



### ***Code of Student Conduct Revisions***

**PRESENTED BY** Andrea Dragan, Chair**REVIEW DATES** SEC – November 28, 2017 | SENATE – December 7, 2017**VOTING METHOD** In a single vote**RELEVANT  
POLICY/DOCUMENT** [V-1.00\(B\) – University of Maryland Code of Student Conduct](#)**NECESSARY  
APPROVALS** Senate, President

### **ISSUE**

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In September 2016, the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) recommending a full revision of the *Code of Student Conduct*. The proposal noted that the *Code* has not been thoroughly reviewed since it was established, and it needs to be revised to align with current practices. The proposal suggested revisions in a few major areas, including creating expanded definitions of Prohibited Conduct, adopting the preponderance of the evidence standard rather than the clear and convincing standard, addressing the role of advisors in the conduct process, and revising the structure and language of the *Code*. The SEC reviewed the proposal at its meeting on September 27, 2016 and voted to charge the Student Conduct Committee (SCC) with review of the proposal.

### **RECOMMENDATION(S)**

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- The Student Conduct Committee recommends that the *Code of Student Conduct* (V-1.00[B]) be revised in its entirety as indicated in the policy document immediately following this report.
- The Student Conduct Committee recommends that the revised *Code* be effective as of January 1, 2018.
- The Student Conduct Committee recommends that all University policies and procedures that reference the *Code* be revised to include accurate citations.

### **COMMITTEE WORK**

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The Student Conduct Committee (SCC) began its review in October 2016. It consulted with representatives from the Office of General Counsel and the Office of Student Conduct (OSC) throughout its review. The SCC and the OSC conducted extensive research on practices at peer institutions, reviewing *Codes* at Big Ten, University System of Maryland, and other peer institutions. The SCC met with representatives from the Office of Student Legal Aid, the Student Government Association (SGA), the Graduate Student Government (GSG), the Residence Hall Association (RHA), and the Senate Student Affairs Committee during its review to gather feedback on preliminary ideas developed by the committee.

The SCC developed its revised *Code* with the intent of providing clarity on student rights, what conduct is prohibited, and what the student conduct process entails. The SCC sought to address the needs of students as well as the current realities of conduct on campus. Early in its review, the SCC determined that the *Code* needed to be rewritten in full, and redrafted the *Code* using standard language. The *Code* was organized into four sections, and all annotations and references to court cases and civil procedure were removed. The Prohibited Conduct section provides clearer definitions and is organized according to type of conduct, rather than by presumed severity. The proposed *Code* indicates that the sanction for any specific violation will depend on the facts of the case as well as any aggravating or mitigating factors.

During its review, the SCC considered a few key changes to the conduct process. The SCC's proposed revised *Code* changes the standard of evidence, using the preponderance of the evidence standard rather than clear and convincing evidence. Preponderance of the evidence means that based on all of the evidence in the case, a reasonable person would conclude that it is more likely than not that the violation occurred. The SCC also revised the role of attorneys in the conduct process, proposing a limited role for attorneys that allows them to serve as an advisor to the student but prevents them from actively advocating during proceedings. This aligns the *Code* with the role of an attorney in other conduct processes, including the *Code of Academic Integrity* and the University's Sexual Misconduct Policy.

In fall 2017, the SCC developed revisions to the *Code* to ensure that the OSC has the necessary flexibility to charge student groups and student organizations with violations of the *Code*. The SCC also considered an addendum to its charge asking it to consider what sanctions would be appropriate in cases that are motivated by hate or bias. The SCC unanimously agreed that cases motivated by hate or bias should receive stricter sanctions, and agreed to incorporate the proposed language into its revised *Code*.

## ALTERNATIVES

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The Senate could reject the proposed revised *Code of Student Conduct*. The current *Code* would remain in effect. However, the University would lose the opportunity to clarify the conduct process and student rights and responsibilities under the *Code*.

## RISKS

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There are no known risks to the University.

## FINANCIAL IMPLICATIONS

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There are no known financial implications.



## ***Code of Student Conduct Revisions***

### **2017-2018 Committee Members**

**Andrea Dragan** (Chair)  
**John Buchner** (Faculty)  
**Blessing Enekwe** (Staff)  
**Andrea Goodwin** (Ex-Officio Director of Student Conduct)  
**Katie Heil** (Undergraduate Student)  
**Gideon Mark** (Faculty)  
**Paul Mavrikes** (Undergraduate Student)  
**Christopher Rand** (Undergraduate Student)

**Jason Speck** (Faculty)  
**Megan Stump** (Graduate Student)  
**Anuj Thakore** (Undergraduate Student)  
**Hilary Thompson** (Faculty)

### **Date of Submission**

**November 2017**

## **BACKGROUND**

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In September 2016, the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) recommending a full revision of the *Code of Student Conduct*. The proposal noted that the *Code* has not been thoroughly reviewed since it was established, and it needs to be revised to align with current practices. The proposal suggested revisions in a few major areas, including creating expanded definitions of Prohibited Conduct, adopting the preponderance of the evidence standard rather than the clear and convincing standard, addressing the role of advisors in the conduct process, and revising the structure and language of the *Code*. The SEC reviewed the proposal at its meeting on September 27, 2016 and voted to charge the Student Conduct Committee (SCC) with review of the proposal (Appendix 6).

## **CURRENT PRACTICE**

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The *Code of Student Conduct* was developed and approved in 1980. The *Code* establishes the necessity of ensuring the safety of students and the campus community, sets forth the conduct that is not permitted at the University, and specifies the process by which violations will be considered. The *Code* specifies the composition of conduct boards that adjudicate cases, which are typically composed of students. The Office of Student Conduct is responsible for administering the *Code*.

In the student conduct process, the Complainant is the party that referred the alleged violation to the OSC for review. The Complainant can be a student but is often the University, since cases are often referred by the University of Maryland Police Department (UMPD), the Department of Resident Life, or by University faculty, staff, or administrators. Students, student groups, or student organizations alleged to have violated the *Code* are referred to as Respondents. Student Respondents are afforded due process protections through the *Code*, including a presumption of innocence; adequate notice of the charges against them and of all meetings, hearings, or deadlines through the process; the ability to submit evidence and question witnesses during disciplinary hearings; the right to be assisted by an attorney, a student Advocate, and/or a support person; and the ability to appeal both a finding of responsibility as well as any sanction given as a result of the process.

