

# University of Kansas

## Student Non-Academic Conduct Procedures

### I. Background

Under the University of Kansas' Senate Rules and Regulations Article VI, Section 6.4.9, the Vice Provost for Student Affairs has the authority to define and describe the procedures for disputes involving alleged violations of the *Code of Student Rights and Responsibilities* by students (non-academic student conduct).

The University of Kansas' non-academic student conduct process is not intended to be adversarial in nature and is substantially less formal than a court of law. The majority of cases can and should be handled informally. The purpose of the student conduct procedures is to resolve conflict situations that involve violations of the *Code of Student Rights and Responsibilities* or other University policy and educate and prepare students for responsible citizenship.

### II. Authority

The Vice Provost for Student Affairs will designate individuals or units to administer the University student conduct system, as appropriate. The responsibilities of these individuals or entities are briefly defined as follows:

1. The Vice Provost for Student Affairs or his/her designee will be responsible for the coordination of the activities of the entire University student conduct system. The Vice Provost for Student Affairs or his/her designee will process and resolve student non-academic conduct matters. The Vice Provost for Student Affairs and his/her designee shall be responsible for monitoring student compliance with all non-academic conduct conditions and sanctions imposed through the conduct process and shall maintain all official non-academic student conduct records.
2. Hearing Officers will be appointed by the Vice Provost for Student Affairs or his/her designee. The responsibilities of Hearing Officers include preparing notices of violation, collecting information, conducting administrative hearings, making decisions related to conduct outcomes, and performing other functions as required in the student conduct process.
  - a. Graduate level staff working in the Department of Student Housing are authorized to hear violations specific to the KU Student Housing Handbook and low-level violations of the Code of Student Rights and Responsibilities for students living within student housing.
  - b. Professional level staff within the Department of Student Housing are authorized to hear violations of University Policy for students living within student housing which may rise to the level of University probation and/or Student Housing contract cancellation.

- c. Staff working in the Office of the Vice Provost for Student Affairs are authorized to hear violations of University Policy for all students; including violations that may lead to suspension or expulsion from the University.
3. Formal Hearing Panels are scheduled when suspension or expulsion from the University may be a likely sanction. The Panels will consist of three members; one student, and two faculty or staff members. Typically the harmed party/complainant and accused student/respondent are present for the Panel hearing. In the event that either party does not appear at the hearing, the Panel may reach a decision by taking into consideration the totality of the information available at the time of the hearing.

### **III. Definitions**

“Non-Academic Conduct” involves conduct covered under published policies, rules and regulations of the University and Kansas Board of Regents. This definition excludes conduct otherwise covered by the University’s definition of academic misconduct, U.S.R.R. 2.6.1.

“Accused student/Respondent” is a person who is alleged to have violated University Policy.

“Witness” is a person who has relevant information to share.

“Harmed party/Complainant” is an individual who claims to have been harmed by a student through a violation of the *Code* or University Policy. The University reserves the right to serve as a complainant.

“Incident Report” is the written report submitted describing the behavior and/or alleged violations of the University Policy.

“University Policy” are the written rules and regulations of the University as found in, but not limited to, the *Code of Student Rights and Responsibilities*; KU Student Housing Handbook; and, the University policy library. These include, but are not limited to, policies related to computer use, solicitation, sexual harassment and other anti-discrimination policies, athletic events, use of facilities, travel, and participation in student organizations.

“Hearing Officer” means a University official authorized by the Vice Provost for Student Affairs or designee to determine whether a student has violated University Policy, and to impose sanctions when a policy violation has been committed.

“Hearing” is the educational meeting between the Hearing Officer/Panel and student to determine the student’s behavior in the complaint, whether the student’s involvement is a violation of University Policy, and if a violation exists, determine appropriate sanctions. See Section VI C. for the types of hearings that exist.

#### **IV. Student Rights in the Conduct Process**

Students and student organizations who participate in the conduct process, as either a harmed party/complainant or as an accused student/student organization, have the rights afforded by University Senate Code, Article XIV, Section 2 and University Senate Rules and Regulations Section 5.2.2, including the right to:

1. Present his/her or its version of the events in question.
2. Be accompanied by an advisor(s).
3. Have witnesses present information, in writing or in person, on his/her or its behalf.
4. Not participate or answer questions in a hearing.
5. Question any statements presented (directly or indirectly).
6. The hearing officer/body be disinterested and able to act impartially. Note: Graduate level and Professional level staff working within student housing will often serve as hearing officers within their specific housing facilities due to greater rapport with student residents and to foster a sense of community. This alone does not create an interest in the complaint.
7. Appeal the outcome of the hearing.
8. For the accused student/respondent, receive advance notice of the alleged violation(s), a general summary of the complaint, who to contact for a meeting, and the date by which that contact must occur.

