

The University of Arizona
STUDENT CODE OF CONDUCT DISCIPLINARY PROCEDURES

The Arizona Board of Regents Student Code of Conduct sets forth the standards of conduct expected of students who choose to join the University of Arizona community. The Student Code of Conduct Disciplinary Procedures guide the process that will be followed by the Dean of Students to review and resolve alleged violations of the Student Code of Conduct, except those involving allegations of academic dishonesty or formal complaints of Title IX sexual harassment, for which there are different procedures.

Definitions

The definitions provided in the Student Code of Conduct are also applicable in these procedures, except where otherwise indicated.

“Code of Conduct” means the Student Code of Conduct set forth in Arizona Board of Regents Policy Manual (ABOR) 5-301-308, and 5-401.

“Complainant” means an individual alleged to be the victim of conduct that could constitute a Code of Conduct violation as addressed by these Procedures.

“Dating Violence” means violence committed by a Student who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the information available and consideration of the following factors: 1) the length of the relationship, 2) the type of relationship, and 3) the frequency of the interaction between the persons involved in the relationship.

“Day” means a university business day, not including Saturday, Sunday, a university-recognized holiday, or any day the university is closed

“Dean of Students” means the Dean of Students or one or more designee(s) of the Dean of Students.

“Domestic Violence” means conduct that would meet the definition of a felony or misdemeanor crime of violence committed:

- a. by a current or former spouse or intimate partner of the Complainant, by a person who is cohabitating with, or who has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of an applicable jurisdiction;
- b. by a person with whom the Complainant has a child in common, or either party is pregnant by the other party;
- c. by a person residing or having resided in the same household;
- d. where a Complainant is related to the Student or the Student’s spouse by blood or court order as a parent, grandparent, child, grandchild, brother, or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, or sister-in-law;
- e. or where a victim is a child who resides or has resided in the same household as the Student and is related by blood to a former spouse of the Student or to a person who

resides or who has resided in the same household as the Student.

“Provost” means the university Provost or the Provost’s designee.

“Sexual Assault” means any attempted or actual sexual act¹ directed against a Complainant, without their consent, including instances where the Complainant is incapable of giving consent under ABOR 5-308(E)(4).

“Sexual Misconduct” includes dating violence, domestic violence, sexual assault, and stalking, as defined by these Procedures, to the extent that the alleged conduct does not fall within the scope of Title IX sexual harassment.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for that person’s safety or the safety of others or to suffer substantial emotional distress.

“Student” refers to the student who is alleged to have engaged in prohibited conduct and includes student organizations that are charged with Code of Conduct violations.

“University” means the University of Arizona.

“University Representative” means the person who presents the conduct determination and disciplinary sanction during a hearing process.

“Vice President for Student Affairs” means the Vice President for Student Affairs or the Vice President for Student Affairs’ designee.

Purpose and Application

The Student Code of Conduct Disciplinary Procedures (Procedures) provide a fair and impartial administrative process. The standard of review is a preponderance of the evidence (more likely than not). Consistent with ABOR 5- 308(A)(3), “a student can be found responsible under the 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

¹ **Sexual Acts include the following forcible and non-forcible sexual acts and sexual violations:**

Rape. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of that person.

Sodomy. Oral or anal sexual intercourse with another person, without the consent of that person, including instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Sexual Assault with an Object. To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Fondling. The touching of the private body parts of another person for the purpose of sexual gratification without the consent of that person, including in instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent as defined by law. 5 See 34 U.S.C. §12291(a)(36).

criminal proceeding.”

The responsibilities of the university under these Procedures may be carried out by the Dean of Students or the Office of Institutional Equity (OIE) as the Dean of Students’ designee. Where the alleged misconduct involves discrimination or discriminatory harassment, OIE will conduct an initial assessment, implement any necessary interim actions, and, if appropriate, initiate an investigation to determine whether it is more likely than not that a violation of the Code of Conduct has occurred and, if so, the appropriate administrative action(s), educational intervention(s), and/or disciplinary sanction(s) to apply. In all other cases involving potential violations of the Code of Conduct, these responsibilities will be managed by the Dean of Students.

In student conduct cases involving allegations of sexual misconduct or physical violence, an alleged victim who is also a student or employee of the university (the Complainant) may participate in the conduct process as outlined in these Procedures to the extent allowable by law.