It is critical that students are able to read and understand the *Code*, as it is the primary guide to their rights and responsibilities at the University. However, students have difficulty navigating the *Code* and the conduct process. The *Code* is legalistic in nature, and is structured in a disjointed fashion

that makes reading difficult. The document has multiple annotations that describe legal concepts or court cases that were relevant at the time when various provisions of the *Code* were written. Since 1980, the *Code* has been revised multiple times to add or revise specific sections as the needs of the University and the OSC changed. However, the *Code* has not been reviewed in full since 1980.

## COMMITTEE WORK

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The Student Conduct Committee (SCC) began its review in October 2016. It consulted with representatives from the Office of General Counsel (OGC) and the Office of Student Conduct (OSC) including the Director of Student Conduct throughout its review. The SCC and the OSC conducted extensive research on practices at peer institutions, reviewing *Codes* at Big Ten, University System of Maryland, and other peer institutions. A brief summary of peer institution practices related to the SCC's review can be found in Appendix 3.

The SCC focused its review on the need to create a clear, readable document, in order to ensure that all students are informed of their rights and responsibilities and to educate students on community standards. The SCC sought to address the needs of students as well as the current realities of conduct on campus. The SCC learned that the OSC's mission is to encourage safety for the individual student and the community while promoting growth and character development. The OSC views the student conduct process as an educational process in that it seeks to support students in reaching their academic and personal goals while fostering a climate of responsibility and accountability. The OSC intends for the *Code* to support the rights and responsibilities of all individuals within the community and uphold the integrity and values of the University of Maryland.

The SCC consulted with students and stakeholders throughout its work. The SCC met with representatives from the Office of Student Legal Aid in order to understand concerns and perspectives from students who serve as student Advocates for Respondents in conduct hearings. Representatives of the SCC and OSC met with the Student Government Association (SGA), the Graduate Student Government (GSG), the Residence Hall Association (RHA), and the Senate Student Affairs Committee to gather feedback on preliminary ideas developed by the committee. While each initially had many questions and concerns regarding the revisions to the *Code*, each organization expressed appreciation for the changes being considered by the SCC. A summary of the concerns and advice from the Student Affairs Committee can be found in Appendix 4. Resolutions from the RHA in favor of specific changes in the *Code* can be found in Appendix 5. In addition to these resolutions, a vote on a resolution to endorse the preponderance of the evidence standard failed in March 2017; however, after additional consultation with the RHA in November 2017, representatives of the RHA indicated their appreciation for the SCC's work and their comfort with the SCC's proposed changes.

After due consideration, at its meeting on November 15, 2017, the SCC voted unanimously to approve its proposed revised *Code of Student Conduct* as well as two administrative recommendations. After final consultation with the OGC and OSC, additional revisions were approved via an email vote concluding on November 21, 2017. An overview of the revisions to the *Code* is presented below.

### ***Language and Structure***

The SCC developed its revised *Code* with the intent of providing clarity on student rights, what conduct is prohibited, and what the student conduct process entails. Students at the University are first introduced to the *Code* during orientations; the OSC seeks to educate new students on their

rights and responsibilities before they come to campus. However, students, faculty, and staff report difficulty understanding the current *Code*. The document uses dated, legalistic language and a disjointed structure, and the many pages of annotations that follow the *Code* disrupt the narrative and present unnecessary or outdated information that can cause additional confusion.

Early in its review, the SCC determined that the *Code* needed to be rewritten in full. The *Code* was redrafted using standard language and all annotations have been removed, so the revised *Code* can be read through without having to refer to other documents or notes. The SCC organized the *Code* into four sections and drafted each section as a narrative that clearly presents pertinent information. The SCC also removed all references to court cases and civil procedure, as these references give students the wrong impression about the conduct process. The student conduct process is an administrative process that is not subject to the procedures used in a court of law, and the SCC felt that continually referring to legal concepts caused students and attorneys to view the conduct process as a legal process rather than an educational administrative process.

### ***Structure/Definitions of Prohibited Conduct***

The SCC's proposed revised *Code* includes an organized Prohibited Conduct section that provides clearer definitions of the types of conduct that are not allowed. The current section in the *Code* is outlined in a single list, with conduct ranked in order of presumed severity of the offense. The *Code* suggests appropriate sanctions for specific items, indicating that items (a) through (h) may result in expulsion and items (i) through (m) may result in suspension. However, in practice, both the severity of the offense and the appropriate sanction depend a great deal on the circumstances of the case. The OSC does not have a standard sanction for any type of misconduct; all cases are fact-specific. The SCC drafted the new Prohibited Conduct section by grouping items according to type of conduct, rather than by severity. The proposed *Code* does not indicate which types of conduct may result in expulsion, suspension, or other types of sanctions, but indicates throughout that the sanction will depend on the facts of the case as well as any aggravating or mitigating factors.

The SCC was asked to consider expanding the list of Prohibited Conduct to be responsive to the types of misconduct currently being seen by the OSC or to align with practices at peer institutions. The SCC determined that the definitions in the current *Code* are overly general, which can lead to inconsistency in interpretation and can make it difficult to bring charges when the conduct does not clearly fit the definition. For instance, the *Code* does not have a provision prohibiting public urination, so the OSC classifies these incidents as disruptive or disorderly conduct instead. The SCC worked with the OSC to revise and add definitions to include conduct that is more prevalent today and to reflect how violations are currently handled. New provisions prohibiting public urination and defecation, operating a vehicle while impaired, trespassing or unauthorized use of facilities or resources, and fire-setting, among others, were all added to the *Code*. Each of these new provisions meet needs identified by the OSC and can be found in *Codes* at peer institutions. An illustration of the changes in the list of Prohibited Conduct can be found in Appendix 2.

### ***Standard of Evidence***

The standard of evidence is the level of certainty needed in order to establish a finding of responsibility under the *Code*. The current *Code* uses a clear and convincing standard, stating that "The burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence." Clear and convincing requires that the evidence be enough to convince a reasonable person that the facts are true. This is a high standard, and it can be difficult for students and student boards to understand.

The SCC's proposed revised *Code* employs the preponderance of the evidence standard. Preponderance of the evidence means that based on all of the evidence in the case, a reasonable person would conclude that it is more likely than not that the violation occurred. The preponderance of the evidence standard is currently used in the University's policy and procedures on sexual misconduct, and the SCC voted unanimously to use the preponderance of the evidence standard for general misconduct cases as well.