#### **V. Making a Complaint**

1. Any person attending University programs, using University facilities, working at or for the University, or participating in University-sponsored events or activities may file a complaint against a student. The complaint should be filed with the Vice Provost for Student Affairs.
2. Timeline for Complaints: Complaints of student non-academic conduct should be made as soon as possible, and in accordance with USRR Article VI, Section 3.1.3, within six months of the incident or event that is the subject of the complaint. In exceptional circumstances, the hearing officer/body may grant an extension to this time limit.
3. Dual Reporting: Non-academic conduct may be both a violation of University policy and law, and as such, the University encourages complainants to make reports to both local law enforcement agencies and the University. Because the standard of proof required in criminal law is different from the standard of proof required in University policy, the result of criminal investigations is not dispositive of whether a violation of University policy has occurred. In addition, the criminal investigation will not take the place of a University investigation, although such criminal investigation may supplement a University investigation. The University will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, or to take interim measures to protect the University or any member of the University community, or when necessary, to initiate hearing procedures as outlined below.

4. Information requested: When filing a complaint, you should provide as much detail as possible regarding the nature of the complaint and any witnesses. The more information that you can provide, the better equipped the University will be to address the complaint. The University suggests you provide the following information to the extent possible:
  - Name and contact information (address, telephone, email) for the complainant;
  - Name of person(s) directly responsible for the alleged violations of policy;
  - Date(s), time(s), and place(s) of the alleged violation(s);
  - Detailed description of the specific conduct that is the basis of the alleged violation(s);
  - Copies of any documents or other tangible items pertaining to the alleged violation(s);
  - Names and contact information for any witnesses to the alleged violation(s); and
  - Any other relevant information.
5. Retaliation is Prohibited: University policy prohibits retaliation against a complainant or individual cooperating in the investigation of an alleged violation of University Policy. Retaliation includes any harassment, intimidation, threats or adverse action against any complainant or individual as a result of participation in a complaint. Retaliatory behavior is not limited to behavior by the accused student, and covers behavior by his or her associates, as well as third parties. Retaliation should be reported to the Hearing Officer, and is considered an independent allegation that may lead to additional interim measures or disciplinary action.

## **VI. Complaint Handling and Resolution Process**

### **A. Charges**

1. Intake and Review: All concerns and complaints about a student's or students' conduct shall be referred to the Office of the Vice Provost for Student Affairs. The Hearing Officer will review the allegations and select the appropriate charges to be considered, if any. In instances where the complaints involve behavior that may fall under the University's Nondiscrimination Policy, the complaint will be referred to the Office of Institutional Opportunity and Access (IOA) for investigation.
  - a. When appropriate, the Hearing Officer will meet with the complainant in order to provide the complainant a general understanding of these procedures and to identify forms of support or interim measures available to the complainant.
  - b. If the complainant does not wish to pursue resolution and/or requests that his or her complaint remain anonymous, the University may still need to investigate and take reasonable action in light of the complainant's request.

The complainant's request will be balanced against the University's need to provide a learning and working environment for all members of the University community that is reasonably safe and non-discriminatory.

Factors that will influence the University action include: the seriousness of the allegation; whether there are additional complaints involving the same alleged student; and the University's ability to bring the complaint forward absent the involvement of the complainant.

2. **Interim Measures:** To ensure the health, welfare, and safety of the complainant, respondent, third-parties or the University community, or to uphold the integrity of the process, the University may take interim action at any time and is not required to wait to take such action until after the Intake and Review or a hearing. Depending on the specific nature of the allegation, interim action may include but is not limited to the following:
  - Imposition of a No-contact order (a directive that the complainant and accused student refrain from having contact with one another, their families, and/or their personal possessions, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing);
  - Provision of counseling services;
  - Provision of medical services;
  - Provision of academic support services, like tutoring;
  - Provision of alterations to the student's class schedule to ensure the complainant and alleged student do not attend the same classes;
  - Moving the complainant or alleged student to a different student housing facility;
  - Removing a student from residential facilities (See Residential Suspension); and
  - Provision of an escort to ensure the student can move safely between classes and University activities.
3. **Standard of Proof:** A violation of University policy will be found and the accused student will be found responsible if the Hearing Officer, or Formal Hearing Panel by a majority vote, finds it more likely than not that the accused student violated University Policy based on all of the information presented during the investigation and hearing process.

