary legal underpinnings of conduct codes;*
- Containing rules that were focus-grouped with students, for we too often seek to govern their conduct without their input;*
- That would be a tool of education, prevention, social justice, and community-building as much as a retrospective gauge of whether misconduct has occurred;*
- Deeply imbued with the values, mission, and ethos held dear within institutions of higher education;*
- That offered clear expectations, well-defined terms, and elegantly simplified procedures;*

- *Whose language was policy-based, rather than legalistic and archaic (to wit, the words “shall” and “charge” have been banished);*
- *Whose flexibility would take us away from an era of rigid procedural frameworks to better allow our developmental and educational aims to inculcate mature decision-making and guide our students to better align their actions with their values;*
- *That would embrace social justice as a hallmark of a document rooted in the origins and the now of the civil-rights movement;*
- *That would lean heavily toward conflict resolution mechanisms and investigation functions;*
- *That would fundamentally reimagine the appeals process that on too many campuses is either broken or increasingly dysfunctional;*

That’s an ambitious manifesto. Have we done what we set out to do? That is not for us to say. Our ideas will be ratified by your adaptation and implementation or defeated by your rejection. All we can do is offer them for your consideration. We know that our ideas don’t magically define best practices, and we expect that some of our more progressive ideas will take some getting used to. We are not the only source of expertise on this subject, and so our code project is being offered with a unique opportunity to engage the entire field in the iterative and evolutionary development of our project.

Our code project is posted to our Code Wiki. We invite you to visit its page http://modelcode.wikia.com/wiki/NCHERM_Group_Code_Model_Wiki and contribute your thoughts. If you suggest an edit or change that the Wiki moderator (not affiliated with The NCHERM Group) decides is an improvement on our original language, it will be incorporated. If you offer alternative language that is worth considering, it will be posted alongside our language to show other options. If you don’t like a section, sub-section, rule or procedural element, your comments will be posted for all to see. Post your own code, section or innovative idea to help us create the first online open source collaborative code of student conduct. Together, our work product can only be strengthened by our many voices, diversity, perspectives and experiences.

Our code project is not annotated in law review style, in an intentional effort to de-legalize the tone and nature of our model. Further, our code offers flexible procedures, and often suggests several alternative language options for you to consider. These are noted in the text with boldface type set off between brackets. Additionally, we offer our code in multiple versions and sections. We have three versions, one for public universities, one for private institutions and one for community colleges. This was non-negotiable from the start for us, because of how meaningfully different these types of campuses are. Lastly, we have divided our code into four parts: Preface, Rules, Procedures and Community Standards. Our preface addresses theme issues such as mission and values, and policy issues such as jurisdiction and the confluence of criminal proceedings. The rules are our laundry list of thou-shalt-nots, organized by the five key values we’ve chosen for our model (yours may vary) and framed as positive expectations.

Our procedures offer our take on a model set of conduct procedures, and lean heavily on civil rights concepts, conflict resolution and investigation functions. Community standards are our extended policies on alcohol, gambling, hazing, etc., which amplify on our rules with broader and clearer expectations. We also offer supplements to the free model, including our model voluntary/involuntary medical/psychological leave protocol, and our NCHERM Group/ATIXA One Policy, One Process Model, which allows the resolution of all discrimination claims involving all employees and students through one unified policy and process. So that you can get to know our work product, we are publishing our Public University Model Code (unannotated) version for free to the higher education community with the expectation that you will adapt, modify and revise it to fit your institutional needs, culture and values.

Of course, the services of The NCHERM Group remain available to you, should your campus wish to have us:

- *Assist in your code review, updating and/or implementation process;*
- *Train your campus conduct advisors, investigators, hearings officers and appeals officers;*
- *Assess compliance with any law or statute impacting on the student conduct process.*

Finally, if you have interest in purchasing copies of our community college or private institution versions, the model leave protocol or our One Policy, One Process Model (<http://atixa.org/resources/model-policies/>), please contact our office for details. We can be reached by phone at 610-993-0229, by email to nchem1@nchem.org, and through our website at www.nchem.org.

With kindest regards,

The NCHERM Group Code Project Team

ABOUT THE AUTHORS

William Fischer, J.D. currently serves as Vice President for Student Development at the University of Dayton. He joined the University of Dayton in November 2008 as Associate Vice President for Student Development, where his responsibilities included providing leadership to the departments of housing and residence life, community standards and civility, and public safety. He also was responsible for student life policy review, as well as crisis and risk management related-issues in student development. Bill has 15 years of experience in higher education with specialty focus on student conduct and conflict resolution systems, crisis and risk management, and law/policy issues in student affairs. He has previously held adjunct faculty appointments at Northeastern and Suffolk University teaching on the topic of law and higher education. Prior to his tenure in higher education, Bill was engaged in the full time practice of law for approximately ten years. He was a principal in the law firm of Matthews, White & Fischer in New Jersey. Bill is an active member of the Association for Student Conduct Administration (ASCA), having served on its Board of Directors in various capacities for approximately seven years. He is a Past President of the Association. Bill earned his B.A. degree from Villanova University and his J.D. degree from Seton Hall University School of Law.

W. Scott Lewis, J.D. is a partner with The NCHERM Group, LLC and the current president of NaBITA, the National Behavioral Intervention Team Association. He is a founder of ATIXA and a member of its advisory board. He formerly served as the Assistant Vice Provost at the University of South Carolina. Scott brings over fifteen years of experience as a student affairs administrator, faculty member, and consultant in higher education. He is a frequent keynote and plenary speaker, nationally recognized for his work on behavioral intervention for students in crisis and distress. He is noted as well for his work in the area of classroom management and dealing with disruptive students. He presents regularly throughout the country, assisting colleges and universities with legal, conduct, and risk management issues, as well as policy development and implementation. He serves as an author and editor in a number of areas including legal issues in higher education, campus safety and student development, campus conduct board training, and other higher education issues. He is a member of NASPA, ACPA, CAI, SCCPA, and serves on the Board of Directors for ASCA as its Past-President. He did his undergraduate work in Psychology and his graduate work in Higher Education Administration at Texas A&M University and received his Law degree and mediation training from the University of Houston.

John Wesley Lowery, Ph.D. is Department Chair and Professor in the Student Affairs in Higher Education Department at Indiana University of Pennsylvania. He previously served on the faculties at Oklahoma State University, where he coordinated the college student affairs and higher education programs, and the University of South Carolina, where he taught in and coordinated the Higher Education and Student Affairs (HESA) Program. John has a Master's degree in student personnel services from the University of South Carolina and his undergraduate degree in religious studies is from the

University of Virginia. He earned his doctorate at Bowling Green State University in Higher Education Administration. Before beginning his doctoral work in 1996, he was Director of Residence Life at Adrian College in Michigan and University Judicial Administrator at Washington University in St. Louis. John served as ASJA's (now ASCA) CAS Director for five years. He served on the Board of Directors for both NASPA (2002-2004) and ASJA (1996-1999). He has previously chaired the ASJA's Legislative Issues and Resolutions Committees as well as co-chairing the Interassociation Task Force on the National Baseline Study on Campus Sexual Assault. John also previously served on the Core Council on Outreach and Advocacy for the American College Personnel Association (ACPA) and on the directorate body of ACPA's Commission XV: Campus Judicial Affairs and Legal Issues. John also currently serves on the Board of Contributors for *About Campus*. John is the co-author of [*Navigating Past the "Spirit of Insubordination": A Twenty-First Century Model Student Conduct Code.*](#)

Saundra K. Schuster, J.D. is a partner with The NCHERM Group, LLC. She is a founder of ATIXA and a member of its advisory board. She was formerly General Counsel for Sinclair Community College in Dayton, Ohio, and Senior Assistant Attorney General for the State of Ohio in the Higher Education Section. Saunie is a recognized expert in preventive law for education, notably in the fields of Sexual Misconduct, First Amendment, Risk Management, Student Discipline, Campus Conduct, Intellectual Property and Employment Issues. Prior to practicing law, Saunie served as the Associate Dean of Students at The Ohio State University. Saunie has more than twenty-five years of experience in college administration and teaching. She frequently presents nationally on legal issues in higher education. Saunie holds Masters degrees in counseling and higher education administration from Miami University, completed her coursework for her Ph.D. at Ohio State University, and was awarded her juris doctorate degree from the Moritz College of Law, The Ohio State University. She a past president of the National Behavioral Intervention Team Association (www.nabita.org).