Many institutions began using the preponderance of the evidence standard for all misconduct cases after federal guidance was issued in 2011 that required the use of the preponderance standard for sexual misconduct cases. At that time, the University of Maryland instituted the preponderance standard for sexual misconduct cases, but did not revise its standard for other misconduct cases (see Senate Document #11-12-10 for more information). Retaining the clear and convincing standard has set UMD apart from its peers, and the OSC reports difficulty based on enforcing two different standards for students. In September 2017, the Department of Education issued revised temporary guidance for sexual misconduct cases indicating that institutions can use either standard for sexual misconduct, but the standard should be consistent across all types of misconduct at the institution. The SCC raised concerns that the University is now out of alignment with federal guidance by having two different standards, and strongly rejected the notion that a higher standard could be used for sexual misconduct cases. The SCC agrees the most appropriate solution is to use preponderance of the evidence for all non-academic misconduct.

In its review, the SCC found that nearly all Big 10 and other peer institutions use the preponderance of the evidence standard. In a survey of approximately 33 institutions, only two institutions use the clear and convincing standard for all misconduct cases (University of North Carolina – Chapel Hill and University of Michigan), and one institution uses clear and convincing only in cases that could result in expulsion or suspension while it uses preponderance of the evidence for all other cases (University of Wisconsin). All other institutions use preponderance of the evidence or a standard not defined in legal terms (see Appendix 3 for more information). The SCC was concerned to find that the University is overwhelmingly out of alignment with its peers in this area.

Preponderance of the evidence is the standard recommended by the Association for Student Conduct Administration, which is the professional association that provides guidance to all campus conduct administrators. Preponderance is also the standard used in civil procedure, and courts have likened administrative student conduct processes to civil procedures, so preponderance is the appropriate standard to use. It is used in many other similar processes in higher education.

During its review, the SCC became concerned about having two different standards for different types of general misconduct cases at the University. The SCC raised concerns about the University's ability to protect student Complainants, especially since under current policy, the same actions occurring in different contexts can result in different findings because of the standard of evidence. For instance, a physical assault that has the same impact and associated evidence as a domestic assault would be treated differently because of the different standards between sexual misconduct and general misconduct. Likewise, incidents involving harassment or stalking could vary in findings because of the different standards. In any cases where a decision needs to be made as to whether it is sexual misconduct or general misconduct, a student Complainant could be harmed by inconsistent standards.

In addition, the SCC found that there are many other cases where students could be harmed by the clear and convincing standard. In cases where evidence is limited and an assessment is based

largely on interviews and witness statements, it can be difficult to reach the higher clear and convincing standard because it requires certainty. For instance, in cases involving physical harm between roommates in the residence halls, it may be possible to establish what is more likely to have happened, but it can be difficult to establish certainty. A change in the standard of evidence would also impact hazing cases; it is often difficult to determine with certainty what happened in cases involving hazing or cases against student organizations, given the significant group power dynamics and the culture of deception that prevents hazing cases from coming to resolution. In cases like these, the SCC felt the preponderance of the evidence standard would provide necessary protection for student Complainants.

The OSC also suggested it would be easier to communicate to students who serve on conduct boards and to students who are affected by the conduct process. Students who are charged with a violation of the *Code* have difficulty understanding why the University has two standards, and often raise concerns about whether the University's processes are equitable due to the difference in standards. Under preponderance of the evidence, boards are trained on how to weigh the evidence and what it means for the evidence to show that it is "more likely than not" that a violation occurred. The preponderance standard seeks to promote a fair and balanced process for both the Respondent and the Complainant or larger community.

The SCC recognized and considered the concerns raised by those it consulted that a preponderance of the evidence standard would greatly increase findings of responsibility and rates of suspension or expulsion. However, the SCC does not anticipate such significant changes. While there may be a slight increase in findings of responsibility, the SCC anticipates any increase would be in cases involving drugs or alcohol where physical evidence is limited but all signs point to responsibility. In these cases, the OSC's intention is to provide educational interventions as a sanction, in order to provide students with the tools they need to make healthy decisions and reach their academic goals. Cases that could potentially result in suspension or expulsion are reviewed very carefully by student conduct boards, and in most cases, there is enough evidence or certainty to rise above the preponderance standard. In addition, despite the change in the standard of evidence, student Respondents retain all rights and due process protections afforded by the *Code*.

### ***Attorney's Role in the Conduct Process***

The SCC determined that the role of attorneys in the conduct process needed to be revised. In the current *Code*, attorneys are allowed to play an active role. Attorneys can make opening and closing statements, advise the student during the proceedings, call witnesses to testify, question all witnesses who appear at the hearings, voice objections, petition for recesses, and "zealously and lawfully assert their client's position under the *Code of Student Conduct*." The SCC's revised *Code* proposes a limited role for attorneys, which allows them to serve as an advisor to the student but prevents them from actively advocating during proceedings. Advisors can provide advice to the student Respondent, but may not speak for the Respondent. This aligns the *Code* with the role of an attorney in other conduct processes; the *Code of Academic Integrity* and the University's Sexual Misconduct Policy both limit the role of attorneys to that of an advisor, where attorneys may advise their clients, but may not speak or be an active participant during the hearings.

After consultation with the OSC, the SCC found significant concerns with the active role attorneys can play in the conduct process. The student conduct process is educational in nature, and as such, it is critical that students participate in the hearing and speak for themselves. Attorneys tend to prevent their client from speaking, and tend to try to focus the hearing on deficiencies of the *Code* and loopholes in the *Code* rather than on the student's behavior. Attorneys often also put student



boards, student presiding officers, and student Community Advocates at a disadvantage. Student conduct boards and Presiding Officers do not have the training to address legal procedures or motions presented by attorneys. Attorneys often create a power and authority imbalance and can intimidate student boards. The SCC felt that requiring students to speak for themselves would allow the educational component of the process to take place, and would eliminate procedural issues created by attorneys.

The SCC also discussed equity concerns related to attorneys, in that not all students can afford an attorney and there are many cases where only one party in a case has an attorney. While not all students have access to an attorney, all students have access to student Advocates through the Office of Student Legal Aid. Student Advocates provide free assistance to students charged with student conduct violations, and can assist students in all aspects of the conduct process, including during the hearing. The SCC's revised *Code* retains the rights of student Advocates, and allows them to make opening and closing statements, ask questions during the hearing, provide advice to the student, and make recommendations on sanctions if appropriate. In practice, the OSC advises each student Respondent to seek assistance from Student Legal Aid, and all students involved in the conduct process should be aware that this resource is available to them.

### ***Group Responsibility***

In fall 2017, the SCC developed revisions to the *Code* to ensure that the OSC has the necessary flexibility to charge student groups and student organizations with violations of the *Code*. The SCC defined groups and organizations clearly in the *Code*, and revised statements throughout the process as appropriate to clarify that groups and organizations can be the Respondent in any conduct case. The OSC has in practice been able to charge groups and organizations as needed, but the SCC felt that additional clarity was needed in order for groups and organizations to better understand their responsibilities under the *Code*.