Consequences for Code of Conduct Violations

When the Dean of Students determines that a student or student organization has violated the 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 disciplinary sanctions.

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, and processes leading to the assignment of an administrative action are not considered disciplinary proceedings.

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 disciplinary, and processes leading to the assignment of an educational intervention are not considered disciplinary proceedings.

Disciplinary sanctions include suspension, expulsion, or degree revocation.

Interim Actions

If the Dean of Students is aware of reliable information that supports a misconduct allegation, and the Dean of Students believes that the student poses a threat of harm or substantial disruption, the Dean of Students 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 for imposing the interim action no longer exists.

Interim actions may include interim suspension, immediate removal or relocation from university housing, exclusion from one or more classes or class modalities, and other measures that the Dean of Students determines are appropriate under the circumstances.

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 simultaneously communicated in writing to the Student and Complainant (when applicable).

A student who is restricted from campus or suspended for an interim period may challenge the decision. A challenge to the interim action must be submitted in writing no later than five (5) days following the effective date of the interim action.

If the Student elects to provide information to the Dean of Students, the Complainant (when applicable) will be given the same opportunity to provide information relevant to the interim action.

Based on information provided, the Dean of Students will determine whether the interim action will remain in place, be modified, or be rescinded.

If upheld, the interim action will remain in effect until the decision-making process is concluded or the reasons for imposing the interim action no longer exist.

If the Dean of Students rescinds or modifies the interim action, the Student and Complainant (when applicable) will be simultaneously notified in writing.

Preliminary Review and Conduct Investigation

On receipt of information from any source that a student may have violated the Code of Conduct, the Dean of Students will evaluate the information to determine an appropriate course of action to gather the facts concerning the alleged violation.

A preliminary review may be conducted when the Dean of Students requires additional information to determine if there is a credible basis to believe a violation of the Code of Conduct occurred. The Preliminary Review may consist of interviews, document review, or any other steps needed to gather relevant information. Any information gathered during the Preliminary Review may be considered in a conduct investigation.

A preliminary review is not required. The Dean of Students may directly initiate a conduct investigation if the information provided is sufficient to form a credible basis to believe a student violated the Code of Conduct.

If the Dean of Students initiates a conduct investigation, the Student and Complainant (when applicable) will be provided written notice of the alleged misconduct and an opportunity to respond. The notice will contain:

- a. a summary of the allegations, including the identities of those involved in the

- incident;
- b. the specific Code of Conduct provisions that may have been violated based on the allegations;
- c. a link to these Procedures;
- d. a link to information regarding rights and options pursuant to the Clery Act/Violence Against Women Act (VAWA), when applicable;
- e. a statement that the Dean of Students will apply the preponderance of the evidence standard to determine whether it is more likely than not that the alleged conduct occurred;
- f. details on how the Student and Complainant (when applicable) may request disability accommodations during the disciplinary process; and
- g. a statement that retaliation is prohibited.

Investigation Process

Students may accept responsibility for Code of Conduct violations and waive their rights to the process provided by these Procedures.

Students who are the subject of a conduct investigation will have the opportunity to meet with the Dean of Students during the investigation process.

The Student will be provided with reasonable notice of the date and time of the meeting, which will be scheduled for a time that does not conflict with the Student's course or university work schedule.

The Student may be accompanied by an advisor of their choice and at their own expense.

If the Student fails to attend the meeting with the Dean of Students, the Student will forfeit their right to respond to the allegations.

If, in the sole discretion of the Dean of Students, the Student failed to attend due to an extraordinary circumstance, the meeting may be rescheduled.

When applicable, the Complainant will also have an opportunity to meet with the Dean of Students.

The Complainant will be provided with reasonable notice of the date and time of the meeting, which will be scheduled for a time that does not conflict with the Complainant's course or university work schedule.

The Complainant may be accompanied by an advisor of their choice and at their own expense.

Members of the university community are expected to comply with any request or directive issued by the Dean of Students, including but not limited to requests for interviews or to provide relevant information, documents, or other evidence, consistent with applicable law and university and ABOR policy.

Determination and Appeal

The Dean of Students will determine whether it is more likely than not that a violation of the Code of Conduct has occurred and, if so, the appropriate administrative action(s), educational intervention(s), and/or disciplinary sanction(s) to apply.