Brett A. Sokolow, J.D. is a higher education attorney who specializes in high-risk campus health and safety issues. He is recognized as a national leader on campus sexual violence prevention, response and remediation. He is the founder, president and CEO of The NCHERM Group, LLC, which serves as legal counsel to 35 colleges and universities. Sokolow also serves as the Executive Director of ATIXA, the Association of Title IX Administrators (www.atixa.org) and NaBITA, the National Behavioral Intervention Team Association (www.nabita.org), both of which he co-founded. In 2011, Sokolow also founded SCOPE, the School and College Organization for Prevention Educators (www.wearescope.org), and serves on its advisory board. He is a frequent keynote speaker and often serves as an expert witness on sexual assault, harassment and campus security cases. Sokolow has authored twelve books and more than 50 articles on campus safety and sexual assault. Since its inception in 2000, The NCHERM Group has consulted with more than 3,000 college campuses. Sokolow has also provided strategic prevention programs to students at more than 2,000 college and university campuses on sexual misconduct and alcohol. He has authored the conduct codes of

more than seventy-five colleges and universities. The ATIXA Model Sexual Misconduct policy serves as the basis for policies at hundreds of colleges and universities across the country. The NCHERM Group has trained the members of more than 700 conduct hearing boards at colleges and universities in North America. ATIXA has certified more than 2,000 school and campus Title IX Coordinators and civil rights investigators. Additionally, Sokolow serves as a Directorate Body member of the ACPA Commission on Student Conduct and Legal Issues and on the advisory boards of the National Hazing Prevention Collaborative and the NASPA Enough is Enough Campaign. He is a 1993 graduate of the College of William and Mary and a 1997 graduate of the Villanova University School of Law.

Daniel Swinton, J.D., Ed.D. is Senior Executive Vice President of The NCHERM Group, LLC and Associate Executive Director of ATIXA. Prior to that, he served as Assistant Dean and Director of Student Conduct and Academic Integrity at Vanderbilt University. He also has served as Associate Counsel to the Vice President for Student Affairs at Saint Mary's College in Notre Dame, IN. He received his Bachelor's degree from Brigham Young University, his law degree (J.D.) from the J. Reuben Clark Law School at BYU, and a doctorate (Ed.D.) in higher education leadership and policy from Vanderbilt University's Peabody College. He is a member of the Tennessee State Bar. He has presented nationally and written on issues such as Title IX, sexual misconduct on college campuses, legal issues in student affairs and higher education, student conduct policies and procedures, mediation and behavioral intervention teams. Daniel also served as president of the Association for Student Conduct Administration (ASCA) in 2010-2011.

TABLE OF CONTENTS

Preface	ix
Section 1: Mission/Vision/Philosophy/Ethos Statement	1
Section 2: Jurisdiction.....	2
Section 3: Violations of the Law.....	4
Section 4: The Rules	5
Section 5: Overview of the Conduct Process	11
Section 6: Student Conduct Authority	13
Section 7: Formal Conduct Procedures.....	15

PREFACE

Core Values of Student Conduct at College/University

- **Integrity:** University/College students exemplify honesty, honor and a respect for the truth in all of their dealings.
- **Community:** University/College students build and enhance their community.
- **Social Justice:** University/College students are just and equitable in their treatment of all members of the community and act to discourage and/or intervene to prevent unjust and inequitable behaviors.
- **Respect:** University/College students show positive regard for each other, for property and for the community.
- **Responsibility:** University/College students are given and accept a high level of responsibility to self, to others and to the community.

University/College students are responsible for knowing the information, policies and procedures outlined in this document. The University/College reserves the right to make changes to this code as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online [insert URL] for the updated versions of all policies and procedures.

University/College: Code of Student Conduct

SECTION 1: [MISSION/VISION/PHILOSOPHY/ETHOS STATEMENT]

[Insert Mission/Vision/Philosophy/Ethos Statement here]

Sample Philosophy Statement

The University/College community is committed to fostering a campus environment that is conducive to academic inquiry, a productive campus life and thoughtful study and discourse. The student conduct program within the Office of Student Conduct is committed to an educational and developmental process that balances the interests of individual students with the interests of the University/College community.

A community exists on the basis of shared values and principles. At the University/College, student members of the community are expected to uphold and abide by certain standards of conduct that form the basis of the *Code of Student Conduct*. These standards are embodied within a set of core values that include integrity, social justice, respect, community, and responsibility.

Each member of the University/College community bears responsibility for their conduct and to assume reasonable responsibility for the behavior of others. When members of the community fail to exemplify these five values by engaging in violation of the rules below, campus conduct proceedings are used to assert and uphold the *Code of Student Conduct*.

The student conduct process at the University/College is not intended to punish students; rather, it exists to protect the interests of the community and to challenge those whose behavior is not in accordance with our policies. Sanctions are intended to challenge students' moral and ethical decision-making and to help them bring their behavior into accord with our community expectations. When a student is unable to conform their behavior to community expectations, the student conduct process may determine that the student should no longer share in the privilege of participating in this community.

Students should be aware that the student conduct process is quite different from criminal and civil court proceedings. Procedures and rights in student conduct procedures are conducted with fairness to all, but do not include the same protections of due process afforded by the courts. Due process, as defined within these procedures, assures written notice and a hearing before an objective decision-maker. No student will

be found in violation of University/College policy without information showing that it is more likely than not that a policy violation occurred and any sanctions will be proportionate to the severity of the violation and to the cumulative conduct history of the student.

SECTION 2: JURISDICTION

Students at the University/College are provided a copy of the *Code of Student Conduct* annually in the form of a link on the University/College website. Hard copies are available upon request from the Office of Student Conduct. Students are responsible for having read and abiding by the provisions of the *Code of Student Conduct*.

The *Code of Student Conduct* and the student conduct process apply to the conduct of individual students, both undergraduate and graduate, including law students and all University/College-affiliated student organizations. For the purposes of student conduct, the University/College considers an individual to be a student when an offer of admission has been extended and thereafter as long as the student has a continuing educational interest in the University/College.

The University/College retains conduct jurisdiction over students who choose to take a leave of absence, withdraw or have graduated for any misconduct that occurred prior to the leave, withdrawal or graduation. If sanctioned, a hold may be placed on the student's ability to re-enroll **[and/or obtain official transcripts and/or graduate]** and all sanctions must be satisfied prior to re-enrollment eligibility. In the event of serious misconduct committed while still enrolled but reported after the accused student has graduated, the University/College may invoke these procedures and should the former student be found responsible, the University/College may revoke that student's degree.

The *Code of Student Conduct* applies to behaviors that take place on the campus, at University/College-sponsored events and may also apply off-campus when the Dean of Students or designee determines that the off-campus conduct affects a substantial University/College interest.¹ A substantial University/College interest is defined to include:

- Any situation where it appears that the student's conduct may present a danger or threat to the health or safety of him/herself or others; and/or
- Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or

¹ Adapted, with gratitude, from Penn State University.

- Any situation that is detrimental to the educational mission and/or interests of the University/College;

The *Code of Student Conduct* may be applied to behavior conducted online, via email or other electronic medium. Students should also be aware that online postings such as blogs, web postings, chats and social networking sites are in the public sphere and are not private. These postings can subject a student to allegations of conduct violations if evidence of policy violations is posted online. The University/College does not regularly search for this information but may take action if and when such information is brought to the attention of University/College officials. **[However, most online speech by students not involving College/University networks or technology will be protected as free expression and not subject to this Code, with two notable exceptions:**

- **A true threat, defined as “a threat a reasonable person would interpret as a serious expression of intent to inflict bodily harm upon specific individuals”;**
- **Speech posted online about the University/College or its community members that causes a significant on-campus disruption].**

The *Code of Student Conduct* applies to guests of community members whose hosts may be held accountable for the misconduct of their guests. **[The Code may also be applied to resident non-students, campers and high school bridge/extension/partner/dual-credit and continuing education programs by contractual agreements].** Visitors to and guests of University/College may seek resolution of violations of the *Code of Student Conduct* committed against them by members of University/College community.

There is no time limit on reporting violations of the *Code of Student Conduct*; however, the longer someone waits to report an offense, the harder it becomes for University/College officials to obtain information and witness statements and to make determinations regarding alleged violations.

Though anonymous complaints are permitted, doing so may limit the University/College’s ability to investigate and respond to a complaint. Those who are aware of misconduct are encouraged to report it as quickly as possible to the Office of Student Conduct and/or to Campus Police **[Public Safety, etc.]**

[A responding student facing an alleged violation of the *Code of Student Conduct* is not permitted to withdraw from the College/University until all allegations are resolved².]

² Many students are simply electing to withdraw once notified that they are facing an accusation. Withdrawal, like admission, should require an administrative action. A student can request a withdrawal for any number of reasons, which can then be administratively approved or denied. In this approach, a request would be denied until the conduct complaint is resolved, if a complaint is pending at the time of the withdrawal request. Yes, a student may effectively withdraw themselves by dropping out, but must go through the process to change their status officially. This approach resolves the challenge of proceeding

University/College email is the University/College's primary means of communication with students. Students are responsible for all communication delivered to their University/College email address.

SECTION 3: VIOLATIONS OF THE LAW

Alleged violations of federal, state and local laws may be investigated and addressed under the *Code of Student Conduct*. When an offense occurs over which the University/College has jurisdiction, the University/College conduct process will usually go forward notwithstanding any criminal complaint that may arise from the same incident.