As it considered the standard of evidence, the SCC determined that the preponderance of the evidence standard would increase the University's ability to hold groups and organizations accountable. In many cases, group dynamics make it difficult to determine if individual students are responsible for misconduct; feelings of loyalty to group members and to the organization cause many students to withhold information. For instance, in cases involving hazing, group members often band together and conceal the truth in order to preserve the status of the organization. In many of these cases, there would likely be enough evidence to find an organization or group responsible by the preponderance of the evidence standard, despite any efforts to conceal the truth from the University.

The SCC's proposed revisions clarify that officers, leaders, or members of a group or organization can be compelled to participate in the conduct process by standing in as the Respondent in a case. If a group or organization is found responsible for a violation of the *Code*, it is subject to sanctions. The revised *Code* clarifies that sanctions can include expulsion (permanent separation from the University), suspension (temporary removal of recognition), or other sanctions such as social moratoriums. In these cases, the individual students in the group or organization would not be expelled or suspended and no notations would appear on their transcripts, but the group or organization as a whole would be prevented from continuing to meet or operate. Sanctions could prevent the organization from receiving funding, soliciting members, using University resources or facilities, or representing the University, among other activities.

### ***Sanctions for Incidents Motivated by Bias***



In fall 2017, the SCC received an addendum to its charge asking it to consider adding language to the *Code* to ensure that cases motivated by hate or bias receive harsher sanctions. In many cases, violations based on hate or bias are under the purview of the Office of Civil Rights & Sexual Misconduct (OCRSM) and the University of Maryland Non-discrimination Policy & Procedures (VI-1.00[B]), rather than the *Code of Student Conduct*. However, the non-discrimination policy indicates that once the OCRSM reaches a finding of responsibility under the policy, the sanction is determined by the Director of Student Conduct using the sanctioning guidelines in the *Code*. The SCC unanimously agreed that cases motivated by hate or bias should receive stricter sanctions, and agreed to incorporate appropriate language into its revised *Code*.

## RECOMMENDATIONS

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The Student Conduct Committee recommends that the *Code of Student Conduct* (V-1.00[B]) be revised in its entirety as indicated in the policy document immediately following this report.

The Student Conduct Committee recommends that the revised *Code* be effective as of January 1, 2018.

The Student Conduct Committee recommends that all University policies and procedures that reference the *Code* be revised to include accurate citations.

## APPENDICES

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- Appendix 1 – Current *Code of Student Conduct*
- Appendix 2 – Visual Representation of Proposed Prohibited Conduct Revisions
- Appendix 3 – Relevant *Code* Provisions at Peer Institutions
- Appendix 4 – Student Affairs Committee Feedback on Proposed *Code* Changes
- Appendix 5 – RHA Resolutions
- Appendix 6 – Charge from the SEC

## Proposed Revised *Code of Student Conduct*

### V-1.00(B) UNIVERSITY OF MARYLAND CODE OF STUDENT CONDUCT

Approved by the Board of Regents January 25, 1980; amended effective September 4, 1990; December 18, 2001; April 22, 2004; November 18, 2005; April 5, 2006; March 10, 2011; January 17, 2012; February 20, 2013; May 9, 2013; (Technical amendments approved by the President September 2, 2015)

This *Code* does not apply to matters of student academic integrity. The policy and procedures document applicable to student academic integrity is III-1.00(A) University of Maryland Code of Academic Integrity at <http://www.president.umd.edu/policies/2014-iii-100a.html>.

This *Code* does not apply to student sexual misconduct. The policy and procedures document applicable to student sexual misconduct is VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures at <http://www.president.umd.edu/policies/2014-VI-160A.html>.

### INTRODUCTION

1. The *Code of Student Conduct* was created to ensure the safety and security of the University community. The *Code*, administered by the Office of Student Conduct, seeks to balance the rights and responsibilities of all individuals within the community, and uphold the integrity and values of the University of Maryland. Reasonable efforts are made to educate and support students in reaching their academic and personal goals while fostering a climate of accountability and responsibility for one's actions. The *Code* outlines behaviors that are inconsistent with University standards and expectations and sets forth applicable procedures and potential sanctions governing *Code* violations.

### The Office of Student Conduct

2. The Office of Student Conduct administers matters involving student discipline. The office is led by the Director of Student Conduct. The Director of Student Conduct grants at their discretion to the Office of Rights and Responsibilities the authority to administer matters involving student discipline, which occur in or around the residence halls and/or on-campus University-affiliated housing owned by, leased from, operated in cooperation with, or supervised by the University. References in this *Code* to the Director of Student Conduct include the Director and designees. The responsibilities of the Office include:
  - a) Determining the disciplinary charges to be filed in accordance with this *Code* and the *Code of Academic Integrity*
  - b) Interviewing and advising parties involved in disciplinary proceedings
  - c) Supervising, training, and advising all conduct boards
  - d) Reviewing the decisions of all conduct boards
  - e) Maintaining all student disciplinary records
  - f) Developing procedures for conflict resolution
  - g) Resolving allegations of student misconduct
  - h) Administering duties set forth in VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures and in VI-1.00(B) University of Maryland Non-Discrimination Policy and Procedures as related to allegations against students.

## **STUDENT RIGHTS AND RESPONSIBILITIES**

### **Standards**

3. When students choose to enroll at the University of Maryland, they accept the rights and responsibilities of membership in the University community both on and off campus. Students at the University of Maryland are expected to uphold the values of the University by conducting themselves in accordance with University policies and procedures.

### **Student Rights**

4. The Office of Student Conduct provides a fair and balanced internal University process for resolving allegations of student misconduct. Students will be treated fairly and with dignity and respect without regard to race, color, sex, gender identity or expression, sexual orientation, marital status, age, national origin, political affiliation, physical or mental disability, religion, protected veteran status, genetic information, personal appearance, or any other legally protected status, as outlined in the University's Non-Discrimination Policy.

### **Student Responsibilities**

5. Balancing students' rights with their responsibilities as members of the University community is imperative to creating mature and engaged citizens. All students are expected to understand and follow University policies and procedures as well as to comply with applicable federal, state, and local laws. Due to the high expectations the University has of its community members, responsibilities set forth in University policies may exceed federal, state, or local requirements.
6. University email is the primary means by which the Office of Student Conduct communicates with students. Students are responsible for reading all official communications delivered to their University email address and are advised to check their email regularly for University communications, including those from the Office of Student Conduct.