## B. Hearing Notification

1. **Charge Letter:** The Hearing Officer will issue a written letter which shall inform the accused student/respondent of the approximate date, time, place and type of incident, the complaining individual or entity, and the section(s) of University Policy that have allegedly been violated.
  - a. **Timeline:** Hearings should not be scheduled less than one (1) working day or more than ten (10) working days after the student has been notified of the charges. An accused student may waive the one-day hearing requirement with approval from the Hearing Officer. The ten (10) working day timeline may be extended at the discretion of the Hearing Officer, taking into consideration finals, scheduled breaks, and other extenuating circumstances.
  - b. **Notice:** Charge letters are sent to student's University email accounts and are considered received when sent. For situations involving formal hearing, notice will also be sent via U.S. mail to student's current local address listed

- on the University database. It is the student's responsibility to keep his or her contact information current.
2. Notice of Restrictions: To protect the interests of involved students or the University, the charge letter may contain specific requirements or restrictions, pending the resolution of the matter through the hearing process. These requirements may include any of the interim measures listed in Section VI, A #3.
  3. Interim Suspension:
    - a. University Suspension: When there is a cause to believe a student/student organization endangers the health, safety, or welfare of the University community or its property, the Vice Provost for Student Affairs or his/her designee may order the student/student organization be temporarily suspended from University property and activities. A hearing for incidents involving interim suspension from the University shall occur within five (5) working days.
    - b. Residential Suspension: A housing contract may be immediately suspended and the resident required to vacate the premises when circumstances indicate that the resident's continued presence in the living unit may constitute danger, or threat of danger to property, the resident, or others in the housing system. For example, housing contracts of residents who are arrested for alleged criminal acts or against whom criminal charges are pending may be suspended. A hearing shall be held within five (5) working days, or on the earliest working day thereafter identified by the student, during which the resident may demonstrate why his or her continued presence in the housing unit does not constitute a danger, or threat of danger to others, the resident, or property.
    - c. Interim suspension hearings may serve as an opportunity to evaluate the student/student organization's interim status as well as serve to decide alleged violations of University policy if enough information is available at the time of the hearing. If such information is not available, the Interim suspension hearing will serve as a 'show cause' hearing to evaluate the interim status of the student/student organization, and the regular hearing process will be followed to determine violations of University policy. The decision regarding whether there is sufficient information to adjudicate alleged University policy violations lies solely with the University.

### C. Options for Resolution of Conduct Charges

1. Alternative Conflict Resolution (ACR): If all person(s) personally and directly affected by the conflict agree to resolve the complaint through an alternative conflict resolution process (i.e. mediation, restorative justice), and the Hearing Officer believes that the alternative conflict resolution process is an appropriate form of resolution, then the Hearing Officer will make arrangements for the alternative conflict resolution to occur.
  - a. Alternative conflict resolution is not appropriate for all complaints; namely, sexual harassment and some complaints of violence.

- b. ACR is a voluntary process that may or may not result in an agreement. When an agreement is reached by the parties involved, the case is resolved and parties are responsible for completing any agreed upon sanctions.
- c. If an alternative conflict resolution agreement is not reached or upheld, the complaint will be referred to either an Administrative Hearing or Formal Panel Hearing.

## 2. Administrative Hearings

- a. In instances where the accused student is a resident of Student Housing, and the behavior is a violation of the KU Student Housing Handbook and the student is being charged with violation of no other University Policy (e.g. trash, pets, amplified instruments, candles, etc.), an accused student shall meet with a Hearing Officer in an informal administrative hearing.
  - 1. If a violation of the KU Student Housing Handbook is found, the Hearing Officer may assign a formal conduct sanction of University Warning, and any other educational sanction or restriction found in either the Code or the Student Housing Handbook.
  - 2. If the accused student/respondent fails to participate in the process by failing to attend a meeting or providing information, the Hearing Officer may render a decision based on the available information.
  - 3. An accused student who fails to participate or disagrees with the finding of the administrative hearing does not waive the right to appeal.
- b. In situations where the behavior is a violation of University Policy and the administrative sanction is less than University suspension, or when suspension is a likely sanction and there is no disputation of facts by the accused student/student organization, an accused student/student organization shall meet with a Hearing Officer in an informal administrative hearing.
  - 1. If a University Policy violation is found, the Hearing Officer may assign any formal conduct sanction, educational sanction, or restriction, with the exception of expulsion.
  - 2. If the accused student/respondent fails to participate in the process by failing to attend a meeting or providing information, the Hearing Officer may render a decision based on the available information.
  - 3. An accused student/student organization who fails to participate or disagrees with the finding of the administrative hearing does not waive the right to appeal.