In determining the administrative action(s), educational intervention(s), or disciplinary sanction(s), the Dean of Students will consider any mitigating or aggravating factors, including any prior violations of the Code of Conduct.

- The Dean of Students will simultaneously provide the Student and Complainant (when applicable) a written decision within five (5) days of making the determination. The written decision will state whether the charge(s) was substantiated. If substantiated, the decision will state the administrative action(s), educational intervention(s), or disciplinary sanction(s) to be imposed. This decision is final unless a party requests a hearing to review a disciplinary sanction.
- 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 the University Hearing Board by filing a written request with the Dean of Students no later than ten (10) days following the date of the written decision.
- The filing of a timely written request for a hearing will suspend the imposition of the disciplinary sanction 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 concludes. If the disciplinary sanction is degree revocation, the university may refuse to release an official transcript until the hearing process concludes. If no hearing request is received within ten (10) days following the date of the written decision, the decision will be final and effective immediately.

University Hearing Board Process

Purpose and Composition

The University Hearing Board (Hearing Board) conducts hearings concerning disciplinary sanctions involving suspension, expulsion, or degree revocation. It is advisory and provides a recommendation to the Vice President for Student Affairs, who will make the final decision.

The Hearing Board will be comprised of three members, including at least one student. The remaining members may be comprised of faculty or staff. One member will be designated as the Hearing Board Chair (Chair).

The parties at a hearing are the Student, the University Representative, and the Complainant (when applicable).

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 individuals and promotes accountability.

The Hearing Board's recommendation may have two parts, depending on the nature of the Student's appeal.

If the Student is appealing the finding of responsibility and the disciplinary sanction(s), the Hearing Board will first make a recommendation as to whether the Student violated the Code of Conduct.

If the Hearing Board finds that the Student violated the Code of Conduct, the Hearing Board will then recommend whether the Vice President of Student Affairs should accept or modify the disciplinary sanction(s) issued by the Dean of Students.

If the Student or Complainant is appealing only the disciplinary sanction(s), the Hearing Board will only recommend whether the Vice President of Student Affairs should accept or modify the disciplinary sanction(s) imposed by the Dean of Students.

The Hearing Board process is facilitated by a Technical Advisor. The Technical Advisor serves in a neutral role to help coordinate a smooth hearing process for all involved.

Pre-Hearing Procedures

The Hearing Board members will be notified in writing of their selection by the Technical Advisor.

The Technical Advisor will convene the Hearing Board within a reasonable time following receipt of the Student's (or Complainant's, when applicable) written request for a hearing.

The Technical Advisor will send a written notice of the hearing to the Student and Complainant (when applicable) no less than twenty (20) days before the date set for the hearing. The notice will include:

- A statement of the date, time, location, and modality (virtual or in person);
- The matters before the Hearing Board (responsibility, sanction, or both);
- A copy of the Dean of Students' decision letter;
- A copy of the Student's (or Complainant's, when applicable) request for hearing;
- Notice of the right of a Student and Complainant (when applicable) to be assisted by an advisor of their choice and at their expense, who may be an attorney;
- A copy of or link to the Code of Conduct and these Procedures;
- A list of all Hearing Board members, and the Chair's university email address;
- The general expectations of collegiality and civility for all participants;
- The length of time set for the hearing and the time limitation for the presentation of evidence; and
- In sexual misconduct cases, notice regarding the restrictions on evidence of past sexual history and notice that the Complainant and Student may not directly question one another but must submit written requests to the Chair.

If, due to extraordinary circumstances, the Student or the University Representative, or the Complainant (when applicable) cannot attend the hearing on the date scheduled, they must notify the Chair and the Technical Advisor in writing. The Chair will consult with the Technical Advisor to decide whether the request is approved and distribute a decision in writing.

No later than five (5) days before the hearing, the Student, University Representative, and Complainant (when applicable) will exchange and provide the Chair a copy of the following:

- The names and contact information of those witnesses they plan to present at the hearing;
- A concise summary of the anticipated statements of each witness;
- Copies of all documents to be presented as evidence at the hearing;
- If an advisor or attorney is being used, their name and contact information; and
- The name and title of the University Representative who will present the evidence on behalf of the Dean of Students, and, if the University Representative is represented by an attorney, the attorney's name and contact information.