The University/College reserves the right to exercise its authority of interim suspension upon notification that a student is facing criminal investigation and/or complaint (additional grounds for interim suspension are outlined below, on p. 21-22). Interim suspensions are imposed until a hearing can be held, typically within two weeks. **[Within that time, the suspended student may request an immediate hearing from the Director of Student Conduct to show cause why the interim suspension should be lifted]**. This hearing may resolve the allegation, or may be held to determine if the interim suspension should be continued. The interim suspension may be continued if a danger to the community is posed and the University/College may be delayed or prevented from conducting its own investigation and resolving the allegation by the pendency of the criminal process. In such cases, the College/University will only delay its hearing until such time as it can conduct an internal investigation or obtain sufficient information independently or from law enforcement upon which to proceed. This delay will be no longer than two weeks from notice of the incident unless a longer delay is requested in writing by the complaining victim to allow the criminal investigation to proceed before the College/University process.

Students accused of crimes may request to take a leave from the University/College until the criminal charges are resolved. In such situations, the University/College procedure for voluntary leaves of absence is subject to the following conditions:

- The responding student must comply with all campus investigative efforts that will not prejudice their defense in the criminal trial; and

with the conduct process after a student withdraws themselves, because technically, an institution cannot sanction a non-student (which is what a student is after they withdraw). Once the process is complete, if the student is sanctioned, the student must complete the sanctions before becoming eligible to re-enroll, if at all. A hold on withdrawal can be placed accordingly until then.

- The responding student must comply with all interim actions and/or restrictions imposed during the leave of absence; and
- The responding student must agree that, in order to be reinstated to active student status, they must first be subject to, and fully cooperate with, the campus conduct process and must comply with all sanctions that are imposed.

SECTION 4: THE RULES³

A. Core Values and Behavioral Expectations

The University/College considers the behavior described in the following sub-sections as inappropriate for the University/College community and in opposition to the core values set forth in this document. These expectations and rules apply to all students, whether undergraduate, graduate, doctoral, or professional. The University/College encourages community members to report to University/College officials all incidents that involve the following actions. Any student found to have committed or to have attempted to commit the following misconduct is subject to the sanctions outlined in Section 7: Conduct Procedures.

Integrity: University/College students exemplify honesty, honor and a respect for the truth in all of their dealings. Behavior that violates this value includes, but is not limited to:

- 1) Falsification.** Knowingly furnishing or possessing false, falsified or forged materials, documents, accounts, records, identification or financial instruments;
- 2) Academic Dishonesty.** Acts of academic dishonesty as outlined in the *Code of Academic Integrity*;
- 3) Unauthorized Access.** Unauthorized access to any University/College building (i.e. keys, cards, etc.) or unauthorized possession, duplication or use of means of access to any college/university building or failing to timely report a lost University/College identification card or key;
- 4) Collusion.** Action or inaction with another or others to violate the *Code of Student Conduct*;
- 5) Trust.** Violations of positions of trust within the community;

³ We assume you will insert your existing campus terminology here, which might be “Behavioral Standards”, “Standards of Conduct”, etc., or you might find in focus groups with students that they find “The Rules” to resonate as straight-forward and easy to find.

- 6) **Election Tampering.** Tampering with the election of any University/College-recognized student organization (minor election code violations are addressed by the SGA);
- 7) **Taking of Property.** Intentional and unauthorized taking of University/College property or the personal property of another, including goods, services and other valuables;
- 8) **Stolen Property.** Knowingly taking or maintaining possession of stolen property;

Community: University/College students build and enhance their community. Behavior that violates this value includes, but is not limited to:

- 9) **Disruptive Behavior.** Substantial disruption of University/College operations including obstruction of teaching, research, administration, other University/College activities, and/or other authorized non-University/College activities which occur on campus;
- 10) **Rioting.** Causing, inciting or participating in any disturbance that presents a clear and present danger to self or others, causes physical harm to others, or damage and/or destruction of property;
- 11) **Unauthorized Entry.** Misuse of access privileges to University/College premises or unauthorized entry to or use of buildings, including trespassing, propping or unauthorized use of alarmed doors for entry into or exit from a University/College building;
- 12) **Trademark.** Unauthorized use (including misuse) of University/College or organizational names and images;
- 13) **Damage and Destruction.** Intentional, reckless and/or unauthorized damage to or destruction of University/College property or the personal property of another;
- 14) **IT and Acceptable Use.** Violating the University/College Acceptable Use and Computing Policy, found online at:
- 15) **Gambling.** Gambling as prohibited by the laws of the State of []. (Gambling may include raffles, lotteries, sports pools and online betting activities. For more information, See *Student Handbook*, “Community Standards”);
- 16) **Weapons.** Possession, use, or distribution of explosives (including fireworks and ammunition), guns (including air, BB, paintball, facsimile weapons and pellet

guns), or other weapons or dangerous objects such as arrows, axes, machetes, nun chucks, throwing stars, or knives with a blade of longer than _____ inches, including the storage of any item that falls within the category of a weapon in a vehicle parked on University/College property⁴;

17) Tobacco. Smoking or tobacco use in any area of campus [**or smoking or tobacco use in any area of campus where smoking or tobacco use are prohibited**];

18) Fire Safety. Violation of local, state, federal or campus fire policies including, but not limited to:

- a) Intentionally or recklessly causing a fire which damages University/College or personal property or which causes injury.
- b) Failure to evacuate a University/College-controlled building during a fire alarm;
- c) Improper use of University/College fire safety equipment; or
- d) Tampering with or improperly engaging a fire alarm or fire detection/control equipment while on University/College property. Such action may result in a local fine in addition to University/College sanctions;

19) Ineligible Pledging or Association. Pledging or associating with a student organization without having met eligibility requirements established by the College/University.

20) Animals. Animals, with the exception of animals that provide assistance (e.g. seeing-eye dogs), and pets as outlined in the Residence Life Handbook, are not permitted on campus except as permitted by law.

21) Wheeled Devices. Skateboards, roller blades, roller skates, bicycles and similar wheeled devices are not permitted inside College/University buildings, residence halls or on tennis courts. Additionally, skateboards and other wheeled items may not be ridden on railings, curbs, benches, or any such fixtures that may be damaged by these activities, and individuals may be liable for damage to University/College property caused by these activities.

Social Justice: Students recognize that respecting the dignity of every person is essential for creating and sustaining a flourishing university community. They understand and appreciate how their decisions and actions impact others and are just and equitable in their treatment of all members of the community. They act to discourage and challenge those whose actions may be harmful to and/or diminish the worth of others. Conduct that violates this value includes, but is not limited to:

⁴ Subject, of course, to statutorily conveyed rights to carry/possess weapons on campus and/or in locked vehicles on campus.

22) Discrimination. Any act or failure to act that is based upon an individual or group's actual or perceived status (**sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, or sexual orientation, or other protected status**) that is sufficiently severe that it limits or denies the ability to participate in or benefit from the University/College's educational program or activities.

23) [Unwelcome] Harassment. Any unwelcome conduct based on actual or perceived status including: [**sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status**]. Any unwelcome conduct should be reported to campus officials, who will act to remedy and resolve reported incidents on behalf of the victim and community.

- a) Hostile Environment. Sanctions can and will be imposed for the creation of a hostile environment only when [unwelcome] harassment is sufficiently severe, pervasive (or persistent) and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the University/College's educational or employment program or activities⁵.

24) Retaliatory Discrimination or Harassment. Any intentional, adverse action taken by an responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant [**or supporter of a participant**] in a civil rights grievance proceeding or other protected activity [**under this Code**].

25) Bystanding.

- a) Complicity with or failure of any student to [**appropriately**] address known or obvious violations of the *Code of Student Conduct* or law;
- b) Complicity with or failure of any organized group to [**appropriately**] address known or obvious violations of the *Code of Student Conduct* or law by its members.

26) Abuse of Conduct Process. Abuse or interference with, or failure to comply in, University/College processes including conduct and academic integrity hearings including, but not limited to:

- a) Falsification, distortion, or misrepresentation of information;
- b) Failure to provide, destroying or concealing information during an investigation of an alleged policy violation;

⁵ This policy attempts to balance the need of the community to create a civil climate while also embracing the 1st Amendment protection that attaches to most harassing speech that is simply offensive.

- c) Attempting to discourage an individual's proper participation in, or use of, the campus conduct system;
- d) Harassment (verbal or physical) and/or intimidation of a member of a campus conduct body prior to, during, and/or following a campus conduct proceeding;
- e) Failure to comply with the sanction(s) imposed by the campus conduct system;
- f) Influencing, or attempting to influence, another person to commit an abuse of the campus conduct system.

Respect: University/College students show positive regard for each other and for the community. Behavior that violates this value includes, but is not limited to:

27) Harm to Persons. Intentionally or recklessly causing physical harm or endangering the health or safety of any person.

28) Threatening Behaviors:

- a) **Threat.** Written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property.
- b) **Intimidation.** Intimidation defined as implied threats or acts that cause a reasonable fear of harm in another.

