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## **Student Code of Conduct Procedures**

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These grievance procedures govern Student Code of Conduct violations, except those involving academic integrity. "Sexual misconduct" includes the definition in ABOR policy 5-308 (E) (20), stalking as defined in ABOR policy 5-308(E)(21), as well as any code violations related to domestic or dating violence.

The term "parties" refers to the Dean of Students and the student charged with misconduct. In sexual misconduct matters or other matters involving violence, the person(s) against whom the alleged misconduct was committed also has the opportunity to participate as a party if they are a member of the University community (e.g., faculty, staff, student, or affiliate).

These procedures provide a fair and impartial administrative process. Consistent with ABOR 5-308(A)(3), "a student can be found responsible under the Student Code of Conduct even if the underlying conduct would not also constitute a criminal offense, and even if a prosecutor has determined not to prosecute [the underlying conduct] as a criminal matter or the student has been found not guilty in a criminal proceeding."

The responsibilities of the Senior Vice President for Educational Outreach and Student Services or the Dean of Students under this policy may be performed by a designee.

### **A. Goals of the Student Code of Conduct and Procedures**

1. The ABOR Student Code of Conduct sets forth the standards of conduct expected of students who choose to join the university community.
2. When a student violates the ABOR Student Code of Conduct, they will be held accountable and appropriate remedial action will be taken to address the violation. Remedial actions are meant to be educational, not punitive. They affirm university standards and encourage students to make better choices in the future. Remedial actions may include administrative actions, educational interventions, and/or discipline.
  - a. Administrative actions include, but are not limited to: probation, warning, administrative hold, restricted access to university property, and interim actions such as interim suspension, immediate removal from university housing, or exclusion from one or more classes. Administrative actions are not disciplinary.
  - b. Educational interventions include, but are not limited to: completing an educational program at the student's expense, writing a paper, engaging in community service, or any other assignment to address the student's conduct. These educational interventions are not considered discipline and processes leading to assignment of an educational intervention are not considered

disciplinary proceedings.

- c. Disciplinary sanctions include: suspension (except for an interim suspension which is an administrative action), expulsion, or degree revocation. The effective date of a suspension (except for an interim suspension) or expulsion may be no sooner than five (5) business days following the date of the notice.

## **B. Initiation of Investigation**

1. On receipt of information from any source that a student may have violated the Student Code of Conduct, Student Rights and Responsibilities will evaluate the information to determine an appropriate course of action to gather the facts concerning the alleged violation. A student alleged to have violated the Student Code of Conduct will be provided notice of the alleged misconduct and will be provided an opportunity to respond.
2. Where the alleged misconduct is related to discrimination or harassment, Student Rights and Responsibilities will inform the Office of University Rights and Responsibilities and in sexual misconduct cases, the Title IX Coordinator
3. Student Rights and Responsibilities will provide the parties with written information on supportive services available at the university and in the community.

## **C. Interim Action**

1. If the Dean of Students is aware of information that supports a misconduct allegation that may lead to imposing a disciplinary sanction, and the Dean believes that the student poses a threat of harm or substantial disruption, the Dean may take administrative action to restrict or suspend a student for an interim period. The interim action will remain in effect until a final decision has been made on the pending charges or until the Dean of Students believes that the reason(s) for imposing the interim action no longer exist.
2. The decision to restrict or suspend a student for an interim period, and the information upon which the interim restriction or interim suspension is based, will be communicated in writing to all parties.
3. A student who is restricted from campus or suspended for an interim period may request an opportunity to provide information to contest the restriction or interim suspension no later than five (5) business days following the effective date of the interim action. Based on information provided, the Dean of Students will determine whether the restriction or interim suspension should remain in place, be modified, or be lifted. The parties shall have an equal opportunity to provide information relevant to the restriction or interim suspension.
4. The Dean of Students may impose other forms of interim administrative action, such

as, but not limited to, immediate removal from university housing, exclusion from one or more classes, or exclusion from other specific locations.