The Technical Advisor will confirm the Student's and Complainant's (when applicable) intent to attend the hearing. If a party who requested the hearing fails to confirm their intent to attend at least five (5) days in advance of the hearing, the party will be deemed to have abandoned their request for a hearing. If none of the parties who requested a hearing timely confirm their attendance, the hearing may be cancelled. Any disciplinary sanction imposed by the Dean of Students is then immediately effective and not subject to further review.

If a party objects to the inclusion of a document or other information as part of the record, they must submit a written objection to the Chair no later than three (3) days before the hearing. After providing the non-objecting party an opportunity to respond, the Chair will make a decision on the objection.

A party may object to a document submitted for presentation at the hearing by submitting a written objection to the Chair no later than three (3) days before the hearing. After providing the non-objecting party an opportunity to respond, the Chair will make a decision on the objection. The Chair may also exclude irrelevant, immaterial, privileged, or unduly repetitious information.

A party may challenge the participation of any Hearing Board member on the grounds of personal bias. The challenging party must submit a written statement to the Chair setting forth the basis for the challenge no later than ten (10) days before the hearing.

The Chair will consult with the Technical Advisor and determine whether to replace the identified member and name a replacement.

If a challenge is filed against the Chair, the Vice President for Student Affairs will review the challenge and make a determination. A change in the composition of the Hearing Board's members may require that the hearing be rescheduled.

The Chair has the discretion to extend the times and deadlines required by these

Procedures for good cause.

Conduct of the Hearing

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. Relevant university administrators or staff may attend the hearing.

The Chair will preside over the hearing and decide all procedural matters. The formal rules of evidence and procedure do not apply, although objections to the introduction of specific statements or documents may be considered by the Chair.

- Irrelevant, immaterial, privileged, or unduly repetitious information will be excluded.
- The Chair may establish reasonable limits on the time allotted to the parties for oral presentation and examination of witnesses.
- If there are procedural issues that arise before the hearing, such as objections to evidence or witnesses, the Chair may set pre-hearing meetings to discuss and decide those matters.
- The Chair does not have the authority to consider or rule on substantive motions submitted by either party (e.g., motions to dismiss or motions for summary judgment).

Information regarding prior misconduct cannot be used as proof of a current violation. Prior misconduct may be admitted for other purposes, such as to show that the Student had prior experience relevant to the allegations or to show that the Student was previously informed that the conduct was not acceptable. Evidence of prior misconduct may be considered by the Hearing Board in recommending an appropriate remedial action.

Any party who requested a hearing and who fails to appear or refuses to participate at the hearing will be deemed to have abandoned their request for an appeal, unless they can demonstrate that an extraordinary circumstance prevented their appearance or participation.

Any party may be assisted throughout the proceeding by an advisor. If the Student or Complainant (when applicable) is represented by an attorney, the University Representative and the Hearing Board may also be represented by an attorney. An advisor or attorney may present the case for the Student or Complainant (when applicable) or may simply act as an advisor.

The hearing will be recorded manually or by a recording device and will be transcribed.

Except as otherwise permitted by the Chair, witnesses will be excluded from the hearing except during their testimony. However, a Complainant (when applicable) is permitted to attend the hearing and to be accompanied by an advisor of their choice.

No party or advisor may disrupt the proceedings. The Chair has the authority to take any measures necessary to maintain order and to ensure that all participants adhere to general expectations of collegiality and civility.

In sexual misconduct cases, the Student and the Complainant may not directly question one another. In those cases, the 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. In these cases, any impermissible questions will be read into the record, and the party who submitted the question will have an opportunity to explain the relevance of the question.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior will not be admitted unless offered to prove that someone other than the Student committed the alleged conduct, or if they concern specific incidents of the Complainant's prior sexual behavior with the Student and are offered to prove consent.

The order of presentation during a hearing is as follows:

- Beginning with the University Representative, each party (or their advisor) may make an opening statement summarizing the information the party intends to present. The Student may elect to make their opening statement after the University Representative has presented its case.
- The University Representative will present its case and may call witnesses. Witnesses are subject to questioning by the Student.
- The Student will present their case and may call witnesses. Witnesses are subject to questioning by the University Representative.
- Witnesses may provide direct statements and be questioned by either party or the members of the Hearing Board. The party that called the witness is permitted to ask any final, clarifying questions.
- A party may call a witness to refute statements made by another witness.
- Beginning with the University Representative, each party may make a closing statement to summarize the information presented.
- When applicable, a Complainant will be given equal opportunity to present an opening statement, ask questions of a witness, and present a closing statement.