### **Standard of Evidence**

7. The focus of disciplinary proceedings is to resolve allegations of student misconduct. Students have the right to be notified of the allegations and specific charges against them, to have access to the information underlying the charges, and to have an opportunity to respond. The preponderance of the evidence standard will be used to determine responsibility for *Code* violations. Preponderance of the evidence means that based on the totality of the evidence, it is more likely than not that the violation occurred. Sanctions are imposed according to the nature and severity of the violation.

### **Definitions**

8. When used in the context of this *Code*, the terms below mean the following:

- a) “University” means the University of Maryland, College Park.
- b) “Student” means either a person enrolled in or auditing courses at the University on a full-time or part-time basis at the time the alleged violation occurred or an individual who may not be enrolled for a particular term at the time the alleged violation occurred but has a continuing relationship with the University.
- c) The term “University premises” means buildings or grounds owned, leased, operated, controlled, or managed by the University.
- d) The term “University-sponsored activity” means any activity on or off campus which is initiated, aided, authorized, or supervised by the University.
- e) The term “student organization” means a group of persons who are associated with each other and who have complied with University requirements for student organization registration.
- f) The term “student group” means a number of persons who are associated with each other but who do not have status as an officially recognized student organization.
- g) “Referral” means a report, complaint, or allegation of misconduct against a student, student group, or student organization.
- h) “Complainant” refers to an individual(s) who has referred a student, student group, student organization, or incident to the Office of Student Conduct based on an alleged violation of the *Code*.
- i) “Respondent” refers to a student, student group, or student organization alleged to have committed a violation of this *Code*.
- j) “Mitigating factors” may be considered in determining sanctions. Factors include, but are not limited to, the present demeanor and past disciplinary record of the Respondent and any steps the Respondent has taken to address their behavior.
- k) “Aggravating factors” may be considered in determining sanctions. Factors include, but are not limited to, the present demeanor and past disciplinary record of the Respondent, as well as the nature of the offense and the severity of any resulting damage, injury, or harm.

## **Jurisdiction**

- 9. This *Code* covers conduct by a student, student group, or student organization that occurs:
  - a) on University premises; or
  - b) at University-sponsored activities; or
  - c) not on University premises, if:
    - i. the conduct would constitute a violation of this *Code* had it occurred on University premises; *and*
    - ii. if the Director of Student Conduct determines that the conduct affects the safety of the University community or the orderly operation of the University.

## **PROHIBITED CONDUCT**

- 10. This list of prohibited conduct is provided to inform students, student groups, and student organizations of behaviors that are not permitted. The list should be read broadly and is not designed to define misconduct in exhaustive terms. Attempts to commit acts prohibited by this *Code* may be sanctioned to the same extent as completed violations. The University

considers prohibited conduct motivated in whole or in part because of an individual or group characteristic or status, or the perception of an individual or group characteristic or status, protected by the University's Non-Discrimination Policy to be an aggravating factor, which may subject the student, student group, or student organization to a more severe sanction than would be imposed in the absence of such motivation.

**a) Offenses Against Persons**

1. Intentionally or recklessly causing physical harm to any person, or intentionally or recklessly causing reasonable apprehension of such harm.
2. Engaging in hazing activities as prohibited by the University's [Policy and Procedures on Hazing](#).
3. Intentionally and substantially interfering with the lawful freedom of expression of others. (Demonstrations, rallies, leafletting, and equivalent activity are addressed by the University Guidelines for Demonstrations and Leafletting.)

**b) Alcohol and Other Drug Offenses**

"Controlled substance" and "illegal drugs" are defined by Maryland law.

1. Unauthorized distribution of any controlled substance or illegal drug, or the production, manufacture, or possession of any controlled substance or illegal drug for purposes of unauthorized distribution.
2. Unauthorized use, production, manufacture, or possession of any controlled substance or illegal drug.
3. Providing alcohol or alcoholic beverages to a person under the legal age of consumption or possession.
4. The illegal or unauthorized consumption, possession, or sale of alcohol or alcoholic beverages.
5. Operating a motor vehicle while intoxicated or impaired by alcohol or other drugs.

**c) Property Offenses**

1. Theft of property, services, or resources, or the unauthorized use of services to which one is not entitled.
2. Knowingly possessing stolen property.
3. Intentionally or recklessly destroying, damaging, vandalizing, tampering with, or defacing University property or the property of others.
4. Trespassing on or the unauthorized use of University facilities, property, or resources.

**d) Community Offenses**

1. Unauthorized on-campus or illegal off-campus use, possession, or storage of any weapon or explosive. The term "weapon" includes any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, and knives with blades five (5) or more inches in length.
2. Intentionally initiating or causing any false report, warning, or threat of fire, explosion or other emergency.
3. Rioting, assault, theft, vandalism, fire setting, or other serious misconduct i) related to a University-sponsored event, occurring on- or off-campus, that results in harm to

- persons or property; or ii) which otherwise poses a threat to the stability of the campus or campus community. Such conduct may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of law.
4. Engaging in disorderly or disruptive action that interferes with University or community activities, including but not limited to studying, teaching, research, and University administration.
  5. Intentionally or recklessly misusing or damaging fire safety equipment.
  6. Unauthorized setting of fires on University property.
  7. Unauthorized use or possession of fireworks.
  8. Public urination or defecation.

**e) Offenses Against University Operations**

1. Intentionally furnishing false information to the University.
2. Making, possessing, providing, or using any forged, altered, or falsified University document.
3. Failure to comply with a directive of University officials, including law enforcement officials, acting in the performance of their duties.
4. Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code* or by the Office of Student Conduct in accordance with other University policies.

**f) Other Offenses**

1. Conviction, a plea of no contest, acceptance of responsibility or acceptance of sanctions in state or federal court for a crime (other than a minor traffic offense) not otherwise prohibited by this *Code*.
2. Making, possessing, providing, or using any forged, altered, or falsified instrument of identification.
3. Violation of published University regulations or policies, including but not limited to, rules addressing conduct in the residence halls, use of vehicles, campus demonstrations, misuse of identification cards, acceptable use of technology resources, non-discrimination, and access to University resources.

## **STUDENT CONDUCT PROCESS**

11. This section provides general information and an overview of the student conduct process. Not all cases are the same, and allegations differ in their severity and complexity. However, the Office of Student Conduct endeavors to treat similar facts and circumstances consistently.
12. Certain conduct may constitute both a violation of law and a violation of this *Code*. Therefore, students may be accountable to both criminal authorities and to the University as a result of the same conduct or incident. The University's student conduct process differs from any legal civil or criminal proceedings. Disciplinary action at the University will normally move forward before or during criminal proceedings, and will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced. The same conduct may also result in civil litigation. Civil litigation is separate and

independent from any University process under this *Code*, and the resolution of any civil legal action by settlement or other means will not resolve a University action for violation of the *Code*.

