

**APPENDIX A**

**THE UNIVERSITY OF OKLAHOMA  
Student Rights and Responsibilities Code  
PROCEDURES**

**2017-2018**

## **I. Procedural Flexibility**

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. The University Vice President for Student Affairs or authorized designee (“UVPSA”) 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. Technical departures from these procedures will not invalidate a decision, recommendation, or proceeding unless they have prevented a fair determination of the issues.

## **II. Commencement of a Conduct Process**

Allegations that a student has engaged in conduct that, if true, would constitute Prohibited Conduct under the Student Code of Rights and Responsibilities (“the Code”) should be referred to the Office of Student Conduct. The Director of Student Conduct or designee (“Student Conduct Officer”) shall review the allegations and determine whether to initiate disciplinary proceedings (“Student Conduct Proceedings”). If the Student Conduct Officer determines that, even if true, the alleged conduct would not constitute Prohibited Conduct under the Code, the matter shall be concluded. If the Student Conduct Officer determines that the alleged conduct, if true, could constitute Prohibited Conduct under the Code, he or she shall notify the student of the allegations and afford the student an opportunity to be heard, as set forth more fully below.

### **A. Student Conduct Notice**

A Student Conduct Notice shall be delivered to the student who is the subject of the allegations via the student's University email address. Notice to the student will be considered furnished once a Student Conduct Notice is delivered to the student's University email account. 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 Student Conduct Officer within five (5) days, or such shorter time as may be specified.

A “no contact” order may be issued in the Student Conduct Notice. A “no contact” order is a non-disciplinary directive to avoid contact with one or more members of the University Community during an investigation and any attendant Student Conduct Proceedings. 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 disciplinary action.

### **B. Mandatory Meeting**

The Student Conduct Officer will meet with the student to explain the Student Conduct process, allow the student an opportunity to respond to the allegations contained in the Student Conduct Notice, and answer any questions the student may have. The student may be accompanied by an advisor or attorney of his or her choosing.

When the Student Conduct Officer 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 Student Conduct Officer 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.

During the Mandatory Meeting, the Student Conduct Officer shall consider the student's response to the allegations and any additional information the student has presented. The Student Conduct Officer shall then determine whether to charge the student with engaging in Prohibited Conduct under the Code. During the Mandatory Meeting, or as soon afterward as is reasonably possible, the Student Conduct Officer may:

- determine not to proceed with charges against the student on the basis that the student did not engage in Prohibited Conduct under the Code;
- negotiate a resolution with the student, whereupon the matter shall be concluded, subject to the student's timely completion of the agreed terms of the negotiation;
- determine to proceed with charges against the student as set forth in the Student Conduct Notice; or
- prepare a modified Notice of Student Conduct, based upon the student's response or other information obtained, and proceed with charges against the student.

Upon determining to proceed with charges, the Student Conduct Officer will recommend disciplinary sanctions. If the charged student denies having engaged in Prohibited Conduct under the Code, or believes that the recommended disciplinary sanction is excessive, the student may request a hearing in writing within two (2) days of the Mandatory Meeting.

### **1. Acceptance of Responsibility**

If, during the Mandatory Meeting, the student agrees that he or she engaged in Prohibited Conduct under the Code, the Student Conduct Officer will discuss the conduct and any relevant circumstances with the student. After considering the student's response and any additional information the student has presented, the Student Conduct Officer shall determine recommended disciplinary sanctions. If the student accepts responsibility and agrees to the imposition of recommended disciplinary sanctions, the Student Conduct Officer shall make a finding that the student has violated the Code, and that the student has accepted responsibility for engaging in Prohibited Conduct. The matter shall be concluded, subject to the student's timely completion of designated sanctions.

Before recommending a disciplinary sanction or negotiating a resolution for Prohibited Conduct in violation of the Sexual Misconduct, Discrimination, and Harassment Policy, the Student Conduct Officer shall notify the University's Title IX Coordinator of the recommended discipline, who shall determine whether the recommended disciplinary sanction is within an acceptable range for the type of violation described. If the recommended disciplinary sanction is not considered reasonable, the Title IX Coordinator shall respond with an explanation of the appropriate range and the basis for that range.