- 3. Formal Panel Hearing: When expulsion from the University may be a likely sanction, or when suspension is a likely sanction and there is a disputation of facts by the accused student/student organization, the accused student/student organization shall meet before a formal hearing panel.
  - a. A student may waive his or her right to a Formal Panel Hearing and resolve an incident through an informal administrative hearing. Waiving the right to a Formal Panel hearing does not waive the right to appeal.

- b. Notice of Formal Resolution will be sent by the Vice Provost for Student Affairs and his or her designee to the accused student/student organization and complainant at least 10 working days prior to any hearing, except in cases involving an interim suspension. The notice of hearing shall include the following information:
  - 1. Date, time, place of hearing;
  - 2. Specific violations of the Code and/or University Policy that the student is charged with;
  - 3. Name of complainant or University department submitting complaint;
  - 4. Notice of the conduct forming the basis for the complaint, which may include the time, place, person(s) involved, circumstances of alleged prohibited conduct, and name(s) of possible witness(es);
  - 5. A statement of the applicable type of conduct hearing;
  - 6. Any applicable requirements or restrictions to protect the interests of affected students or the University; and
  - 7. Other information the Vice Provost for Student Affairs and his or her designee may wish to include.
  
- c. Pre-hearing Submission: The complainant and the accused student shall submit to the Vice Provost for Student Affairs or designee any information s/he wishes to present at the hearing, the name of his/her advisor(s) and if s/he is an attorney, and a possible list of witnesses six (6) working days prior to the hearing. Absent good cause, as determined by the Vice Provost for Student Affairs or designee, the parties may not submit information for the hearing after this deadline. Upon the receipt of information from both parties, the Vice Provost for Student Affairs or designee will review the information submitted to eliminate any redundant or prejudicial information. The Vice Provost for Student Affairs or designee, based on the totality of information, reserves the right to modify the charges included in the notification of Formal Resolution and add witnesses to the witness list.
  
- d. The Vice Provost for Student Affairs or designee will be responsible for notifying all witnesses of the hearing and for the creation of the Formal Panel Hearing file. Copies of the Formal Panel Hearing file will be made available to the parties and Panel at least three (3) working days prior to the hearing and will contain, at a minimum, statement of complaint, witness lists submitted by each party, and any related information collected through the investigative process by the Hearing Officer.
  
- e. The Formal Panel Hearing is an administrative hearing and will not follow a courtroom model or formal rules of evidence. The Panel will determine the order of witnesses, and the Chair will resolve any questions of procedure during the hearing. Each party will be allowed to make a presentation, have witnesses called on his/her behalf, challenge any information presented, and make a closing statement. Only the Chair and Panel members are given absolute authority to directly question parties and witnesses. At the discretion

of the Chair, parties may directly question witnesses and each other, but the Chair is empowered to have questions directed to the Chair, disallow or reframe any questions.

- f. The University does not have subpoena powers, and as such, witnesses and other individuals asked to participate in a Formal Panel Hearing may choose not to participate. In the absence of personal appearances, the Panel and parties will rely on the documentary information provided in the Formal Panel Hearing file.
- g. The student respondent may choose not to attend the formal hearing. If a student respondent, with notice, does not appear for a Formal Panel Hearing, the failure to respond or appear will not create a presumption of either responsibility or non-responsibility. In such cases, available information shall still be presented and considered and the Panel shall make a decision based upon the information available to it.
- h. The University is able to provide information/testimony through closed-circuit technology; Webex, Skype, etc. This technology may be used in circumstances where parties or witnesses are otherwise unable to participate in the hearing, or at the request of parties for good cause, as determined at the discretion of the VPSA.
- i. A recording will be made of the hearing for the purpose of review by an appeal panel, if necessary. The recording shall be the property of the University and will be maintained as such for a period of seven (7) years after the hearing. However, it shall be maintained for a longer period if the matter is subject to a litigation hold and/or pending in a court of law. Upon the written request of the student respondent or complainant, or his or her advisor, a copy of the recording shall be made available by the Vice Provost for Student Affairs within fifteen (15) working days of the request. Confidentiality of recordings from hearings shall be maintained by all parties and their representatives/advisors.
- j. Hearing Panel Findings and Recommendations: Immediately after the hearing, the Panel members will deliberate among themselves and determine:
  - 1. Whether the facts presented establish that the alleged conduct charged occurred;
  - 2. Whether the conduct that occurred violates the Code of Student Rights and Responsibilities as charged; and
  - 3. Their recommendations for which specific sanctions, if any, should apply in light of their findings.