29) Bullying and Cyberbullying. Bullying and cyberbullying are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.

30) Hazing. Defined as an act that endangers the mental or physical health or safety of a student, or that destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization. Participation or cooperation by the person(s) being hazed does not excuse the violation. Failing to intervene to prevent **(and/or)** failing to discourage **(and/or)** failing to report those acts may also violate this policy. (See *University/College Student Handbook*, "Community Standards");

31) Intimate Partner/Relationship Violence. Violence or abuse by a person in an intimate relationship with another;

32) Stalking. Stalking is a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to feel fear;

33) Sexual Misconduct. Includes, but is not limited to, sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse, and/or sexual

exploitation (See *Community Standards Sexual Misconduct Policy* for further information);

34) Public Exposure. Includes deliberately and publicly exposing one's intimate body parts, public urination, defecation, and public sex acts.

Responsibility: University/College students are given and accept a high level of responsibility to self, to others and to the community. Behavior that violates this value includes, but is not limited to:

35) Alcohol. Use, possession, or distribution of alcoholic beverages or paraphernalia except as expressly permitted by law and the University/College's Alcohol Policy (See *Community Standards* for further information);

36) Drugs. Use, possession or distribution of illegal drugs and other controlled substances or drug paraphernalia except as expressly permitted by law and the University/College's Drug Policy (See *Community Standards* for further information);

37) Prescription Medications. Abuse, misuse, sale, or distribution of prescription or over-the-counter medications;

38) Failure to Comply. Failure to comply with the reasonable directives of University/College officials or law enforcement officers during the performance of their duties and/or failure to identify oneself to these persons when requested to do so;

39) Financial Responsibilities. Failure to promptly meet financial responsibilities to the institution, including, but not limited to; knowingly passing a worthless check or money order in payment to the institution or to an official of the institution acting in an official capacity.

40) Arrest. Failure of any student to accurately report an off-campus arrest by any law enforcement agency for any crime (including non-custodial or field arrests) to the Office of Student Conduct within seventy-two (72) hours of release.

41) Other Policies. Violating other published University/College policies or rules, including all Residence Hall policies;

42) Health and Safety. Creation of health and/or safety hazards (dangerous pranks, hanging out of or climbing from/on/in windows, balconies, roofs, etc.)

43) [Violations of Law. Evidence of violation of local, state or federal laws, when substantiated through the University/College's conduct process.]

SECTION 5: OVERVIEW OF THE CONDUCT PROCESS

This overview gives a general idea of how the University/College's campus conduct proceedings work, but it should be noted that not all situations are of the same severity or complexity. Thus, these procedures are flexible, and are not exactly the same in every situation, though consistency in similar situations is a priority. The campus conduct process and all applicable timelines commence with notice to an administrator of a potential violation of University/College rules.⁶

NOTICE. Once notice is received from any source (victim, RA, 3rd party, online, etc.), the University/College may proceed with a preliminary investigation and/or may schedule an initial educational meeting/conference with the responding student to explain the conduct process to the responding student and gather information.

A. STEP 1: Preliminary Inquiry and/or Educational Conference

The College/University conducts a preliminary inquiry into the nature of the incident, complaint or notice, the evidence available, and the parties involved. The preliminary inquiry may lead to:

- 1) A determination that there is insufficient evidence to pursue the investigation, because the behavior alleged, even if proven, would not violate the Code of Student Conduct, (e.g.: for reasons such as mistaken identity or allegations of behavior that falls outside the code);
- 2) A more comprehensive investigation, when it is clear more information must be gathered (see detailed procedures on p. ??, below);
- 3) A formal complaint of a violation and/or an educational conference with the responding student.

When an initial educational meeting/conference is held, the possible outcomes include:

- A decision not to pursue the allegation based on a lack of or insufficient evidence. The matter should be closed and records should so indicate;
- A decision on the allegation, also known as an "informal" or "administrative" resolution to an uncontested allegation (see immediately below);
- A decision to proceed with additional investigation and/or referral for a "formal" resolution.

If a decision on the allegation is made and the finding is that the responding student is not responsible for violating the Code, the process will end. **[The party bringing the**

⁶ In Title IX related issues, the "administrator" is any "responsible employee" as defined under Title IX and/or campus policy.

complaint may request that the Director of Student Conduct and the Title IX Coordinator reopen the investigation and/or grant a hearing. This decision shall be in the sole discretion of the Director of Student Conduct and the Title IX Coordinator and will only be granted for extraordinary cause]. If the University/College’s finding is that the responding student is in violation, and the responding student accepts this finding within three days, the University/College considers this an “uncontested allegation.” The administrator conducting the initial educational conference will then determine the sanction(s) for the misconduct, which the responding student may accept or reject. If accepted, the process ends⁷.

If student accepts the findings, but rejects the sanction, the University/College will conduct a sanction-only hearing, conducted by **[a panel, etc.]** which recommends a sanction to the Director of Student Conduct. The sanction is then reviewed and finalized by the Director of Student Conduct and is subject to appeal (see *Appeal Review Procedures* in Section 7(P) below) by any party to the misconduct. Once the appeal is decided, the process ends.

If the administrator conducting the educational conference determines that it is more likely than not that the responding student is in violation, and the responding student rejects that finding in whole or in part, then it is considered a contested allegation and the process moves to Step 2.

B. STEP 2: Formal Hearing

In a contested allegation, additional investigation may then be commenced and/or a hearing may be held when there is reasonable cause to believe that a rule or rules have been violated. A formal notice of the complaint will be issued, and a hearing will be held before **[a panel, an administrator, etc.]** A finding will be determined and is final except in cases that involve Title IX or other discrimination allegations. In those cases, the hearing results serve as a recommendation to the Director of Student Conduct and, where appropriate, the Title IX Coordinator, who review and finalize the finding.⁸ If the finding is that the responding student is not responsible, the process ends. Applicable appeals options are described below.

C. STEP 3: Review and Finalize Sanction(s).

If the student is found in violation(s), sanctions will be recommended by the **[panel, administrator, etc.]** to the Director of Student Conduct **[and Title IX Coordinator when**

⁷ In cases of minor misconduct, both steps in this paragraph can be accomplished in one meeting.

⁸ The findings of the hearing should only be overturned or modified when necessary to conform to Title IX and/or to repair error that would result in appeal.

applicable], who will review and finalize the sanctions, subject to the University/College appeals process by any party to the complaint.

SECTION 6: STUDENT CONDUCT AUTHORITY

A. Authority

The **[Dean of Students]** is vested with the authority over student conduct by the Board of Trustees **[or President]**. The Dean of Students appoints a Director of Student Conduct to oversee and manage the student conduct process. The Dean of Students and Director of Student Conduct may appoint administrative hearing **[conference]** and appeals officers as deemed necessary to efficiently and effectively supervise the student conduct process.

The Director of Student Conduct (or designee) will assume responsibility for the investigation of an allegation of misconduct to determine if the complaint has merit.

B. Gatekeeping

No complaint will be forwarded for a hearing unless there is reasonable cause to believe a policy has been violated. Reasonable cause is defined as some credible information to support each element of the offense, even if that information is merely a credible witness or a victim's statement. A complaint wholly unsupported by any credible information will not be forwarded for a hearing.

C. Conflict Resolution Options

The Director of Student Conduct has discretion to refer a complaint for mediation or other forms of appropriate conflict resolution. All parties must agree to conflict resolution and to be bound by the decision with no review/appeal. Any unsuccessful conflict resolution can be forwarded for formal processing and hearing; however, at no time will complaints of physical sexual misconduct or violence be mediated as the sole institutional response. The Director of Student Conduct may also suggest that complaints that do not involve a violation of the *Code of Student Conduct* be referred for mediation or other appropriate conflict resolution.

D. Composition of the Hearing Panel

The Director of Student Conduct will be responsible for assembling the Hearing Panel according to the following guidelines:

- 1) The membership of the panel is selected from a pool of at least 6 students, 6 faculty, and 6 staff/administrative members appointed and trained **[for at least 8, 10, 12, 16, etc. hours]**⁹ annually by the Director of Student Conduct.
- 2) For each complaint, a panel will be chosen from the available pool, and is usually comprised of one student, one faculty member, and one staff member or administrator. Availability may determine a different composition for the Panel, and in complaints involving discrimination, sexual misconduct, or other sensitive issues, the Director of Student Conduct will usually use three administrative/staff members for the panel. The Director of Student Conduct appoints the non-voting chair of the Hearing Panel, who assures that University/College procedures are followed throughout the hearing.

E. Administrative Hearing [or Conference] Officers

Administrative Hearing Officers (AHO or ACO) are chosen from a pool of annually trained administrators or staff members selected by the Director of Student Conduct.

F. Panel Pool and the Appeals Panel

Three-member Appeals Panels are drawn from the panel pool, with the only requirement being that they did not serve on the Panel for the initial hearing. Appeals Panels review appeal requests submitted by the Director of Student Conduct. If an all administrative/staff panel is used to hear a sensitive issue, the Appeals Panel will also be comprised of only administrative/staff members.

