

APPENDIX A

THE UNIVERSITY OF OKLAHOMA
Student Rights and Responsibilities Code
PROCEDURES

2011-2012

I. Overview

The University will administer the Student Rights and Responsibilities Code (“the Code”) according to the following procedures, except as noted and effective beginning September 19, 2011. All cases under this Code will include a Student Conduct Notice and require a Mandatory Meeting between the student and the Student Conduct Office (“Student Conduct”).

If a case is not resolved at the Mandatory Meeting (as discussed below), a case could, assuming deadlines and conditions are met, advance to a hearing. Depending on the type of charge and/or sanction involved, differing procedures for the hearing and selection of panel members may apply. However, all cases not resolved at the Mandatory Meeting go before a hearing panel (the “Hearing Panel”). The Hearing Panel’s hearings fall within one (1) of two (2) categories: (A) general charges, and (B) sexual misconduct charges. For any charge involving a sanction of expulsion, additional procedural safeguards apply. At the conclusion of the hearing and findings, either party may seek an appeal on the written record before an Appellate Panel. Either party may appeal the finding of the Appellate Panel in writing to the Vice President for Student Affairs (“UVPSA”), who in collaboration with the appropriate University official vested with authority over the relevant area, shall render a decision on the written record, and whose decision is final. However, differing appellate options are available in expulsion cases.

The respective campus Director of Student Conduct or the Chair of the Hearing Panel may extend or accelerate existing timelines, as well as establish and enforce additional deadlines not stated in these procedures as necessary for prompt and effective case resolution. Further, the UVPSA in collaboration with Legal Counsel and the respective campus Provost and the respective campus Director of Student Conduct may modify these procedures at any time, as a whole or on a case-by-case basis where necessary to comply with applicable law, regulation, guidance or as deemed appropriate.

II. Commencement of a Conduct Process

Student Conduct may initiate the conduct process on the basis of information received from any source, including but not limited to an individual, a University official, a residence hall official or a law enforcement agency. Upon receipt of such information, the appropriate Director of Student Conduct may review the allegations and decide whether they fall within the jurisdiction of the Code and whether conduct proceedings should occur. Student Conduct may (A) initiate conduct proceedings by sending the student a Student Conduct Notice; (B) resolve the situation through an informal resolution process; or (C) dismiss the charge.

Student Conduct shall promptly forward allegations of a violation of the University’s Sexual Assault, Discrimination, and Harassment Policy in writing to the University’s Sexual Misconduct Officer (“SMO”). The SMO will investigate any such claims and make a report to the Director of Student Conduct on the respective campus, who will be responsible for filing any applicable charges under the Code.

A. Student Conduct Notice

When Student Conduct initiates conduct proceedings, it sends a Student Conduct Notice to the student who is the subject of the report or complaint via the student's University email address. Notice to the student will be considered furnished once a Student Conduct Notice complying with the following is delivered to the student’s University email account or where certified mail is required by law, the delivery date of the mail.

The Student Conduct Notice shall include:

1. A description of the alleged misconduct;
2. A citation to the Code provisions that are alleged to have been violated;
3. A brief explanation of the Student Conduct process; and
4. An explanation that the student must set up an administrative review meeting (Mandatory Meeting) with the conduct officer within five (5) days, or such shorter time as the Director of Student Conduct specifies.

Likewise, a “no contact” order shall be deemed sufficient if delivered via the student’s University email address or as otherwise required by law. If a “no contact” order is issued, it is the responsibility of the student not to have any contact with the individual(s) named, directly or through third parties, as specified in the order. Failure to comply with this order may result in additional disciplinary action.

B. Mandatory Meeting

Student Conduct will meet with the charged student to explain the conduct process, answer any questions the charged student may have, and allow the charged student an opportunity to respond to the allegations contained in the Student Conduct Notice. The charged student may be advised by an advisor or attorney (collectively referred to as “advisors”) of his or her choosing prior to the meeting, but no advisors shall be present at the meeting.

When the Director of Student Conduct of the respective campus determines that prompt action is essential (e.g., during University orientation, toward the end of the semester, the student is nearing graduation, or there is substantial concern for the health, safety, or welfare of a member of the University community as with a Direct Administrative Action), the Director of Student Conduct may require that the charged student meet within one (1) day of receipt of the Student Conduct Notice if the student resides on campus, or two (2) days if the charged student resides off campus. The University may give notice in these cases by the telephone number provided in oZone, PeopleSoft or by the student’s University email address.