## **Referral**

13. Anyone may refer a student, student organization, or student group suspected of violating this *Code* to the Office of Student Conduct. Written referrals are preferred. The Office of Student Conduct will review all referrals for reasonable cause; this means that the Office will review the allegations to determine whether there is evidence which, if true, would amount to conduct in violation of the *Code*. If reasonable cause is established, the Complainant should expect to be a participant and provide pertinent information in any future proceedings. In the absence of a determination that there is reasonable cause to proceed, the case may be dismissed.
14. There are no time restrictions on reporting potential *Code* violations to the Office of Student Conduct. However, individuals are encouraged to report incidents as soon as they occur so that witnesses can be identified and important information and documents preserved, in the event there is a reasonable cause determination and the Office determines to move forward.
15. A Complainant may remain anonymous; however, anonymity may limit the University's ability to investigate and respond to a complaint. Retaliation against anyone for reporting an alleged violation of this *Code* is strictly prohibited and persons who retaliate will be considered for further disciplinary action.

## **Interim Measures**

16. Based on the nature and circumstances of the referral, the Director of Student Conduct, in consultation with appropriate University administrators, may authorize interim measures to ensure the safety and well-being of the parties and others in the University community, as appropriate.
  - a) Interim Suspension: The Director of Student Conduct may suspend a student for an interim period pending resolution of disciplinary proceedings. This interim suspension may become effective immediately without prior notice whenever there is evidence that the continued presence of the student in the University community poses a significant threat to themselves or others, or to the stability and continuation of normal University operations. The student will be offered an opportunity to meet with the Director of Student Conduct to review the reliability of the information within five (5) business days from the effective date of the interim suspension. However, there is no guarantee that the student will be permitted to return to campus.
  - b) Cease and Desist: A cease and desist notice may be issued to student organizations or student groups whose continued operation poses a threat to the health and safety of the University community. Directives to cease and desist may be effective immediately without prior notice if there is evidence that the continued presence and operation of the student organization or student group poses a substantial threat to the health and safety of



their members or others in the community (e.g., hazing allegation).

- c) No Contact Directives: No Contact Directives are effective immediately without prior notice whenever there is evidence that the continued interaction of the student with other particular members of the University community poses a substantial threat to themselves or others, or to the stability and continuation of normal University operations. A No Contact Directive applies to both the Respondent and Complainant and prohibits contact between the two by any means.

### **Preliminary Interview**

- 17. After establishing reasonable cause, the Office of Student Conduct or the Office of Rights & Responsibilities will contact the Respondent and request that they attend a Preliminary Interview. The purpose of the Preliminary Interview is to review the allegations with the Respondent and to assist the Respondent in understanding the student conduct process. Respondents may discuss the alleged incident during the Preliminary Interview; however, they are not required to do so. Relevant information shared in this meeting may become part of the case file for future proceedings.
- 18. The officers, leaders, or any identifiable spokespersons for the student group or student organization may be directed by the Director of Student Conduct to act on the group or organization's behalf as the Respondent.
- 19. The Director of Student Conduct may initiate, defer, or dismiss disciplinary charges against a Respondent regardless of whether they choose to attend or discuss the alleged incident during the Preliminary Interview. A deferral of disciplinary proceedings may not exceed a period of 90 days.

### **Resolution Procedures**

- 20. Staff members in the Office of Student Conduct will review referrals to determine whether the alleged misconduct might result in suspension or expulsion from the University or University housing termination. Alleged misconduct which results in or could have foreseeably resulted in significant injury to persons or damage to property, or which otherwise poses a substantial threat to the stability and continuation of normal University or University-sponsored activities, may result in a student's suspension or expulsion from the University or University housing termination. Students who face potential suspension or expulsion from the University or University housing termination have the right to a hearing before the appropriate conduct board, or may waive their right to a student conduct hearing and proceed to have their case resolved in a Disciplinary Conference. Respondents who waive their right to a hearing before a Student Conduct Board and opt for a Disciplinary Conference are subject to the full range of sanctions and also waive their right to an appeal.
- 21. Respondents do not have a right to a hearing before an appropriate conduct board in cases that do not have the potential to result in a student's suspension or expulsion from the University. Such cases are resolved in a Disciplinary Conference.

## Disciplinary Conference

22. A Disciplinary Conference is a resolution meeting between the Respondent and the designee(s) assigned by the Director of Student Conduct who is (are) deciding the case. Respondents participating in Disciplinary Conferences receive the following procedural protections:
- a) Written notice of the charges at least three (3) days prior to the conference;
  - b) Reasonable access to the case file prior to and during the conference;
  - c) An opportunity to respond to the allegations and bring forward any evidence, witnesses, or information on their behalf; and
  - d) The option to be accompanied by an Advocate or Advisor of their choosing as outlined in the section titled “Role of Advocate and Advisor.”
23. The Director of Student Conduct may refer complex or contested cases to a Disciplinary Conference Board for resolution. A Disciplinary Conference Board consists of two students from the University Student Judiciary and a staff member from the Office of Student Conduct.

## Student Conduct Boards and the Hearing Process

24. In Student Conduct Board hearings, a designated panel of board members hears a case, determines facts, renders a decision, and recommends sanctions to the Office of Student Conduct.

### a) University Student Judiciary Boards

Students play an integral role in the student disciplinary process. The University Student Judiciary is a diverse group of students specifically trained in the *Code* and matters related to the University’s Student Conduct Board process, and operates under the direction of the Office of Student Conduct. Students are selected to assume positions of responsibility in the University Student Judiciary for the express purpose of providing student perspective as a part of the student conduct process. Final authority in disciplinary matters, however, is vested in the University administration and in the Board of Regents. Students selected for Student Conduct Boards are selected according to procedures developed by the Director of Student Conduct.

- 1) Resident Board – is a panel of five students from the University Student Judiciary which hears cases involving alleged violations of the *Code* when the incident occurs in or around the residence halls and/or on-campus University-affiliated housing owned by, leased from, operated in cooperation with, or supervised by the University.
- 2) Central Board – is a panel of five students of the University Student Judiciary which hears cases involving violations of this *Code* which are not referred to Resident Boards or resolved in Disciplinary Conferences.
- 3) Ad-Hoc Board – is a panel appointed at the discretion of the Director of Student

Conduct when a Resident Board or the Central Board is unable to convene in a timely manner. An Ad-Hoc Board shall be comprised of three members, including at least one student.