### **2. Failure to Respond / Default**

If the 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, the Student Conduct Officer may decide the outcome of the case in the 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.

## **C. Investigations**

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The Student Conduct Officer shall review the facts and circumstances associated with the alleged conduct. This review may frequently consist of a mere informal inquiry into the source of the complaint, together with the student's response. In other cases, particularly where there is potential for sanctions of suspension or expulsion, where there are multiple accounts of the facts from witnesses, or where the facts may not be readily discerned, the Student Conduct Officer may determine that further investigation is required. Such investigation may take place before or after the Mandatory Meeting, or in some combination of the two. Where appropriate in light of the unique facts and circumstances of the case, the Student Conduct Officer shall modify the Student Conduct Notice or recommended disciplinary sanction based on the evidence discovered in the investigation.

Allegations that a student has engaged in conduct that, if true, would constitute a violation of the University's Sexual Misconduct, Discrimination, and Harassment Policy shall be promptly referred to University's Sexual Misconduct Officer.

### **III. Hearing Process**

The Hearing Process offers charged students the opportunity to present their cases before an impartial hearing panel comprised of other members of the University community. The proceeding is designed to be administrative and educational in nature, capable of being navigated by University students. While many of these procedures draw from traditional legal principles of fairness and due process, the proceedings themselves are not intended to simulate a court of law. The Hearing Process is not a forum for challenging the legality or justification of any provision of the Code or these Procedures.

#### **A. Impartial Hearing Panel**

**Hearing Pool:** A Pool shall be established annually upon the recommendations of the faculty senate Chair, staff senate Chair, and student body president. The Pool may consist of a mixture of faculty, staff, and students for a pool of thirty (30) representatives of each campus. Each member of the Pool shall serve a three-year term and may be reappointed or removed at any time.

**Hearing Panel Training:** All members of the Pool will receive general hearing training; all members except student members also receive specialized training regarding sexual misconduct, stalking, domestic violence, and dating violence.

**Hearing Panel Selection:** Within five (5) days of receipt of a student's request, the UVPSA shall schedule and select a Hearing Panel randomly from the Hearing Pool. Specific representatives may also be appointed from professional schools where a violation of an ethical or professional code is alleged. Each Hearing Panel shall consist of three (3) members; one (1) of whom must be a student, except in cases where a student is charged with violating the Sexual Misconduct, Discrimination, and Harassment Policy, in which case, no student may sit on the Hearing Panel. 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 hearing Pool.

**Impartiality:** 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. The Student Conduct Officer, the charged student, and the reporting party (in sexual misconduct cases) may 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.

#### **B. Role of the Hearing Panel Chair**

**Election of the Chair:** Once appointed, the Hearing Panel shall immediately elect a Hearing Panel Chair (“the Chair”) for the hearing. Faculty and staff members are eligible to serve in this role. The Chair shall be responsible for management of the Hearing Panel.

**Powers and Duties of the Chair:** The Chair shall preside at all hearings, keep order throughout the hearing process, exercise control over the hearing for efficiency and relevancy, establish all relevant timelines, rule on requests for extensions, and rule on admissibility of evidence, in advance of the hearing and at the hearing. The Chair may exclude from the proceedings any person who disrupts the hearing process or who fails to adhere to the Chair’s rulings.

### **C. Before the Hearing**

**Chair issues deadlines:** Within ten (10) days of formation of the Hearing Panel, the Chair will notify the Student Conduct Officer and the charged student (“the parties”) the date and location of the hearing, the deadlines for exchanging information, and shall provide a copy of these procedures. The Chair may modify these deadlines as necessary for the just and efficient handling of a hearing, but in general:

- The hearing should typically be scheduled to occur within thirty (30) days of formation of the Panel;
- If a charged student chooses to be accompanied by a legal advisor, who may attend but not participate directly in Student Conduct Proceedings, he or she shall notify the Chair as soon as practicable but at least seven (7) days before the hearing;
- The parties shall exchange the names of witnesses at least seven (7) days before the hearing;
- The parties shall exchange copies of all documents or physical evidence at least seven (7) days before the hearing;
- If either of the parties believes that the witnesses, documents, or other evidence should not be considered by the Panel, because they are not relevant or for some other reason, the Chair must be notified at least five (5) days before the hearing;
- Any other matter relating to the presentation of witnesses or evidence must be raised to the Chair at least five (5) days before the hearing;
- The Chair shall notify the parties of rulings on the admissibility of witness testimony, documents, and other physical evidence not less than two (2) days before the hearing;
- Any party who fails to submit information or exchange information as required by the deadline(s) may be barred from presenting that information in the hearing.