If, during the Mandatory Meeting, the charged student agrees that his or her behavior constitutes a violation of the Code, Student Conduct will discuss with the charged student the violation and any relevant circumstances. After considering any additional information the charged student has presented, Student Conduct shall determine sanctions. If the charged student disagrees with the finding of Student Conduct, the student may request a hearing in writing within two (2) days of the Mandatory Meeting, as applicable.

C. Failure to Respond / Default

If the charged student does not schedule or attend a Mandatory Meeting by the date specified in the notice, or fails to follow instructions or submit requested documentation or information within a reasonable specified amount of time, Student Conduct may decide the outcome of the case in the charged student’s absence. In such cases, the student, by failing to respond or participate, shall be in default and will have waived any right to further process under this Code.

III. Hearing Panel Process

A Hearing Panel pool shall be established annually on each of the University’s three (3) main campuses, comprised of members appointed by the UVPSA and the respective Provosts upon the recommendation of the applicable faculty senate Chair, staff senate Chair, and student body president. Each pool shall consist of at least ten (10) faculty members, ten (10) staff members and ten (10) students from

representatives of each campus, and specific representatives may also be appointed from professional schools where a violation of an ethical or professional code is alleged. Each member of the pool shall serve a two-year term and may be reappointed or removed at any time. All members of each pool will receive general hearing training along with specialized training regarding sexual misconduct and expulsion cases.

Upon need for a hearing, the UVPSA or his/her designee shall schedule and select a Hearing Panel randomly from the appropriate pool. If the charges involve sexual misconduct, no appointed panel member may be a student. Generally, the hearing procedures noted below apply to all hearings except as required for sexual misconduct and/or cases involving expulsion as noted below.

- A. Each Hearing Panel shall consist of three (3) members; one (1) of whom must be a student, except in cases involving sexual misconduct or the Sexual Assault, Discrimination, and Harassment Policy, in which case, no student may sit on the Hearing Panel. One (1) faculty or staff member of the Hearing Panel will serve as the Chair and shall be responsible for management of the Hearing Panel.
- B. Student Conduct shall train the Hearing Panel pool at least annually. Any Hearing Panel member who believes he or she is unable to be an objective participant for a given hearing is expected to remove herself/himself for that particular hearing.
- C. In all aspects of these procedures with respect to sexual misconduct cases where rights are provided to the “reporting party,” the reporting party is the alleged survivor. The Director of Student Conduct for the respective campus, the charged student, and the reporting party (in sexual misconduct cases) have the opportunity to object to the composition of the Hearing Panel based upon any panel member’s inability to be an objective participant for the matter. The UVPSA shall make a final determination in any case where there is timely objection to and disagreement as to whether a panel member should be removed.
- D. Upon receipt of the request for hearing by the charged student, Student Conduct shall request the UVPSA or designee appoint a Hearing Panel within five (5) days of the charged student’s request. If an appointed member cannot serve on a particular panel in a timely fashion, the UVPSA may fill the vacant position with another member of the pool. Once appointed, the Hearing Panel shall immediately elect a Chair for the hearing. The Chair of the Hearing Panel will notify the parties of the applicable hearing procedure, the date and location of the hearing, and all relevant timelines. Any party who fails to submit information or exchange information as required by the deadline(s) will be barred from presenting that information in the hearing.
- E. The Chair of the Hearing Panel has the authority to preside at all hearings, to keep order throughout the hearing process, to exercise control over the hearing for efficiency and relevancy, and to determine all relevant timelines including any appropriate extension. The Chair may exclude from the proceedings any person who disrupts the hearing process or who fails to adhere to the Chair’s rulings. The hearing shall continue in the removed person’s absence. Further, the Hearing Panel cannot guarantee the participation of any person. Students and employees are expected to participate as reasonably requested in conduct proceedings as a responsibility of membership in the University community and failure to do so may result in disciplinary action.
- F. The Hearing Panel shall consider the allegations in the Student Conduct Notice, the charged student’s response to those allegations, any applicable reporting party statements (in sexual misconduct cases), and any relevant documents or statements. The Hearing Panel will not hear arguments about the legality or justification of any provision under which a charge is brought or

the legality of the procedures. Technical departures from the hearing procedure will not invalidate a decision, recommendation or proceeding unless they have prevented a fair determination of the issues.