To serve in the panel pool, students must:

- 1) Be in academic good standing and have completed 15 hours of academic credit with a cumulative GPA of at least 2.0.
- 2) Be in good standing with the conduct process throughout the semester in which they serve. Good standing is defined as having no record of misconduct during the semester(s) in which a student wishes to serve on the panel. A serious history of misconduct could disqualify a student for service.
- 3) Submit a letter of recommendation from a faculty member or administrator from within the University/College community.

The Director of Student Conduct will have final authority to approve all those serving on the panel. The non-voting advisor to the panel is the Director of Student Conduct (or designee) with responsibility for training the panel, conducting preliminary

⁹ Minimal competence requires 8 hours of training, and panel members ought to be more than minimally competent.

investigations, and ensuring a fair process for the party bringing the complaint and responding student. In the event of a resignation from the panel, the Director of Student Conduct (or designee) will solicit a replacement from the group from which the representative came. Decisions made, and sanctions imposed, by the panel or an AHO will be final and implemented, pending the normal appeal process. At the discretion of the Director of Student Conduct (or designee), implementation of sanctions may be stayed pending review.

G. Interpretation and Revision

The Director of Student Conduct will develop procedural rules for the administration of hearings that are consistent with provisions of the *Code of Student Conduct*. Material deviation from these rules will, generally, only be made as necessary and will include reasonable advance notice to the parties involved, either by posting online and/or in the form of written communication. The Director of Student Conduct may vary procedures with notice upon determining that changes to law or regulation require policy or procedural alterations not reflected in this *Code*. The Director of Student Conduct may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. Any question of interpretation of the *Code of Student Conduct* will be referred to the Dean of Students, whose interpretation is final. The *Code of Student Conduct* will be updated annually under the direction of the Director of Student Conduct with a comprehensive revision process being conducted every [3-5] years.

SECTION 7: FORMAL CONDUCT PROCEDURES

A. University/College as Convener

The University/College is the convener of every action under this code. Within that action, there are several roles. The responding student is the person who is alleged to have violated the Code. The party bringing the complaint, who may be a student, employee, visitor, or guest, may choose to be present and participate in the process as fully as the responding student. There are witnesses, who may offer information regarding the allegation. There is an investigator(s) whose role is to present the allegations and share the evidence that the University/College has obtained regarding the allegations.

B. Group Violations

A student group or organization and its officers and membership may be held collectively and individually responsible when violations of this code by the organization or its member(s):

- Take place at organization-sponsored or co-sponsored events, whether sponsorship is formal or tacit;

- Have received the consent or encouragement of the organization or of the organization's leaders or officers; or
- Were known or should have been known to the membership or its officers.

Hearings for student groups or organizations follow the same general student conduct procedures. In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and individually and will be proportionate to the involvement of each individual and the organization.

C. Amnesty:

1) For Victims

The University/College provides amnesty to victims who may be hesitant to report to University/College officials because they fear that they themselves may be accused of minor policy violations, such as underage drinking, at the time of the incident. Educational options will be explored, but no conduct proceedings or conduct record will result¹⁰.

2) For Those Who Offer Assistance

To encourage students to offer help and assistance to others, University/College pursues a policy of amnesty for minor violations when students offer help to others in need. At the discretion of the Director of Student Conduct, amnesty may also be extended on a case-by-case basis to the person receiving assistance. Educational options will be explored, but no conduct proceedings or conduct record will result.

3) For Those Who Report Serious Violations

Students who are engaged in minor violations but who choose to bring related serious violations by others to the attention of the University/College are offered amnesty for their minor violations. Educational options will be explored, but no conduct proceedings or record will result.

Abuse of amnesty requests can result in a decision by the Director of Student Conduct not to extend amnesty to the same person repeatedly.

4) Safe Harbor

The University/College has a Safe Harbor rule for students. The University/College believes that students who have a drug and/or addiction

¹⁰ Records regarding the provision of amnesty, however, should be maintained.

problem deserve help. If any University/College student brings their own use, addiction, or dependency to the attention of University/College officials outside the threat of drug tests or conduct sanctions and seeks assistance, a conduct complaint will not be pursued. A written action plan may be used to track cooperation with the Safe Harbor program by the student. Failure to follow the action plan will nullify the Safe Harbor protection and campus conduct processes will be initiated.

D. Notice of Alleged Violation

Any member of the University/College community, visitor or guest may allege a policy violation(s) by any student for misconduct under this *Code* [by the following process and/or via the following URL]:

Notice may also be given to the Director of Student Conduct (or designee) and/or to the Title IX Coordinator, when appropriate. Additionally, administrators may act on notice of a potential violation whether a formal allegation is made or not. All allegations can be submitted by a victim or a third party, and should be submitted as soon as possible after the offending event occurs. The University/College has the right to pursue an allegation or notice of misconduct on its own behalf and to serve as convener of the subsequent campus conduct process.

The Director of Student Conduct (or designee) will assume responsibility for the investigation of the alleged violation as described in the sub-section below.

E. Investigation

Investigation is referenced in both steps 1 and 2 above, with detailed investigation procedures described in this sub-section. The Director of Student Conduct will appoint an investigator(s) for allegations under this *Code*.¹¹ The investigator(s) will take the following steps, if not already completed by the Coordinator or designee:

- 1) Initiate any necessary remedial actions on behalf of the victim (if any);
- 2) Determine the identity and contact information of the party bringing the complaint, whether that person is the initiator of the complaint, the alleged victim, or a University/College proxy or representative;
- 3) Conduct an immediate preliminary investigation to identify an initial list of all policies that may have been violated, to review the history of the parties, the context of the incident(s), any potential patterns and the nature of the complaint;
 - a) If the victim is reluctant to pursue the complaint, determine whether the complaint should still be pursued and whether sufficient

¹¹ For any complaint that falls under Title IX (e.g. sexual misconduct) or involves any other form of discrimination, the Director of Student Conduct will work under the direction of the Title IX Coordinator.

- independent evidence could support the complaint without the participation of the victim;
- b) Notify the victim of whether the University/College intends to pursue the complaint regardless of their involvement, and inform the victim of their rights in the process and option to become involved if they so choose;
 - c) Preliminary investigation usually takes between 1-7 business days to complete;
- 4) If indicated by the preliminary investigation and authorized by the Coordinator or Director or Student Conduct, conduct a comprehensive investigation to determine if there is reasonable cause to believe that the responding student violated College/University policy, and to determine what specific policy violations should serve as the basis for the complaint;
 - a) If there is insufficient evidence through the investigation to support reasonable cause, the allegations will be closed with no further action;
 - b) A comprehensive investigation usually takes between one day and two weeks;
 - 5) Meet with the party bringing the complaint to finalize the Party bringing the complaint's Statement, which will be drawn up by the investigator or designee as a result of this meeting;
 - 6) Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding student, who may be given notice of the interview prior to or at the time of the interview;
 - a) Prepare the notice of alleged policy violation(s) on the basis of the reasonable cause determination, which may be delivered prior to, during or after the responding student is interviewed, at the discretion of the investigator(s);
 - 7) Interview all relevant witnesses, summarize the information they are able to share and have each witness sign the summary to verify its accuracy;
 - 8) Obtain all documentary evidence and information that is available;
 - 9) Obtain all physical evidence that is available;
 - 10) Complete the investigation promptly by analyzing all available evidence without unreasonable deviation from the intended timeline;
 - 11) Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
 - 12) Present the investigation report and findings to the responding student, who may:
 - a) accept the findings,
 - b) accept the findings in part and reject them in part,
 - c) or may reject all findings;

- 13) Share the findings and update the party bringing the complaint on the status of the investigation and the outcome.

F. Findings

The following options (1-3) describe how to proceed depending on whether the responding student is found responsible and whether the Responding Student accepts or rejects the findings and/or the sanctions either in whole or in part.

1) The Responding Student is Found “Not Responsible”

Where the responding student is found not responsible for the alleged violation(s), the investigation will be closed. The party bringing the complaint, if any, may request that the [Title IX Coordinator and/or] Director of Student Conduct, as applicable, review the investigation file to possibly re-open the investigation or convene a hearing. The decision to re-open an investigation or convene a hearing rests solely in the discretion of the Title IX Coordinator or the Director of Student Conduct in these cases, and is granted only on the basis of extraordinary cause.

2) The Responding Student Accepts a Finding of “Responsible”...

a) The Responding Student Accepts a Finding of “Responsible” and Accepts the Recommended Sanctions.

Should the responding student accept the finding that they violated University/College policy, the Investigator will recommend appropriate sanctions for the violation, having consulted with Director of Student Conduct and/or Title IX Coordinator, as appropriate. In cases involving discrimination, recommended sanctions will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the University/College community. If the responding student accepts these recommended sanctions, the sanctions are implemented by the Director of Student Conduct and the process ends. **[There will be a three-day period for review between the date of acceptance and when the resolution becomes final. Should the responding student decide to reject the sanctions within that time period, Option 2B, below, will apply].** This outcome is not subject to appeal.

b) The Responding Student Accepts a Finding of “Responsible” and Rejects the Sanctions Recommended.