### **D. The Elements of the Hearing**

**Panel Chair Opening:** The Panel Chair shall open the hearing with the following announcements and procedures:

1. The Chair will notify the parties that the hearing is closed to the public and shall then ask any non-party witnesses to leave the room. A party’s advisor may remain in the room;
2. The Chair shall request all persons present to identify themselves to the parties;

3. The Chair shall announce whether the University is recording the proceeding, and if so, shall announce that the recording will be the official record of the proceedings, and will be kept pursuant to the University's Records Retention policy;
4. The Chair may also provide general instructions regarding the proceedings and address any procedural matters that require clarification.

**Student Conduct Officer Opening Statement:** In an opening statement, which should generally not exceed five (5) minutes, the Student Conduct Officer is expected to generally inform the Hearing Panel of the facts and circumstances surrounding the conduct at issue, the provision(s) of the Code that are alleged to have been violated, and asking the Hearing Panel to issue the recommended disciplinary sanction.

**Charged Student Opening Statement:** In an opening statement, which should generally not exceed five (5) minutes, the charged student is expected to generally explain his or her position to the Hearing Panel, which may include, but is not limited to, any of the following:

- whether the charged student denies engaging in the alleged conduct;
- whether the charged student disagrees that the conduct is Prohibited Conduct under the Code; and/or
- that the recommended disciplinary sanction is not appropriate for the violation.

**Presentations:** After the opening statements, the Hearing Panel shall provide the Student Conduct Officer and the charged student an opportunity to present their respective positions, including the presentation of documents and calling of witnesses. Each party is responsible for ensuring that any witnesses who will testify in support of that party's position are notified of the time and place of the hearing. As a responsibility of membership in the University community, all students are expected to participate in Conduct Proceedings upon request; however, the Hearing Panel cannot compel the attendance of witnesses.

**Cross examination:** Each party shall also be given the opportunity to cross-examine witnesses presented by the other. The Hearing Panel may also directly question any individuals, including the charged student, at any time during the hearing.

**Closing statement:** Generally, each party may be allowed to give a five (5) minute closing statement summarizing the evidence and restating why the Hearing Panel should be persuaded by the party's case.

**Dismissal and deliberations:** Upon conclusion of the closing statements, the Chair shall dismiss the parties and the Hearing Panel shall deliberate privately. The Hearing Panel will consider the facts presented and assess the credibility of those providing information to determine by a majority vote whether, by a preponderance of the evidence (i.e., whether it is more likely true than not true), the charged student has engaged in Prohibited Conduct under the Code. If the Hearing Panel finds that the charged student is responsible for engaging in Prohibited Conduct, the Hearing Panel will consider aggravating and mitigating circumstances in assigning sanctions.

**Notice of decision:** The Chair of the Hearing Panel will notify the charged student and appropriate University officials of the decision in writing within five (5) days of the hearing.

#### **IV. Rules governing hearings**

**Closed Proceedings:** All student conduct hearings are closed to the public.

**Recordings:** The University may audiotape any conduct proceeding, which will be the official record of the

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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>

**Counsel to the Hearing Panel:** The Chair and the Hearing Panel may consult with designated counsel in University's Office of Legal Counsel at any time during Student Conduct Proceedings.

**Counsel/Advisor to the Parties:** A charged student may be accompanied by an advisor or attorney during the hearing; provided, in the case of an attorney, the charged student must notify the Chair within the time restrictions imposed by the Chair. If the charged student elects to be accompanied by an attorney, the Student Conduct Officer may elect to be accompanied by a designated member of University's Office of Legal Counsel, who shall not be the same attorney serving as counsel to the Hearing Panel.

#### **V. Special Procedures for Sexual Misconduct Hearings:**

The following procedures are applicable in cases where a student is charged with violating the Sexual Misconduct, Discrimination, and Harassment policy.