- G. Student Conduct, the reporting party (in sexual misconduct cases) and the charged student, as provided by applicable law, will receive a copy of any materials submitted to the Hearing Panel and that the Hearing Panel accepts as relevant.
- H. Generally, each party, including the reporting party in sexual misconduct cases, may be allowed to give a five (5) minute opening statement and a five (5) minute closing statement. After the opening statements, the Hearing Panel may provide the University and the charged student (and the reporting party in sexual misconduct cases) an opportunity to present their respective positions, including the presentation of documents and witness testimony. Each party shall also be given the opportunity to cross-examine witnesses presented by the other. However, in sexual misconduct cases, the charged student and reporting party may not cross-examine one another directly. In expulsion cases involving sexual misconduct, the attorneys may cross-examine the charged student and reporting party. In any sexual misconduct case where an individual is not represented by an attorney, the individual may request that the Hearing Panel pose cross-examination questions. The parties should be given an opportunity to testify through a variety of means, where appropriate, e.g. videoconferencing, behind a screen, etc. The Chair may ask those questions the Hearing Panel deems relevant. The Hearing Panel may also directly question any individuals (including the charged student) and will consider any relevant documents presented.
- I. The Hearing Panel will make determinations about the facts and the credibility of those providing information and determine by majority vote whether the charged student has violated the Code. If the Hearing Panel finds that the charged student is responsible for violating the Code, the Hearing Panel then considers any aggravating or mitigating circumstances timely presented to them in assigning sanctions. The Chair of the Hearing Panel will notify the charged party and appropriate University officials of the decision in writing and in accordance with the procedures noted below.
- J. All student conduct proceedings are closed. The University may audiotape any conduct proceeding, which will be the official record of the proceedings, and will be kept pursuant to the University's Records Retention policy, found at: <http://www.ou.edu/content/dam/AdminFinance/documents/Records%20Retention%20Policy%20Intro%20Dec%202010.pdf>
- K. The standard of proof required to show a violation of the Code is by a preponderance of the evidence contained in the record, *i.e.* the evidence must demonstrate that it is more likely true than not that the conduct occurred.
- L. Unless otherwise noted in expulsion cases, technical rules of evidence and procedures applicable to civil and criminal court cases do not apply to hearings. The Hearing Panel may consider any information it deems relevant.
- M. If procedural questions arise during the hearing process, the Hearing Panel may consult with the Office of Legal Counsel.
- N. For possible Sanctions, see the Code, Section VII.

IV. Types of Hearings

A. Administrative Review Hearings: Administrative Review Hearings heard by the Hearing Panel involve any charge not involving sexual misconduct or expulsions.

1. Within ten (10) days of the formation of the Hearing Panel, the Chair shall notify the parties of the relevant details and schedule the Administrative Review Hearing, which should typically occur no later than thirty (30) days after the formation of the Hearing Panel. Student Conduct and the charged student shall exchange the names of any persons they believe have relevant information and all relevant documents no later than five (5) days prior to the Administrative Review Hearing.
2. In accordance with these Procedures, the charged student may be advised by an advisor of his or her choosing prior to the Administrative Review Hearing, but no advisor shall be present at the Administrative Review Hearing or in any meetings.
3. If the student is found responsible for violating the Code, the Hearing Panel will consider any aggravating or mitigating circumstances and assign sanctions. The Hearing Panel will notify the charged student and appropriate University officials of the decision in writing via email to the student's University email address within five (5) days of the Administrative Review Hearing.
4. Either party may appeal the decision as noted in Section V below.