If the responding student accepts the “responsible” findings, but rejects the recommended sanctions, there will be an administrative

conference on the sanction, only. Administrative conference procedures are detailed below.

3) Responding Student Rejects the Findings Completely or In-part

a) Responding Student Rejects the Findings Completely

Where the responding student rejects the finding that they violated University/College policy, a formal hearing will be convened within seven business days, barring exigent circumstances.

At the hearing, the investigator(s) will present their report to the panel, the panel will hear from the parties, and any necessary witnesses. The investigation report will be considered by the panel, which renders an independent and objective finding. Full panel procedures are detailed below.

If the panel finds the responding student not responsible for all violations, the Director of Student Conduct will timely inform the parties of this determination and the rationale for the decision in writing. This determination is subject to appeal by any party to the complaint. Appeal review procedures are outlined below.

If the panel finds a violation, it will recommend a sanction/responsive action to the Director of Student Conduct, who will **[confer with the Title IX Coordinator as necessary and]**, render a decision within **[2, 3, 4, 5, 6, 7?]** days of the hearing and timely notify the parties **[orally, as well as]** in writing. An appeal of sanction(s) may be filed by any party to the complaint as detailed below.

b) Responding Student Accepts the Findings in Part and Rejects in Part

Where the responding student rejects in part the finding that they violated University/College policy, there will be a panel hearing solely on the disputed allegations within seven days, barring exigent circumstances. For all findings holding a responding student responsible for a violation, the College/University will follow the sanctioning process detailed in sub-sections K(8) and K(9), below. If the Panel finds the responding student “Not Responsible” on any of the contested allegations, the process will move to the Sanctioning Phase on only the uncontested allegations, as detailed in sub-sections K(8) and K(9), below.

G. Special Hearing Provisions for Sexual Misconduct, Discrimination and Other Complaints of a Sensitive Nature

All hearings under this sub-section will be conducted by a three member administrative panel drawn from the panel pool. For sexual misconduct, discrimination and other complaints of a sensitive nature, whether the alleged victim is serving as the party bringing the complaint or as a witness, alternative testimony options may be provided, such as placing a privacy screen in the hearing room or allowing the alleged victim to testify from another room via audio or audio/video technology. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the responding student.

The past sexual history or sexual character of a party will not be admissible by the other parties in hearings unless such information is determined to be highly relevant by the panel Chair. All such information sought to be admitted by a party or the University/College will be presumed irrelevant until a showing of relevance is made, in advance of the hearing, to the Chair. Demonstration of pattern, repeated, and/or predatory behavior by the responding student, in the form of previous findings in any legal or campus proceeding, **[or in the form of previous good faith allegations]**, will always be relevant to the finding, not just the sanction. The parties will be notified in advance if any such information is deemed relevant and will be introduced in the hearing.

The party bringing any complaint alleging sexual misconduct, other behavior falling with the coverage of Title IX and/or a crime of violence will be notified in writing of the outcome of a hearing, any sanctions assigned and the rationale for the decision.

H. Notice of Hearing

Once a determination is made that reasonable cause exists for the Director of Student Conduct (or designee) to refer a complaint for a hearing, notice will be given to the responding student. Notice will be in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official University/College records; or emailed to the student's University/College-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. The letter of notice will:

- 1) Include the alleged violation and notification of where to locate the *Code of Student Conduct* and University/College procedures for resolution of the complaint; and
- 2) Direct the responding student to contact the Director of Student Conduct (or designee) within a specified period of time to respond to the complaint. This

time period will generally be no less than two days¹² from the date of delivery of the summons letter.

A meeting with the Director of Student Conduct (or designee) may be arranged to explain the nature of the complaint and the conduct process. At this meeting, the responding student may indicate, either verbally or in writing, to the Director of Student Conduct (or designee), whether they admit to or deny the allegations of the complaint.

I. Interim Action

Under the *Code of Student Conduct*, the Dean of Students or designee may impose restrictions and/or separate a student from the community pending the scheduling of a campus hearing on alleged violation(s) of the *Code of Student Conduct* when a student represents a threat of serious harm to others, is facing allegations of serious criminal activity, to preserve the integrity of an investigation, to preserve University/College property and/or to prevent disruption of, or interference with, the normal operations of the University/College. Interim actions can include separation from the institution or restrictions on participation in the community for no more than ten (10) business days pending the scheduling of a campus hearing on alleged violation(s) of the *Code of Student Conduct*. **[A student who receives an interim suspension may request a meeting with the Dean of Students or designee to demonstrate why an interim suspension is not merited. Regardless of the outcome of this meeting, the University/College may still proceed with the scheduling of a campus hearing].**

During an interim suspension, a student may be denied access to University/College housing and/or the University/College campus/facilities/events. As determined appropriate by the Director of Student Conduct, this restriction may include classes and/or all other University/College activities or privileges for which the student might otherwise be eligible. At the discretion of the Director of Student Conduct and with the approval of, and in collaboration with, the appropriate Dean(s), alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding student.

J. Hearing Options & Preparation

The following sub-sections describe the University/College's conduct hearing processes. Except in a complaint involving failure to comply with the summons of the Director of Student Conduct (or designee), no student may be found to have violated the *Code of Student Conduct* solely as a result of the student's failure to appear for a hearing. In all such instances, conduct hearings will proceed as scheduled and the information in

¹² "Day", used throughout this document, refers to normal business days when the College/University is in operation.

support of the complaint will be presented to, and considered by, the Director of Student Conduct, AHO or panel presiding over the hearing.

Where the responding student admits to violating the *Code of Student Conduct*, the Director of Student Conduct (or designee) may invoke administrative hearing procedures to determine and administer appropriate sanctions without a formal hearing. This process is also known as an *administrative conference*. In an administrative conference, complaints will be heard and determinations will be made by the Director of Student Conduct or designee.

Where the responding student denies violating the *Code of Student Conduct*, a formal hearing will be conducted. This process is known as a panel hearing. At the discretion of the Director of Student Conduct (or designee), a request by one or more of the parties to the complaint for an administrative conference may be considered. Students who deny a violation for which a panel hearing will be held will be given a minimum of seven **[3,5,7]** days to prepare unless all parties wish to proceed more quickly. Preparation for a formal hearing is summarized in the following guidelines:

- 1) Notice of the time, date and location of the hearing will be in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official University/College records; or emailed to the student's University/College-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- 2) If there is an alleged victim of the conduct in question, the alleged victim may serve as the party bringing the complaint or may elect to have the University/College administration serve as the party bringing the complaint forward. Where there is no alleged victim, the University/College administration will serve as the party bringing the complaint forward.
- 3) If a responding student fails to respond to notice from the Director of Student Conduct (or designee), the Director of Student Conduct (or designee) may initiate a complaint against the student for failure to comply with the directives of a University/College official and give notice of this offense. Unless the student responds to this notice within two days by answering the original notice, an administrative conference may be scheduled and held on the student's behalf. As a result, the student may be administratively withdrawn from attending classes or a disciplinary hold may be placed on their University/College account, deeming them ineligible to register for courses or University/College housing until such time as the student responds to the initial complaint.
- 4) At least three (3) days before any scheduled formal hearing, the following will occur:

- a) The responding student will deliver to the Director of Student Conduct (or designee) a written response to the complaint;
 - b) The responding student will deliver to the Director of Student Conduct (or designee) a written list of all witnesses for the University/College to call at the hearing;
 - c) The responding student will deliver to the Director of Student Conduct (or designee) all physical evidence the student intends to use or needs to have present at the hearing and will indicate who has possession or custody of such evidence, if known, so that the Director of Student Conduct can arrange for its presence;
 - d) The party bringing the complaint will deliver to the Director of Student Conduct (or designee) a written list of all witnesses for the University/College to call at the hearing;
 - e) The party bringing the complaint will deliver to the Director of Student Conduct (or designee) all items of physical evidence needed at the hearing and will indicate who has possession or custody of such evidence, if known, so that the Director of Student Conduct can arrange for its presence;
 - f) The party bringing the complaint and the responding student will notify the Director of Student Conduct (or designee) of the names of any advisors/advocates who may be accompanying the parties at the hearing.
- 5) The Director of Student Conduct (or designee) will ensure that the hearing information and any other available written documentation is shared with the parties at least two (2) days before any scheduled hearing. In addition, the parties will be given a list of the names of all the panelists in advance. Should any party object to any panelist, that party must raise all objections, in writing, to the Director of Student Conduct immediately. Hearing officers will only be unseated if the Director of Student Conduct concludes that their bias precludes an impartial hearing of the complaint. Additionally, any panelist who feels they cannot make an objective determination must recuse themselves from the proceedings.