**Interim Measures:** Any remedial measures or sanctions imposed by the Title IX Coordinator, Sexual Misconduct Officer or Director of Student Conduct, in consultation with the appropriate executive officer shall be in effect during the investigation, hearing or any appeal.

**Role of the Parties:** A person who alleges that he or she has been subjected to conduct that amounts to sexual assault, discrimination, or harassment under University's policy ("the reporting party"), is deemed to be a party to Student Conduct Proceedings and shall have any rights afforded to the charged student, should the reporting party wish to actively participate in the process.

**Advisors and Attorneys:** Any party may be advised by an advisor of his or her choosing. Advisors and attorneys do not directly participate in the process or hearing. The parties may request a recess at any time to confer with an advisor. If a party is afforded the right to have a nonlegal advisor and a legal advisor present during the hearing, the same right shall be afforded the other party.

**Sanctioning:** Before entering a disciplinary sanction for a violation of the Sexual Misconduct, Discrimination, and Harassment Policy, the Chair shall notify the University's Title IX Coordinator, who shall determine whether the recommended disciplinary sanction is within an acceptable range for the type of violation described. If the recommended disciplinary sanction is not considered reasonable, the Title IX Coordinator shall respond with an explanation of the appropriate range and the basis for that range.

**Expedited Timeline:** Generally, within two (2) days of the formation of the Hearing Panel, the Chair shall notify the charged student, the reporting party, and the Student Conduct Officer 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 providing additional information such as the names of any persons or documents to be presented (typically two (2) days prior to the hearing). Notice of the findings shall be determined and followed by a written decision within three (3) days of the hearing via email to the parties' University email address. This expedited timeline may be adjusted where fairness so requires.

**Cross Examination:** Hearing Panel members and the 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.

**Sanctioning guidelines:** Any student found responsible for violating the policy on non-consensual or forced sexual contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident and taking into account any previous campus code violations.

Any student found responsible for violating the policy on non-consensual or forced sexual intercourse will likely face a recommended sanction of suspension or expulsion, taking into account any previous campus code violations.

Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion depending on the severity of the incident, taking into account any previous campus conduct code violations.

Except in conjunction with other discipline, the sanctions of verbal warning, written warning, disciplinary probation, educational sanctions, restitution, administrative fee and alcohol strike are not appropriate if a student is found responsible for violations of the Sexual Misconduct, Discrimination, and Harassment Policy that comprise Sexual Violence, Dating Violence, and Domestic Violence.

The Title IX Coordinator and the Hearing Panel may broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanction unless compelling justification exists for doing so.

**Simultaneous Notification:** The reporting party and the charged student shall be notified simultaneously, in writing, of the result of any disciplinary proceeding, and shall be provided with the University's procedures to appeal the result of the disciplinary proceeding. Furthermore, the reporting party and the charged student shall be simultaneously notified of any change to the results of the disciplinary proceeding and shall be notified when the results are final.

**Appeal:** A reporting party, charged student, or Student Conduct may request an appeal of the decision as provided in Section VI below.

**VI. Appellate Review:** Student Conduct, the charged student, and the reporting party in sexual misconduct cases may appeal the findings or sanction 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. Upon request for an appeal from a hearing, Student Conduct shall immediately request that the UVPSA review the appeal. The UVPSA shall have the authority to:

1. Affirm the initial decision.
2. Find that improper procedures were used that significantly prejudiced the University or student. In this case, the UVPSA 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. Student Conduct or the parties may then submit another request for review to the UVPSA
3. Reduce or increase the sanction, if the UVPSA 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.
4. Find that (i) Student Conduct or the parties (including the reporting party in sexual misconduct cases) 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 UVPSA will refer the case back to the Hearing Panel for reconsideration in light of the new information.

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. In some cases, the UVPSA may require more time to reach a decision, and in such cases the parties will be notified that a decision will be reached as soon as reasonably practicable. The UVPSA's decision is final. If the UVPSA does not act or otherwise notify the parties of the need for more time to reach a decision, within five (5) days of the request for appeal and receipt of the record, the decision of the Hearing Panel is final.