B. Sexual Misconduct Hearings: The Hearing Panel shall utilize the Sexual Misconduct Hearing procedures in cases involving sexual misconduct, or the violation of the University's Sexual Assault, Discrimination, and Harassment Policy. The Sexual Assault, Discrimination and Harassment Policy, is available at:

<http://www.ou.edu/home/misc.html>

1. Typically, the Sexual Misconduct Officer or the Director of Student Conduct for the respective campus shall present the case for the University, and, due to the nature of the proceedings, indirectly represent the reporting party. However, Student Conduct's role is to ensure the best interests of the University community are represented. In accordance with these Procedures, any party may be advised by an advisor of his or her choosing prior to the hearing, but no advisor shall be present at the hearing or in any meetings. The parties may request a recess at any time to confer with his/her advisor. If, in the unusual circumstance, the Chair determines the reporting party may have a SART advocate present during the hearing, the charged student may also have a nonlegal advisor present during the hearing. Neither advisor may speak during the hearing.
2. Generally, within two (2) days of the formation of the Hearing Panel, the Chair of the Hearing Panel shall notify the charged student, the reporting party and Student Conduct of the date of the hearing, which generally shall be set no later than ten (10) days from the date of the notice to the parties. The notice shall also include the location of the hearing, the panel composition and any additional Hearing Panel procedures and deadlines for objecting to the panel's composition and for exchanging information such as the names of any persons or documents to be presented (typically five (5) days prior

to the hearing).

3. The reporting party shall have any rights afforded to the charged student should the reporting party wish to actively participate in the process. Generally, the reporting party becomes a witness in the proceedings rather than a party initiating or defending the charges. However, to the extent the reporting party wishes to submit objections, present evidence, or identify witnesses outside the context of Student Conduct's role or Sexual Misconduct Officer's role, the reporting party may directly participate in the process.
4. The Hearing Panel may question any witness at the hearing.
5. *Hearing Panel members and Student Conduct officers shall be the only persons permitted to question the reporting party and the charged student. The Chair may pose any questions he/she deems relevant as requested by the reporting party or charged student for cross-examination of one another. At no time shall the reporting party or charged student address one another directly. Further, alternate testimony methods may be offered to the parties, e.g. videoconferencing, testifying behind a screen, etc., where deemed appropriate by the Chair.*
6. After deliberations, the Chair of the Hearing Panel will notify the charged student and appropriate University officials of the decision in writing via email to the charged student's University email address generally within two (2) days of the hearing. To the extent permitted or required by law, the Chair of the Hearing Panel will also notify the reporting party of any findings to the reporting party's email address simultaneously with the notice to the charged student.
7. Any party may appeal the decision as provided in Section V below.

C. Additional Procedural Safeguards Regarding Expulsion: In addition to the Hearing Panel Process procedures noted in Section III above, additional procedural safeguards shall be implemented when the University seeks expulsion of the charged student. With respect to expulsion cases that also involve sexual misconduct or a violation of the Sexual Assault, Discrimination and Harassment Policy, the procedures noted in Sections III, and IVB above apply in addition to these expulsion hearing safeguards. In expulsion cases, including those arising out of Direct Administrative Actions, the additional hearing procedures of this Section IVC and the Oklahoma Administrative Procedures Act, 75 O.S. §250 et seq. ("APA") shall apply. To the extent any policy or procedure conflicts with the APA applicable to the University proceeding, the APA shall govern unless federal law or guidance requires otherwise.

1. When expulsion is sought, the Director of Student Conduct or the Sexual Misconduct Officer, where appropriate, for the respective campus shall represent Student Conduct (with the assistance of University counsel if the charged student is represented by an attorney and Student Conduct/Sexual Misconduct Officer requests assistance). Upon notification that the University may seek to expel the charged student (i.e. after determination of sanctions following the Mandatory Meeting), the charged student, and reporting party in sexual misconduct cases, is entitled to one *licensed attorney* of his or her choosing at his or her expense. If in sexual misconduct cases, the Chair determines the reporting student may have a SART advocate present, the charged student may likewise have a nonlegal advisor present during the hearing. However, neither advisor may speak during the hearing.
2. Generally, the reporting party in sexual misconduct cases is merely a witness and is indirectly represented by Student Conduct/Sexual Misconduct Officer, and not a party to the