K. Panel Hearing Procedures

The Director of Student Conduct will appoint one panelist as the Chair for the hearing. The parties have the right to be present at the hearing; however, they do not have the right to be present during deliberations. If a student cannot attend the hearing, it is that

student's responsibility to notify the Director of Student Conduct no less than three (3) days prior to the scheduled hearing to arrange for another date, time and location. Except in cases of grave or unforeseen circumstances, if the responding student fails to give the requisite minimum three (3) day notice, or if the responding student fails to appear, the hearing will proceed as scheduled. If the party bringing the complaint fails to appear, the complaint may be dropped unless the University/College chooses to pursue the allegation on its own behalf, as determined by the Director of Student Conduct.

The Director of Student Conduct (or designee), the Chair and the Panel will conduct panel hearings according to the following guidelines:

- 1) Hearings will be closed to the public.
- 2) Admission to the hearing of persons other than the parties involved will be at the discretion of the panel chair and the Director of Student Conduct.
- 3) In hearings involving more than one responding student, the standard procedure will be to hear the complaints jointly; however, the Director of Student Conduct may permit the hearing pertinent to each responding student to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding student.
- 4) The parties have the right to an advisor/advocate of their own choosing, including attorneys. Typically advisors are members of the campus community, but the parties may select whomever they wish to serve as their advisor.¹³ The advisor may not make a presentation or represent the party bringing the complaint or responding student during the hearing. They may confer quietly with their advisee, exchange notes, clarify procedural questions with the chair and suggest questions to their advisee.¹⁴
- 5) The party bringing the complaint, the responding student, the panel, and the Director of Student Conduct (or designee) will have the privilege of questioning all present witnesses and questioning all present parties (directly or through the Chair, at the discretion of the Chair). Unduly repetitive witnesses can be limited at the discretion of the **[panel Chair and/or the Director of Student Conduct, or designee]**.
- 6) Pertinent records, exhibits, and written statements may be accepted as information for consideration by the panel and the Director of Student Conduct.

¹³ Note that some jurisdictions (e.g.: North Carolina) require institutions to permit attorney participation in a hearing.

¹⁴ *See Id.*

Formal rules of evidence are not observed. The **[panel Chair and/or the Director of Student Conduct, or designee]** may limit the number of character witnesses presented or may accept written affidavits of character instead.

- 7) All procedural questions are subject to the final decision of the Director of Student Conduct **[or panel Chair]**.
- 8) After a panel hearing, the panel will deliberate and determine, by majority vote, whether it is more likely than not that the responding student has violated the *Code of Student Conduct*. The Director of Student Conduct (or designee) will be present and available as a resource during all deliberations. Once a finding is determined, if the finding is that of a policy violation, the panel will determine an appropriate sanction(s). The Director of Student Conduct (or designee) is responsible for informing the panel of applicable precedent and any previous conduct violations or other relevant pattern information about the responding student. The panel Chairperson will prepare a written deliberation report and deliver it to the Director of Student Conduct, detailing the recommended finding, how each member voted, the information cited by the panel in support of its recommendation, and any information the panel excluded from its consideration and why. This report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Director of Student Conduct within two (2) days of the end of deliberations.
- 9) The Director of Student Conduct will consider the recommendations of the panel, may make appropriate modifications to the panel's report and will then render a decision and inform the responding student and party bringing the complaint (if applicable by law or University/College policy) of the final determination within **[2,3,4,5, or 7]** days of the hearing. Notification will be made in writing and may be delivered by one or more of the following methods: in person by the Director of Student Conduct (or designee); mailed to the local or permanent address of the student as indicated in official University/College records; or emailed to the student's University/College-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. In cases of sexual misconduct and other crimes of violence, notice of the outcome will be delivered to all parties simultaneously, meaning without substantial delay between the notifications to each.
- 10) There will be a single verbatim record, such as an audio recording, for all panel hearings. Deliberations will not be recorded. The record will be the property of the University/College and maintained according to the University/College's record retention policy.

L. Conduct Sanctions

One or more of following sanctions may be imposed upon any student for any single violation of the *Code of Student Conduct*:

- 1) *Warning*: An official written notice that the student has violated University/College policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the University/College.
- 2) *Restitution*: Compensation for damage caused to the University/College or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
- 3) *Fines*: Reasonable fines may be imposed. Fines are specified to include:
- 4) *Community/University/College Service Requirements*: For a student or organization to complete a specific supervised University/College service.
- 5) *Loss of Privileges*: The student will be denied specified privileges for a designated period of time.
- 6) *Confiscation of Prohibited Property*: Items whose presence is in violation of University/College policy will be confiscated and will become the property of the University/College. Prohibited items may be returned to the owner at the discretion of the Director of Student Conduct and/or Campus Police.
- 7) *Behavioral Requirement*: This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- 8) *Educational Program*: Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- 9) *Restriction of Visitation Privileges*: May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- 10) *University/College Housing Probation*: Official notice that, should further violations of Residence Life or University/College policies occur during a specified probationary period, the student may immediately be removed from

University/College housing. Regular probationary meetings may also be imposed.

- 11) *University/College Housing Reassignment*: Reassignment to another University/College housing facility. Residential Life personnel will decide on the reassignment details.
- 12) *University/College Housing Suspension*: Removal from University/College housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to University/College housing may be specified. Under this sanction, a student is required to vacate University/College housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Housing and Residence Life. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for University/College housing, the student must gain permission from the Director of Housing and Residence Life (or designee). This sanction may include restrictions on visitation to specified buildings or all College/University housing during the suspension.
- 13) *University/College Housing Expulsion*: The student's privilege to live in, or visit, any University/College housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
- 14) *University/College Probation*: The student is put on official notice that, should further violations of University/College policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
- 15) *Eligibility Restriction*: The student is deemed "not in good standing" with the University/College for a specified period of time. Specific limitations or exceptions may be granted by the Director of Student Conduct and terms of this conduct sanction may include, but are not limited to, the following:
 - a) Ineligibility to hold any office in any student organization recognized by the University/College or hold an elected or appointed office at the University/College; or
 - b) Ineligibility to represent the University/College to anyone outside the University/College community in any way including: participating in the study abroad program, attending conferences, or representing the University/College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.

- 16) *University/College Suspension*: Separation from the University/College for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Student Conduct. During the suspension period, the student is banned from university property, functions, events and activities without prior written approval from the Director of Student Conduct. This sanction may be enforced with a trespass action as necessary. **[This sanction will be noted as a Conduct Suspension on the student's official academic transcript]**
- 17) *University/College Expulsion*: Permanent separation from the University/College. The student is banned from university property and the student's presence at any University/College-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary. **[This sanction will be noted as a Conduct Expulsion on the student's official academic transcript].**
- 18) *Other Sanctions*: Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Director of Student Conduct or designee.

The following sanctions may be imposed upon groups or organizations found to have violated the *Code of Student Conduct*:

- 1) One or more of the sanctions listed above, specifically *a)* through *i)* and *o)* through *q)*; and/or
- 2) Deactivation, de-recognition, loss of all privileges (including status as a University/College registered group/organization), for a specified period of time.

M. Parental Notification

The University/College reserves the right to notify the parents/guardians of dependent students regarding any conduct situation, particularly alcohol and other drug violations. The University/College may also notify parents/guardians of non-dependent students who are under the age of 21 of alcohol and/or other drug violations. Parental notification may also be utilized discretionarily by administrators when permitted by FERPA or consent of the student.

N. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the responding student and is protected from release under the Federal Education Rights and Privacy

Act (FERPA), except under certain conditions. As allowed by FERPA, when a student is accused of a policy violation that would constitute a “crime of violence” or forcible or nonforcible sex offense, the University/College will inform the alleged victim/party bringing the complaint in writing of the final results of a hearing regardless of whether the University/College concludes that a violation was committed. Such release of information may only include the alleged student’s/responding student’s name, the violation committed, and the sanctions assigned (if applicable). In cases of sexual misconduct and other offenses covered by Title IX, only, the rationale for the outcome will also be shared with all parties to the complaint in addition to the finding and sanction(s).

In cases where the University/College determines through the student conduct process that a student violated a policy that would constitute a “crime of violence” or nonforcible sex offense, the University/College may also release the above information publicly and/or to any third party. FERPA defines “crimes of violence” to include:

- 1) Arson
- 2) Assault offenses (includes stalking)
- 3) Burglary
- 4) Criminal Homicide—manslaughter by negligence
- 5) Criminal Homicide—murder and nonnegligent manslaughter
- 6) Destruction/damage/vandalism of property
- 7) Kidnapping/abduction
- 8) Robbery
- 9) Forcible sex offences
- 10) Non-forcible sex offences

O. Failure to Complete Conduct Sanctions

All students, as members of the University/College community, are expected to comply with conduct sanctions within the timeframe specified by the Director of Student Conduct or Administrative Hearing **[Conference]** Officer. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions and/or suspension from the University/College **[and may be noted on, or with, the student’s official transcript at the end of the semester]**. In such situations, resident students will be required to vacate University/College housing within 24 hours of notification by the Director of Student Conduct, though this deadline may be extended upon application to, and at the discretion of, the Director of Housing and Residence Life and/or the Director of Student Conduct. A suspension will only be lifted when compliance with conduct sanctions is satisfactorily achieved. This determination will be made by the Director of Student Conduct.