#### **D. Investigation Process**

1. If Student Rights and Responsibilities believes that there is sufficient basis that a violation of the Student Code of Conduct may have occurred, they will notify the student in writing of the alleged violation and initiate an investigation.
2. Members of the university community are expected to comply with any request or directive issued by Student Rights and Responsibilities in connection with an investigation.
3. Student Rights and Responsibilities will provide advance notice to a party of any code of conduct meeting with the party. In addition, a party will be given access to information that will be used during the code of conduct meeting as permissible under the Family Educational Rights and Privacy Act (FERPA).
4. Student Rights and Responsibilities will provide all parties the following:
  - a. An explanation of the charges which have been made;
  - b. A summary of the information gathered;
  - c. A reasonable opportunity for the student to reflect upon and respond to the charge(s); and
  - d. An explanation of the applicable code of conduct procedures, including the right to request a hearing before a University Hearing Board if a disciplinary sanction is imposed.
5. Before concluding an investigation, Student Rights and Responsibilities will provide the parties with an opportunity to respond to all investigative materials.
6. Students may accept responsibility for Student Code of Conduct violations and waive their rights to procedures provided by this policy. A student who fails to attend the meeting with Student Rights and Responsibilities will forfeit the right to respond to the alleged violation, unless the student can demonstrate that an extraordinary circumstance prevented the student's appearance. If the student fails to attend the meeting, the Dean may proceed as described in paragraph E of this subsection.

#### **E. Determination and Appeal**

1. The Dean of Students will determine whether it is more likely than not that a violation of the Student Code of Conduct has occurred and, if so, the appropriate administrative action, educational intervention, and/or disciplinary sanction to apply.
2. In determining the administrative action, educational intervention, or disciplinary sanction, the Dean will consider any mitigating or aggravating factors, including any

prior violations of the Student Code of Conduct. In sexual misconduct cases, the Dean will endeavor to make the determination within sixty (60) days from the opening of the conduct file. Reasons for any delay will be documented.

3. The Dean of Students will provide the parties a written decision within five (5) business days of making the determination. When feasible, Student Rights and Responsibilities will communicate this information in a meeting with the student(s). The written decision will state whether the charge(s) was substantiated. If substantiated, the decision will state the administrative action, educational intervention, or disciplinary sanction to be imposed. This decision is final unless a party requests a hearing to review a disciplinary sanction.
4. If a disciplinary sanction is imposed, the student (and in sexual misconduct cases, the complainant if a member of the University community) will be informed of the right to request a hearing before a University Hearing Board by filing a written request with the Dean of Students no later than five (5) business days following the date of the written decision.
5. The filing of a timely written request for a hearing will suspend the imposition of the disciplinary sanction (except for interim restriction(s) or interim suspension which shall continue) pending the outcome of the hearing. A student who requests a hearing of a disciplinary sanction of suspension or expulsion will not be permitted to graduate until the hearing process has been concluded. If the disciplinary sanction is degree revocation, the university may refuse to release an official transcript until the hearing process has been concluded. If no hearing request is received within five (5) business days following the date of the written decision, then the decision is final and effective immediately.

#### **F. University Hearing Board Disciplinary Proceedings Review**

1. Purpose of the Hearing Board. The Hearing Board is the body that conducts hearings concerning disciplinary sanctions. It is advisory and provides a recommendation to the Senior Vice President for Educational Outreach and Student Services who will make the final decision.
2. Composition of the Hearing Board.
  - a. The Hearing Board will be comprised of three members. One member must be a student and one of the other members will act as Hearing Board Chair.
  - b. Each Hearing Board member shall at a minimum receive annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

### 3. Pre-Hearing Procedures

- a. The Hearing Board members will be notified in writing of their selection.
- b. The Hearing Board Chair shall set a hearing date no later than (90) calendar days after receipt of the request for hearing.
- c. The Hearing Board Chair will prepare and send a written notice of the hearing to the parties no less than twenty calendar (20) days before the date set for the hearing. The notice will be directed to the student's ASU e-mail address. The notice will include:
  - 1) A statement of the date, time, location, and nature of the hearing, including a statement of the Hearing Board's jurisdiction;
  - 2) A copy of the disciplinary sanction letter containing references to the code violations and a short statement describing the misconduct;
  - 3) A notice of the right to be assisted by an advisor or represented by an attorney which explains that exercise of this right is at the option of the party and at the party's sole expense;
  - 4) A copy of or link to the Student Code of Conduct and the "Student Code of Conduct Procedures";
  - 5) A list of the names of all Hearing Board members, and the university address of the Chair;
  - 6) The length of time set for the hearing and the time limitation for the presentation of evidence; and
  - 7) In sexual misconduct cases, notice regarding the restrictions on evidence of past sexual history and notice that the parties may not directly question one another but must submit written requests to the Chair.
- d. If any of the parties cannot attend the hearing on the date scheduled for the hearing due to extraordinary circumstances, the Hearing Board Chair must be notified in writing stating the circumstances why attendance cannot occur at the hearing on the date scheduled. The Hearing Board Chair will determine whether to approve or deny the request to reschedule the hearing.
- e. No later than five (5) business days before the hearing, the parties shall exchange and provide a copy to the Hearing Board of the following:
  - 1) A list of the names of the witnesses who may be called to testify at the hearing;