- proceeding. However, to the extent the reporting party wishes to do so, he/she may hire an attorney of his or her own choosing. The attorney for the reporting party may only participate on behalf of the reporting party, and shall not take the place of Student Conduct.
3. If the charged student, or reporting party in sexual misconduct cases, chooses to be represented by an attorney, that attorney may act for and on his or her behalf in all further conduct proceedings. The charged student (or reporting party in cases of sexual misconduct where the reporting party wishes to engage an attorney) must notify the Hearing Panel and Student Conduct immediately of this engagement. In no event no later than five (5) days (or such other timeline as determined by the Chair) prior to the hearing. Any attorney who represents a charged student, or reporting party in sexual misconduct cases, must be currently licensed to practice law by the Supreme Court of Oklahoma, as required under the APA.
 4. The Chair shall provide a notice to the charged student, the reporting party and Student Conduct within five (5) days of the formation of the panel. The notice shall include: (a) a statement of the time, date (generally within fifteen (15) days of the notice), place and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved; and (d) a short and plain statement of the matters asserted. Shorter timelines may apply in cases of sexual misconduct.
 5. In cases involving potential expulsion, the Director of Student Conduct for the respective campus, the reporting party or his/her attorney in sexual misconduct cases, and the charged student or his or her attorney may each present persons whom they believe have relevant information and cross-examine each other's witnesses. Provided, however, the Chair of the Hearing Panel ultimately determines what evidence and/or testimony may be presented on the basis of relevancy. Generally, each examination and cross-examination should last no longer than ten (10) minutes, unless the Hearing Panel allows additional time.
 6. Although the reporting party's (in sexual misconduct cases) and charged student's attorneys may cross-examine any witness, at no time shall the charged student personally cross-examine the reporting party or vice versa. If the charged student or reporting party is representing him/herself, he/she may provide questions to the Hearing Panel for purposes of cross-examination. Alternate methods of testifying by the parties should be offered in sexual misconduct cases, where appropriate. The Chair and other members of the Hearing Panel may ask those questions the Hearing Panel deems relevant. At no time may the reporting party, in sexual misconduct cases, be excluded from the hearing even where exclusion of witnesses is requested and permitted by the Chair.
 7. The Hearing Panel shall recognize and apply the applicable rules of evidence and privilege as provided in the APA. The record shall include: (a) all pleadings, motions and intermediate rulings; (b) evidence received or considered at the individual proceeding; (c) a statement of matters officially noticed; (d) questions and offers of proof, objections and rulings thereon; (e) proposed findings and exceptions; (f) any decision, opinion, or report by the Chair; and (g) all other evidence or data submitted to the Hearing Panel to which all parties have had access. The parties may submit impact and mitigation statements to the Chair in a sealed format which will not be reviewed unless and until a policy violation has been determined.
 8. In cases involving expulsion, the decision of the Hearing Panel shall include findings of fact and conclusions of law, stated separately, along with a statement of facts that support each decision. The Hearing Panel will notify the charged student and the reporting party, their attorneys as permitted by law, of the decision in writing, via certified mail, return receipt requested, within five (5) days of the hearing. The Hearing Panel shall likewise notify the appropriate University officials of the decision in writing within five (5) days of the hearing. Provided, however, in cases of sexual misconduct, notification timelines may be shortened and shall be simultaneously made to all parties. Where no expulsion sanction is

found, the decision shall be in writing with a short statement of the findings and shall be delivered via email to all parties involved and their counsel.

9. Oral proceedings shall be electronically recorded and retained as provided in Section III above. Copies of the recording shall be provided by the University at the request of the charged student, the reporting party (in sexual misconduct cases) and Student Conduct. Costs for transcription shall be borne by the requesting party. Typically, the University shall have expulsion proceedings transcribed at its expense. Copies of the transcription may be requested and the costs borne by the requesting party.
10. In accordance with the APA, before the Hearing Panel's decision is considered a final agency order in an expulsion case, in addition to the notification requirements noted in Section IV C(7), the Chair shall transmit the record to the UVPSA within five (5) days of the hearing. Within five (5) days of receipt of the record, the UVPSA shall serve the charged student, the reporting party (in sexual misconduct cases) and Student Conduct with his or her proposed final decision (which may affirm or modify the Hearing Panel's decision, or remand the proceedings to the Hearing Panel for additional action), and notify all relevant persons and attorneys of the date of a meeting on the matter which shall not be scheduled any earlier than fifteen (15) days after the UVPSA serves notice of the proposed ruling. Notification shall be via certified mail, return receipt requested or personally to each party and his/her attorney of record. Shorter timeframes may apply in cases of sexual misconduct, where appropriate and the parties shall be advised of these timeframes.
11. Where expulsion is found, the UVPSA's proposed order shall be in writing and include findings of fact and conclusions of law, separately stated. At the meeting, the charged student, the reporting party (in sexual misconduct cases) and/or their attorneys, and Student Conduct shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order. Within five (5) days of the conclusion of the meeting, the UVPSA shall, in collaboration with the appropriate University official vested with authority over the pertinent area, issue his/her final determination and notify the parties and attorneys. The UVPSA's decision is final. The parties may waive by stipulation compliance with this Section IV C(10-11) and instead proceed through the Appellate Review process noted in Section V below. Shorter timelines in cases of sexual misconduct may apply where appropriate and the parties shall be advised of these timeframes.
12. Further, where the Hearing Panel determines a sanction less than expulsion should be applied, the parties may appeal the matter in accordance with Section V below. If, however, the UVPSA disagrees and determines the expulsion sanction should be imposed he/she shall so advise the parties and the appeal shall proceed in accordance with Section 10-11 of this Section IV.