25. All Student Conduct Board hearings, with the exception of an Ad-Hoc Board hearing, are facilitated by a Presiding Officer. The Presiding Officer is a non-voting member of the Board whose role is to exercise control over the proceedings for the purpose of time management and an orderly completion of the hearing. The Presiding Officer may be a trained member of the University Student Judiciary or a staff designee as determined by the Director of Student Conduct.
26. All Student Conduct Boards may be advised by a University staff member as designated by the Director of Student Conduct. A Board Advisor is a non-voting member of the Board and has all the privileges of Board members, including the ability to comment on questions of procedure and on the relevance of evidence, and will otherwise assist in the administration of the hearing.
27. University Student Judiciary members charged with a violation of this *Code*, a University policy, or with a criminal offense may be suspended from their University Student Judiciary positions by the Director of Student Conduct while charges are pending. Students found responsible for *Code* violations or convicted of criminal offenses may be removed from further participation in the University Student Judiciary by the Director. Additional grounds and procedures for removal may also be set forth in the bylaws of the University Student Judiciary.
28. Community Advocates are University community members who are trained to assist or represent the Complainant and present disciplinary cases at Student Conduct Board hearings. Their responsibilities include preparing a formal charge for alleged violations of the *Code* on behalf of the University community, providing brief opening and closing statements, presenting evidence, and other duties as requested by the Student Conduct Board. Community Advocates perform their responsibilities under the oversight of a Campus Advocate designated by the Office of Student Conduct.
29. In all Student Conduct Board hearings, the burden of proof rests upon the Complainant, Campus Advocate, or Community Advocate to establish that it is more likely than not that a Respondent committed a violation of this *Code*.

#### Hearing Procedures

30. The following procedural guidelines shall be applicable in disciplinary hearings:
  - a) Written notice of the specific charges and a hearing date are provided to the Respondent at least five (5) business days in advance of the hearing. Respondents will have reasonable access to their case file maintained in the Office of Student Conduct prior to their hearing. Hearing dates are scheduled in consultation with the parties whenever possible.
  - b) Respondents who fail to appear at a hearing after proper notice will have a plea of “no

contest” to the charges against them entered into the record on their behalf. A decision may be made without the participation or presence of the Respondent at a hearing.

- c) All hearings are closed to the public. Requests for exceptions must be approved at least two (2) business days in advance of the hearing by the Director of Student Conduct.
- d) Hearings may be recorded or transcribed by the Office of Student Conduct, and no other recordings will be permitted. Recordings and transcripts are maintained in the Office of Student Conduct for the purpose of permitting a review by appellate bodies and by staff members in the Office of Student Conduct.
- e) Prior to the start of a hearing, any party may challenge a Student Conduct Board member based on a potential conflict of interest. Board members may be disqualified due to a conflict of interest upon majority vote of the remaining members of the Board conducted by secret ballot, or by the decision of the Director of Student Conduct.
- f) Formal rules of evidence are not applicable to Student Conduct Board proceedings. The Presiding Officer of each Student Conduct Board shall admit all matters into evidence which reasonable persons would accept as relevant, significant, and important to the issues being decided in the case. Unnecessarily repetitious, irrelevant, or prejudicial evidence may be excluded at the discretion of the Presiding Officer.
- g) Both parties will be provided an opportunity to question witnesses who testify at hearings.
- h) All parties and witnesses will be excluded during Student Conduct Board deliberations. The parties will be informed when a determination of responsibility has been made, and will be given an opportunity to submit evidence or make statements concerning appropriate sanctions. At this time, character witness statements or letters of reference may be provided to the Student Conduct Board. The Student Conduct Board shall hold a separate session to review sanction recommendations, during which it may consider aggravating and mitigating factors. The past disciplinary record of a student shall not be provided to the Student Conduct Board prior to a determination of responsibility.
- i) Final decisions of all Student Conduct Boards shall be by a majority vote of the members present and voting. A tie vote on a determination of responsibility for a *Code* violation will result in a finding of “not responsible.”
- j) Final decisions of all Student Conduct Boards, except Disciplinary Conference Boards, shall be accompanied by a brief written report.

#### Role of Advocate

31. The Respondent may be assisted by an Advocate, who must be a registered, degree-seeking student at the University. The role of the Advocate is limited to:

- a) Making brief opening and closing statements;
- b) Asking relevant questions, which may be directed to witnesses;
- c) Providing confidential advice to the student; and
- d) Following a determination of responsibility, making recommendations regarding sanctions, if appropriate.

#### Role of Advisor

32. The Respondent may also choose to be assisted by an Advisor of their choice, including an attorney, at their own initiation and expense. The Advisor is present to provide advice and consultation to the Respondent. If necessary, the Respondent may request a recess in order to speak privately with an Advisor. The Advisor shall not be an active participant in the hearing. The Advisor may not speak for the Respondent, advise the Advocate, serve as a witness, provide evidence in the case, delay, or otherwise interfere with the University's disciplinary process.

#### Role of Support Person

33. Respondents may choose to be supported by a Support Person of their choice to provide emotional and logistical support. A Support Person shall not be an active participant in the process.
34. As a general practice, disciplinary proceedings will not be delayed due to the unavailability of an Advocate, Advisor, or Support Person.

#### **Witnesses**

35. The Presiding Officer of any Board may direct a witness to appear before the Board upon the request of any Student Conduct Board member, at the request of either party, or at the request of the Board Advisor. Directives for witnesses to appear must be approved by the Director of Student Conduct. University students and employees are expected to comply unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities.
36. If the Director of Student Conduct determines that a fair hearing cannot be held without the testimony of a particular witness and after good faith attempts are made to notify the witness, if the witness either fails to or refuses to appear, the hearing will be postponed until the witness agrees to appear or the charges will be dismissed.
37. Witnesses will be asked to sign an 'Honesty Statement' affirming that the information they present during the hearing will be truthful and accurate. Students who knowingly provide false information may be charged with a violation under this *Code*.
38. Prospective witnesses, other than the Complainant and the Respondent, may be excluded from the hearing during the testimony of other witnesses.
39. Witnesses may expect to be questioned by the Complainant, Respondent, the respective Advocates, and Board members during hearing proceedings.
40. A witness who is unable to attend the hearing, may submit a signed statement to the Office of Student Conduct prior to the hearing. Statements will not be admitted into evidence unless signed by the witness in the presence of a staff member in the Office of Student Conduct or a

person designated by the Director of Student Conduct.