P. Appeal Review Procedures

Any party may request an appeal of the decision of the Panel/Administrative Conference by filing a written request to the **[Director of Student Conduct]**, subject to the procedures outlined below. All sanctions imposed by the original hearing body remain in effect, and all parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.

GROUNDINGS FOR APPEAL REQUESTS

Appeals requests are limited to the following grounds:

- 1) A procedural **[or substantive error]** occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);¹⁵
- 2) To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction.¹⁶ A summary of this new evidence and its potential impact must be included;¹⁷
- 3) The sanctions imposed are substantially disproportionate to the severity of the violation¹⁸ **[preferred: “the sanctions imposed are substantially outside the**

¹⁵ Consider whether you wish to permit appeals on substantive grounds. We believe you can and should avoid this need by formulating your process as one where the original hearing body makes the finding a recommendation to the Student Conduct Office. In this formulation, the Director of Student Conduct will be able to correct manifestly wrong findings prior to appeal by changing the recommendation of the original hearing body, and appeals on the basis of finding should therefore be unnecessary. If you include an appeal on finding, our concern is that it opens the door for appeal in every case, for appeals of appeals, and for rehearing on appeal, all of which we hope to avoid. It is also possible to view a manifestly wrong finding as a procedural error, thus mooted the need for finding as an explicit basis for appeal.

¹⁶ Failure to provide information during or participate in an investigation or a hearing, even resulting from concern over pending criminal or civil proceedings, does not make evidence “unavailable” at the time of the hearing.

¹⁷ The Director of Student Conduct is expected to consult with the chair of the original panel to inquire as to whether the new evidence would, in the opinion of the Chair, have substantially impacted the original finding or sanction

¹⁸ Campuses using this ground for appeal should meet the following criteria:

1. There are no sanctioning guidelines or parameters offered by the Institution to the Original Hearing Body, and/or
2. There is no review of the sanctions by the Student Conduct Office, as articulated in the previous footnote.

If the above exists, this ground should read, “the sanctions imposed are substantially outside the parameters or guidelines set by the College/University for this type of offense or the cumulative conduct record of the responding student.” These guidelines and parameters are NOT to be confused with precedent. Prior findings/sanctions in similar cases that are flawed should not create the basis for all future cases. Finally, appeals officers/committees (preference for committees) MUST discern the difference between a SANCTION and the IMPACT of a sanction. For a SANCTION to be disproportionate or inconsistent, it must be viewed as a “stand-alone” outcome. Simply put, where a one-year suspension is within the guidelines or has been issued by the Board and/or reviewed by the Student Conduct Office, it is, by default, proportionate. The other impacts on the student’s life are notwithstanding. This should alleviate the potential of subjective decision-making that will later be scrutinized as potentially arbitrary, capricious or pretextually (or actually) discriminatory. For example: A violation of the sexual misconduct

parameters or guidelines set by the College/University for this type of offense or the cumulative conduct record of the responding student].

Appeals must be filed in writing with the **[Director of Student Conduct]** within three **(3,5, or 7)** business days of the notice of the outcome to the hearing, barring exigent circumstances. Any exceptions are made at the discretion of **the [Director of Student Conduct]** and, when appropriate, the Title IX Coordinator.

The **[Director of Student Conduct]** will share the appeal by one party with the other party (parties) when appropriate under procedure or law (e.g., if the responding student appeals, the appeal is shared with the complainant, who may also wish to file a response, request an appeal on the same grounds or different grounds). The Director of Student Conduct will refer the request(s) to the College/University's designated Appeal Review Officer, appointed by [the President]. The **[Director of Student Conduct]** will also draft a response memorandum to the appeal request(s), based on the Appeal Review Officer's determination that the request(s) will be granted or denied, and why. All request-related documents are shared with all parties prior to submission to the Appeal Review Officer, who serves a three-year term.

The Appeal Review Officer will conduct an initial review to determine if the appeal request meets the limited grounds and is timely. They may consult with the Director of Student Conduct and/or Title IX Coordinator on any procedural or substantive questions that arise.

If the appeal is not timely or substantively eligible, the original finding and sanction will stand and the decision is final. If the appeal has standing, the Appeal Review Officer determines whether to refer the appeal to the Appeals Panel or to remand it to the original decision-maker(s), typically within 3-5 business days. Efforts should be made to use remand whenever possible, with clear instructions for reconsideration only in light of the granted appeal grounds. Where the original decision-maker may be unduly biased by a procedural or substantive error, a new panel will be constituted to reconsider the matter, which can in turn be appealed, once. Full rehearings by the Appeals Panel are not permitted **[are very rarely used]**. Where new evidence is presented or the sanction is challenged, the Appeals Review Officer will determine if the matter should be returned to the original decision-maker for reconsideration or if it should be reviewed by the Appeals Panel with instruction on the parameters regarding institutional consistency and any applicable legal guidelines. In

policy where the sanction is a one-year suspension (with conditions for reinstatement) is not "disproportionate" because of the graduation status, time in the semester, pending internship/job/externship/graduate school application. Altering the suspension to allow for some personal situation that may appear academic on its face, or extending it for the same reasons, is not only inconsistent, but also puts the campus at both actual and litigation risk.

review, the original finding and sanction are presumed to have been decided reasonably and appropriately, thus the burden is on the appealing party(ies) to show clear error. The Appeals Panel must limit its review to the challenges presented.

On reconsideration, the Appeals Panel or original decision-maker may affirm or change the findings and/or sanctions of the original hearing body according to the permissible grounds. Procedural **[or substantive]** errors should be corrected, new evidence should be considered, and sanctions should be proportionate to the severity of the violation and the student's cumulative conduct record.

All decisions of the Appeals Panel are to be made within five (5) days of submission to the Panel and are final, as are any decisions made by the original hearing body, Director of Student Conduct or Title IX Coordinator as the result of reconsideration consistent with instructions from the Appeal Review Officer.

THE APPEALS PANEL

Three-member Appeals Panels are drawn from the hearing panel pool, with the following requirements to serve¹⁹:

- 1) they did not serve on the Panel for the initial hearing
- 2) they were not involved in the investigation in any way
- 3) they have been properly trained in appeals procedures

If the institution allows for students to serve in the panel pool²⁰, they must:

- 1) Be in academic good standing and have completed 15 hours of academic credit with a cumulative GPA of at least 2.0.
- 2) Be in good standing with respect to the conduct process throughout the term in which they serve. Good standing is defined as having no record of misconduct during the semester(s) in which a student wishes to serve on the panel, as well as not currently being on any probation. A serious history of misconduct could disqualify a student for service.

The Appeal Review Officer will have final authority to approve all those serving on the panel. The parties may challenge a panelist(s) on the basis of potential bias, and any panelist who cannot render an impartial decision must recuse themselves. The Appeals Review Officer will make the determination as to the validity of any challenge or need for recusal. In the event of a recusal from the panel, the Appeals Review Officer will solicit a replacement from the pool of panelists.

¹⁹ Institutions may opt to have a standing appeals panel, but it is recommended to have alternates at the ready or a pool of panelists.

²⁰ Again, students should not be panelists for sexual misconduct and other Title IX-covered behaviors, because of the chilling effect on reporting this causes.

The Director of Student Conduct or designee serves as the non-voting advisor to the panel, with responsibility for training the panel, conducting preliminary investigations, and ensuring a fair process for the complainant and responding student.

The presumptive stance of the College/University is that all decisions made and sanctions imposed by the original decision-maker are to be implemented during the appellate process. At the discretion of the Director of Student Conduct, and in consultation with the Title IX Coordinator when necessary, implementation of sanctions may be stayed pending review only in extremely exigent circumstances. This does not include proximity to graduation, end of term, or exams. Instead, it refers to an overwhelming likelihood, as determined by the Appeals Review Officer and Director of Student Conduct, in consultation, that the appeal would result in a reversal of the finding and/or substantial modification of the sanctions.

OTHER GUIDELINES FOR APPEALS

- All parties will be timely informed [**specify timeframe here if desired**] of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original decision-maker for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal; Witnesses may be called if necessary.
- Appeals are not an opportunity for appeals panelists to substitute their judgment for that of the original decision-maker merely because they disagree with the finding and/or sanctions. Appeals decisions are to be deferential to the original decision-maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.

Q. Disciplinary Records

All conduct records are maintained by the University/College for seven (7) years from the time of their creation except those that result in separation (suspension or expulsion, including from housing) and those that fall under Title IX, which are maintained indefinitely.

R. Approval and Implementation

This *Code of Student Conduct* was approved on [date] by, and implemented on [date].