V. Appellate Review. Except in cases of expulsion where appeals are governed by Section IV C(10-11) above or where the parties have otherwise agreed, Student Conduct, the charged student, and the reporting party in sexual misconduct cases may appeal the findings of the Hearing Panel within five (5) days of notice of the decision. The appeal shall be in writing and submitted to Student Conduct and the opposing party. All timelines may be shortened where the case involves sexual misconduct and the parties shall be notified in advance of the applicable timelines.

- A. Upon request for an appeal from a hearing, Student Conduct shall immediately request that the UVPSA appoint a three-person Appellate Panel to review the appeal. The Appellate Panel shall be comprised of members of the general Hearing Panel pool, provided that no student may serve on an Appellate Panel convened to hear an appeal of a sexual misconduct case. Student Conduct immediately shall transmit all relevant documents, evidence and transcripts to the Appellate Panel for its review.
- B. Upon formation, the Appellate Panel shall select a Chair from among its members. The

Appellate Panel may confer in person or by telephonic means to render its decision. The Appellate Panel shall issue any decision in writing. The Appellate Panel shall give deference to the Hearing Panel's decision and shall render its decision based solely on the written record.

1. The Appellate Panel shall have the authority to:
 - a. Affirm the initial decision.
 - b. Find that improper procedures were used that significantly prejudiced the University or student. In this case, the Appellate Panel can refer the case back to the Hearing Panel with a recommendation on how to correct the procedures. In any new hearing, the Hearing Panel may make a new decision on the case. The University or the student may then submit another request for review to the Appellate Panel.
 - c. Reduce or increase the sanction, if the Appellate Panel determines that the sanction imposed was too severe or too lenient, given the nature of the violation and/or the circumstances. A sanction should not be increased or decreased unless there is compelling justification to do so. Merely disagreeing with the decision of the Hearing Panel is not a compelling justification.
 - d. Find that (i) the University or the student has presented information that would have been material to the outcome of the case, had the information been presented at the hearing, and (ii) the information was not known and could not reasonably have been known to the person appealing at the time of the original hearing. In this event, the Appellate Panel will refer the case back to the Hearing Panel for reconsideration in light of the new information.

- C. The Appellate Panel shall render its decision by majority vote, and notify the parties (including the reporting party in sexual misconduct cases where permitted) via email, within five (5) days of receipt of all the relevant documents from Student Conduct.

- D. Within five (5) days receipt of the Appellate Panel's decision, the charged student, the reporting party in sexual misconduct cases, and Student Conduct may appeal, in writing, the Appellate Panel's decision to the UVPSA. The appellant shall provide a copy of the appeal to Student Conduct and the Chair of the Appellate Panel. The Appellate Panel shall transmit the record and its findings to the UVPSA immediately upon notice of appeal from any party. The UVPSA shall in collaboration with the appropriate University official, base a decision on the record and shall notify the parties, including the reporting party in sexual misconduct cases, where appropriate, of the decision within five (5) days of receipt of the request for appeal and receipt of the record. The UVPSA's decision is final. If the UVPSA does not act within five (5) days of the request for appeal and receipt of the record, the decision of the Appellate Panel is final.

10/27/11