- 2) A concise summary of the anticipated statements of each witness;
  - 3) Copies of all documents to be presented at the hearing; and
  - 4) If an advisor or attorney is being used, the name of the advisor or attorney.
  - 5) In addition, the university shall provide the name and title of the university representative.
- f. The Hearing Board Chair or designated staff shall confirm the parties' attendance at the hearing. If the party (or parties) who requested the hearing fails to confirm attendance at least five (5) business days in advance of the hearing, that party will be deemed to have abandoned the request for a hearing. If none of the parties who requested a hearing have confirmed attendance, the hearing may be cancelled.
  - g. To object to a document, a party must submit a written objection to the Hearing Board Chair no later than one (1) business day before the hearing. After providing the other party an opportunity to respond, the Hearing Board Chair shall rule on any objections to submitted documents. Absent a timely objection, the documents received by the Hearing Board shall become part of the record and shall be considered.
  - h. A party may challenge the participation of any Hearing Board member on the grounds of personal bias by submitting a written statement to the Hearing Board Chair setting forth the basis for the challenge no later than five (5) business days before the hearing. The Chair will determine whether to sustain or deny the challenge. If a challenge is filed against the Chair, the Senior Vice President for Educational Outreach and Student Services will rule on the challenge. If the challenge is sustained, a replacement member will be appointed to serve on the Hearing Board.
  - i. Members of the university community are expected to comply with any request or directive issued by the Hearing Board Chair in connection with a disciplinary proceeding. Upon specific request, the Chair will send a communication to a member of the university community requesting the community member's presence at the hearing and giving notice of the university's expectations.
  - j. The Hearing Board Chair may extend the times and deadlines required by these rules for good cause.
4. Conduct of the Hearing
    - a. In order to preserve the confidential nature of the disciplinary process and to protect the privacy interests of those involved, the hearing will be closed to the public. Appropriate university administrators or staff may attend the hearing.

- b. The Hearing Board Chair will preside at the hearing and will rule upon all procedural matters. The formal rules of evidence will not apply, although objections to the introduction of specific statements or documents may be considered by the Hearing Board Chair. Irrelevant, immaterial, privileged, or unduly repetitious information will be excluded.
- c. The Dean of Students office has the burden of proving that the student more likely than not violated the Student Code of Conduct. The Dean of Students office also must explain the reason for the sanction. If the student accepts responsibility for the violation charged, then the Hearing Board may focus the hearing on the appropriate disciplinary sanction.
- d. Information regarding prior misconduct may not be used as proof of a current violation, but may be admitted for other purposes, such as to show that the student had prior experience relevant to the charge or to show that the student had been informed previously that the conduct was not acceptable. The Hearing Board may also consider information regarding prior misconduct in determining an appropriate disciplinary sanction.
- e. Any party who requested a hearing and who fails to appear or refuses to participate at the hearing will be deemed to have abandoned the request for an appeal, unless the student can demonstrate that an extraordinary circumstance prevented the student's appearance or participation.
- f. Any party may be assisted throughout the proceeding by an advisor. If the student or complainant is represented by an attorney, the Dean of Students office may also be represented by an attorney. An advisor or attorney may present the case for the party or may simply act as an advisor.
- g. The hearing will be recorded manually or by a recording device and will be transcribed in whole or in part on request. The requestor will pay the cost of the transcript unless the Senior Vice President for Educational Outreach and Student Services waives the cost.
- h. Except as otherwise permitted by the Hearing Board Chair, witnesses will be excluded from the hearing except during their own testimony. In sexual misconduct cases, the parties have the right to be present throughout the hearing. If the person against whom the alleged sexual misconduct was committed is not a member of the University community, they too will be allowed to be present throughout the hearing.
- i. In sexual misconduct cases, the student and the person against whom the alleged misconduct was committed may not directly question one another.
- j. The Hearing Board Chair shall provide procedures for the submission of written

questions and will determine which questions will be permitted. The party to whom the question is directed will have an opportunity to respond on the record. The impermissible questions shall be read into the record, and the party who submitted the question will have an opportunity to explain the relevance of the question.

- k. In sexual misconduct cases, evidence related to the complainant's sexual history will not be admitted.
- l. The university shall proceed first at each stage of the presentation. The student appealing the decision shall go last.
  - 1) Each party may present an opening statement, which summarizes what information is expected to be presented.
  - 2) Each party will call witnesses to provide statements under oath.
  - 3) At the conclusion of each witness statement, the witness may be questioned by the other party.
  - 4) The Hearing Board may ask further questions of each witness.
  - 5) Rebuttal witnesses may be called to refute statements made by any party.
  - 6) Each party may present a closing statement which summarizes the information that has been presented.