## Sanctions

41. Students found responsible for disciplinary offenses are subject to sanctions. The aims of sanctioning are to protect the campus community, deter future offenses, promote individual accountability, and enhance ethical development. Reasonable efforts are made to educate and support students in reaching their academic and personal goals while fostering a climate of accountability and responsibility for one's actions. However, the University is not designed nor equipped to rehabilitate or incapacitate persons who pose a substantial threat to themselves or others. The following sanctions may be imposed by the Director of Student Conduct for violations of the *Code*:

- a) Expulsion: permanent separation of the student, student organization, or student group from the University. In the case of individual students, a permanent notation will appear on the student's transcript. The student will also be barred from University premises. (Expulsion requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred, or withheld.)
- b) Suspension: separation of the student, student organization, or student group from the University for a specified period of time. In the case of individual students, a permanent notation will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises during the period of suspension. Suspended time will not count against any time limits required by the Graduate School for completion of a degree. (Suspension requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred, or withheld.)
- c) Disciplinary Probation: the student is prohibited from representing the University in any extracurricular activity or from running for or holding office in any student or University organization. Additional restrictions or conditions may also be imposed.
- d) Disciplinary Reprimand: warning to the student that further misconduct may result in more severe disciplinary action.
- e) Educational Sanctions: may be imposed in addition to those specified above with the intent of providing the student with learning, assistive, or growth opportunities. Alcohol or other drug education, research or reflective assignments, community service, values/ethics-based activities, or other sanctions may be assigned.
- f) Other Sanctions: other sanctions may be imposed in addition to those specified above. For example, students may be subject to University housing termination for disciplinary violations which occur in the residence halls. Likewise, students may be subject to restrictions upon or denial of driving privileges for disciplinary violations involving the use or registration of motor vehicles. Students may be required to pay fines or to make payments to the University or to other persons, groups, or organizations as restitution for

damages incurred as a result of a violation of this *Code*. Student groups or student organizations may be subject to social moratorium (prohibited from hosting, sponsoring, or attending events where alcohol is present), or other relevant restrictions and sanctions as determined by the Director of Student Conduct.

42. Repeated or aggravated violations of any section of this *Code* may also result in expulsion or suspension or in the imposition of lesser sanctions as deemed appropriate.
43. Any decision to impose a sanction less than suspension or expulsion for event-related misconduct must be supported by written findings signed by the Vice President for Student Affairs. A student suspended under this section shall not be admitted to any other institution in the University of Maryland System during the term of the suspension. A student expelled under this section shall not be admitted to any other institution in the System for at least one year from the effective date of the expulsion.

## **Appeals**

44. The Respondent may appeal both a finding of responsibility and the sanction resulting from a Student Conduct Board hearing. The scope of the appeal is limited to the grounds outlined below. Mere dissatisfaction with the decision and sanction is not a valid basis for appeal.
45. An appeal must be submitted in writing within five (5) business days from the date of the letter providing notice of the outcome. At the discretion of the Director of Student Conduct, extensions may be granted with written permission in extenuating circumstances. If an appeal is received by the Office of Student Conduct, the Campus Advocate will be notified and given an opportunity to respond. Responses shall be submitted directly to the Office of Student Conduct.
46. Appeals of decisions resulting in suspension or expulsion will be decided by the University Senate Student Conduct Committee Appellate Body, which is comprised of three members from the Student Conduct Committee including at least one student. Appeals of decisions resulting in sanctions other than suspension or expulsion will be decided by the Appellate Board, which is a branch of the University Student Judiciary and is comprised of students.
47. If the Respondent does not submit an appeal, the decision and sanction are final after five (5) business days from the date of the letter providing notice of the outcome. Appeals submitted after five (5) business days shall be denied. The Director of Student Conduct has the discretion to defer the imposition of sanctions pending any appeal.
48. Grounds for an appeal shall be limited to:
  - a) Substantial Procedural Error

Procedural errors or errors in interpretation of University policy that were so substantial as to effectively deny a Respondent notice or a fair opportunity to be heard. Deviations from procedures that were not so substantial as to deny a Respondent notice or a fair



opportunity to be heard will not be a basis for granting an appeal.

b) Disproportionate Sanction

The sanction is substantially disproportionate to the offense, which means it is far in excess of what is reasonable given the facts or the circumstances of the violation.

c) Arbitrary and Capricious

An arbitrary and capricious decision is a decision without a rational basis or that is not supported by any evidence in the case.

d) New Evidence

New and significant relevant information has become available which a reasonably diligent person could not have discovered before or during the original hearing.

When the basis of the appeal is new evidence, the appellate body will determine whether the information is new and was unavailable at the time of the hearing. If the appellate body determines that the information is not new and was available at the time, the appeal will be denied. If the information is determined to be new and unavailable at the time of the hearing, the appellate body will consider whether the new information could have changed the outcome of the original hearing. If it is determined that the outcome could have been impacted by the new evidence, the case will be sent back to the original hearing board for further review.

49. Appeals are not intended to allow for a second review of the facts of the case and determination of whether there was a violation. A review of the matter will be prompt and narrowly tailored to the stated grounds for appeal. In most cases, appeals are confined to a review of the written record and the relevant documentation regarding the grounds for appeal. In all cases, deference shall be given to the determinations of the lower board.

50. The appellate body will consider the appeal and may:

- a) Affirm the Decision and the sanction imposed;
- b) Affirm the Decision and reduce, but not eliminate, the sanction;
- c) Remand the case to a new hearing board, if there were procedural or interpretation errors;
- d) Remand the case to the original hearing board in accordance with procedures outlined under “New Evidence”; or
- e) Dismiss the case if the decision is determined to be arbitrary and capricious.

51. Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct. Decisions of the Senate Student Conduct Committee Appellate Body shall be recommendations to the Vice President for Student Affairs. Decisions altering the determinations of all hearing boards and the Senate Student Conduct Committee Appellate Body shall be accompanied by a brief written opinion.

## **Disciplinary Records**

52. Students, student groups, and student organizations found responsible for violations of this *Code* will have a disciplinary record. Disciplinary records are maintained by the Office of Student Conduct for a period of three (3) years from the date of the letter providing notice of final disciplinary action. Disciplinary records may be retained for longer periods of time or permanently, if specified in the sanction. Disciplinary records of students, student groups, or student organizations with a sanction of suspension or expulsion will be retained permanently unless otherwise specified.
53. Students may petition the Office of Student Conduct to void their disciplinary record early, for good cause. Factors to be considered in review of such petitions shall include:
- a) the present demeanor of the Respondent;
  - b) the conduct of the Respondent subsequent to the violation; and
  - c) the nature of the violation and the severity of any damage, injury, or harm resulting from it.
54. Denials of petitions to void disciplinary records can be appealed to the Senate Student Conduct Committee Appellate Body, which will consider the appeal using the grounds for appeal outlined in Part 48.c. Such an appeal must be submitted in writing within five (5) business days from the date of the letter providing notice of the original decision. Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.