The Chair will write a report containing the Hearing Panel's findings of facts, its conclusion about the charge(s) based on the facts, and its recommendations

for sanctions, if any. This report will be sent to the Office of the Vice Provost for Student Affairs within five (5) working days after the hearing.

- k. **Hearing Determination:** After a formal hearing before a Panel, the Vice Provost for Student Affairs will review the report of the Panel and all hearing materials, determine whether to accept the recommendations, and provide written notification to the accused student and the complainant of the findings and sanctions, if any. Sanctions imposed by the Vice Provost for Student Affairs are effective immediately unless otherwise specified in the notification. If sanctions are imposed, notice of the appeal procedure will be provided to both parties. Minor technical departures or errors in the procedures established by this policy will not necessarily be grounds to withhold conduct action.
- l. All Formal Panel Hearings are closed unless the accused student/student organization requests an open hearing. The Vice Provost for Student Affairs or his/her designee must approve the opening of said hearing.
- m. A single hearing may be held for more than one accused student/student organization in cases arising out of a single occurrence. Each accused student/student organization retains the right to request that his/her or its case be heard individually.

## **VII. Appeals**

### **A. Appeals of Student Housing Handbook Violations**

- 1. **Rights:** An accused student involved in an informal administrative hearing has the right to appeal the decision and any sanction imposed by the Hearing Officer. A request for appeal shall be directed to the Hearing Officer's direct supervisor within five (5) working days from the accused student's receipt of findings. The right of appeal is a right to seek review of the informal administrative hearing; it is not a right to a new hearing.
- 2. **Grounds for Appeal:** A request for appeal must be based on one of the following three reasons:
  - a. Proper procedures have not been followed;
  - b. The student believes the sanction is excessive given the violations; and
  - c. The student has obtained new relevant information that was not available at the time of the hearing.
- 3. **Dismissal without a Hearing.** The administrator adjudicating an appeal may involuntarily dismiss an appeal without a hearing if:
  - a. The appeal has not been filed in a timely fashion.
  - b. The appeal does not state a valid ground for appeal.

### **B. Appeals of Student Housing Contract Cancellation**

- 1. An accused student may appeal a Department of Student Housing contract cancellation by submitting a request for appeal to the Associate Director of Residence

- Life within five (5) working days from the accused student's receipt of findings. In the event the Associate Director was the original hearing officer, the appeal would be sent to the Director of Residence Life.
2. Grounds for Appeal: A request for appeal must be based on one of the following three reasons found in Section VII A.2.

C. Appeals of the *Code of Student Rights and Responsibilities*

1. Rights: An accused student and complainant involved in a hearing have the right to appeal the decision and any sanctions imposed by the Vice Provost for Student Affairs or designee. The parties and their advisors have the right to review the hearing file, including any recording of the hearing, in preparation for filing an appeal. A request for appeal must be filed within thirty (30) calendar days from the parties' receipt of findings. The right of appeal is the right to seek review of the original hearing decision by an impartial appeal panel; it is not a right to a new hearing.
2. Grounds for Appeal: An appeal from must be based on one of the five reasons found under USRR 6.7.3.
3. Notification of Appeal: If either the student respondent or complainant files an appeal, the other party involved in the complaint will be notified of the appeal and provided an opportunity to submit a response. The party and his or her advisor will have the right to review the appeal in preparation for filing a response. A response must be filed within fourteen (14) calendar days pursuant to USRR 6.7.2.2.
4. Appeal Record: In considering an appeal, the Appeal Body will conduct a review of the existing record of the case, which may include, but is not limited to:
  - a. The hearing file;
  - b. The written recommendations of the Hearing Officer / Formal Hearing Panel;
  - c. The recording of the Formal Panel Hearing;
  - d. The letter of appeal; and,
  - e. Response from complaint, if any.

## VIII. Additional Information

The University will strive to complete complaint investigations, including issuance of a report of findings to the complainant and accused student, in as timely and efficient a manner as possible and typically within sixty (60) calendar days of receipt of a complaint. However, this timeframe may be extended based on factors such as, but not limited to, schedule and availability of witnesses, holidays or semester breaks including summer break, and complexity of the complaint. If an investigation cannot be completed within sixty (60) calendar days of receipt of the complaint, then the Hearing Officer will notify the complainant and accused student of that fact and provide a timeframe for completing the investigation.