#### **G. Hearing Board Deliberations and Recommendation**

1. Following the presentation of information and closing statements, and before reaching a decision, the Hearing Board will discuss the information that has been presented and the reasonable inferences to be drawn from it. Only the Hearing Board and its legal advisor, if any, may be present during the deliberations.
2. Based solely upon the information presented, the Hearing Board will formulate a recommendation to the Senior Vice President for Educational Outreach and Student Services as to whether the student more likely than not violated the Student Code of Conduct and the appropriate disciplinary sanction. Recommendations must be supported by a simple majority of the board.
3. The Hearing Board Chair will provide a written recommendation to the parties, the Dean of Students, and the Senior Vice President for Educational Outreach and Student Services (and in sexual misconduct cases the Title IX Coordinator) no later than three (3) business days following the conclusion of the hearing. The written recommendation will include findings of fact and a statement of the reasons for the recommendation and will be signed by the Chair. If the recommendation is not



unanimous, it should also explain any minority opinions.

#### **H. Review and Decision by Senior Vice President for Educational Outreach and Student Services**

1. Following a review of the Hearing Board's recommendation, the Senior Vice President for Educational Outreach and Student Services will render a written decision which affirms, denies, or accepts the Hearing Board's recommendation with modifications. The written decision shall be issued no later than twenty (20) business days following receipt of the Hearing Board's recommendation, except when it becomes necessary to conduct further investigation or to remand the matter to the Hearing Board. In those cases the written decision will be transmitted no later than twenty business days following completion of the investigation or the Hearing Board's subsequent recommendation.
2. If the Senior Vice President for Educational Outreach and Student Services does not accept the Hearing Board's recommendation, the Senior Vice President will explain any variance from the recommendation in the final decision.
3. Copies of the written decision will be promptly transmitted to the parties and the Dean of Students (and in sexual misconduct cases the Title IX Coordinator). The written decision will be sent via email to the parties' email address on record with the University.
4. The decision of the Senior Vice President for Educational Outreach and Student Services is a final decision from the date it is issued, unless a timely written request for review or rehearing as described in paragraph I is received by the Senior Vice President.
5. The letter from the Senior Vice President will also provide notice to the parties of the right to seek judicial review pursuant to A.R.S. §12-904.

#### **I. Request for Review or Rehearing**

1. Any party who is dissatisfied with the decision reached by the Senior Vice President for Educational Outreach and Student Services may request a review or rehearing by filing a written request with the Senior Vice President and sending a copy to all parties within fifteen (15) business days after the decision is issued. Any party may file a written response to the request within five (5) business days of the request.
2. A review or rehearing is not an appeal; it is an opportunity to make the decision-maker aware of irregularities or illegalities in the proceedings or of significant new evidence that could not have been provided to the Hearing Board for consideration before its decision. The request may only be based on one or more of the following grounds:

- a. irregularities in the proceedings, including but not limited to any abuse of discretion or misconduct by the Hearing Board or by the Dean of Students, which deprived the opportunity for a fair and impartial disciplinary process;
  - b. newly discovered material evidence which could not have been presented during the fact-finding or hearing process;
  - c. excessive severity of the sanction; or
  - d. the decision is not reasonably justified by the evidence or is contrary to law.
3. Following receipt of a request for review or rehearing, the Senior Vice President for Educational Outreach and Student Services will first determine whether the request sets forth a proper ground for review or rehearing and then will make whatever review is deemed necessary.
  4. The Senior Vice President for Educational Outreach and Student Services will provide a written response to the request for review or rehearing within fifteen (15) business days of receipt of the request. The response shall be sent to the parties via email to the parties' email address on record with the University and to the Dean of Students (and in sexual misconduct cases to the Title IX Coordinator). The Senior Vice President may uphold or modify the previous decision or grant a rehearing on the issues raised by the request. The decision of the Senior Vice President is final.

**Last updated: September 25, 2018 (April 25, 2019, clerical error correction made to Section F.3., which contained two subparagraphs labeled “e.” and erroneously omitted “i.” Thus, the last 5 lettered subparagraphs in F.3. erroneously lettered as “e., f., g., h., j.” were correctly re-lettered f., g., h., i., j.) ; October 16, 2019, page 2, paragraph B.2. amended to substitute Office of University Rights and Responsibilities for Office of Equity and Inclusion.**