Hearing Board Deliberations and Recommendation

Following the presentation of information and closing statements, the parties will be excused from the hearing, and the Hearing Board will begin deliberations. Only the members of the Hearing Board and its legal advisor, if any, may be present during the deliberations.

The Hearing Board will not deliberate on the appropriate remedial action unless and until it

determines that it is more likely than not that the Student is responsible for a violation of the Code of Conduct.

The Hearing Board will make a recommendation to the Vice President of Student Affairs, based solely upon the information presented during the hearing and submitted to the Hearing Board (unless otherwise excluded by the Chair). The recommendation must be consistent with applicable law and policy. Recommendations must be supported by a simple majority of the Hearing Board as to whether the Student more likely than not violated the Code of Conduct and the appropriate remedial action, when applicable. In determining the appropriate remedial action, the Hearing Board may consider any mitigating or aggravating circumstances.

The Chair will provide the written recommendation to the parties, the Dean of Students, and the Vice President for Student Affairs no later than three (3) days following the conclusion of the hearing. The written recommendation must be signed by the Chair and will include findings of fact and the reasons for the recommendation.

Review and Decision by the Vice President for Student Affairs

Following a review of the Hearing Board's recommendation, the Vice President for Student Affairs will decide to affirm, deny, or modify the findings (if appealed) and disciplinary sanction(s) imposed by the Dean of Students.

- Before making a decision, the Vice President of Student Affairs may direct the Dean of Students to conduct further investigation or remand the matter to the Hearing Board for a rehearing. Any such directive from the Vice President of Student Affairs will state the specific issues that the investigation or remanded hearing must address.
- If the Vice President of Student Affairs does not accept the Hearing Board's recommendation, the Vice President of Student Affairs will explain any variance from the recommendation based on the record.
- The Vice President of Student Affairs will issue the written decision no later than twenty (20) 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 (20) days following completion of the investigation or the Hearing Board's subsequent recommendation.
- Copies of the written decision will be promptly transmitted to the Student, their advisor, the Dean of Students, and, when applicable, the Complainant and their advisor.
- The decision of the Vice President of Student Affairs is final, and the sanction imposed on the Student will take effect on the date it is issued unless a timely written request for review or rehearing as described below is received by the Provost.
- The decision letter from the Vice President of Student Affairs will provide notice to the parties of the right to seek judicial review pursuant to A.R.S. §12-904.

Request for Review or Rehearing

The Student (or, if applicable, the Complainant) may request a review or rehearing by filing a written request with the Provost no later than fifteen (15) days following the date of the written decision. Upon receipt of a timely request for review or rehearing, the Provost or their designee will provide the other party with a copy of the request, including any attachments. Any party may file a written response to the request within five (5) days of the request.

A request for review or rehearing is not an appeal; it is an opportunity to make the Provost aware of irregularities 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:

- 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 Student (or, when applicable, the Complainant) of a fair and impartial disciplinary process;
- Newly discovered material evidence that was not reasonably available at the time of the hearing process;
- Excessive severity of the disciplinary sanction; or
- The decision was not reasonably justified by the evidence or is contrary to law.

Following receipt of a request for review or rehearing, the Provost will notify the Dean of Students and the Complainant (when applicable) and provide a copy of the request for review or rehearing. The Dean of Students may submit a written response within five (5) days of receiving notice of the request.

The Provost will respond in writing to the request for review or rehearing within fifteen (15) days of receipt of the request, or, if a response to the request for review or rehearing is submitted, within fifteen (15) days of the receipt of the response to the request for review or rehearing.

Copies of the written decision will be promptly transmitted to the Student, the Dean of Students, and, when applicable, the Complainant.

The Provost's decision is final on the date it is issued, and the disciplinary sanction imposed on the Student, if applicable, will take effect immediately. The Provost's decision letter will provide notice to the Student of their right to seek judicial review pursuant to A.R.S. §12-904.