

APPENDIX C

OFFICE OF STUDENT CONDUCT RESOLUTION PROCEDURE 2019-2020

Pre Hearing:

The investigator will forward the investigative report to the Office of Student Conduct. The Director of the Office of Student Conduct or designee will determine whether the investigative report identifies any potential violations of the Code of Student Conduct, and if so send a notice of the violations to the respondent. The Director of Student Conduct or designee will provide the complainant and the respondent written notice describing the alleged violation(s), the time and date of the hearing, a copy of this procedure, a copy of the final investigative report submitted to the Office of Student Conduct (with any necessary redactions), and a procedural outline describing the format of the hearing.

The resolution of the referral will be assigned to a hearing officer who has no previous substantive knowledge of the facts of the case or the students involved. The hearing officer may be a University employee or an outside adjudicator retained by the University. The hearing will ordinarily be scheduled as soon as possible after receiving the investigative report.

If either the complainant or the respondent believes for any reason that the hearing officer would exhibit bias against their position, respectively, the student has five (5) business days prior to the hearing to notify the Office of Student Conduct in writing of the specific perceived bias that should disqualify the hearing officer from the case. In no event will the gender of the hearing officer alone be considered a valid reason to claim bias by either the complainant or the respondent. This request will be reviewed by the Director of Student Conduct or designee, and a new hearing officer may be assigned if appropriate. The Director or designee's decision is final.

Either the respondent or the complainant may request a pre-hearing conference with the Director of Student Conduct or designee, at which time the Director or designee will describe the hearing process and answer any questions related to the hearing process. The facts of a particular case will not be discussed during the pre-hearing conference.

During the Sexual Misconduct investigative and resolution process, all parties are given the opportunity to have one advisor of their choosing present, at the cost of the student. The role of the advisor is limited in that a student may confer with their advisor, and the advisor is not permitted to speak on behalf of the student.

Respondent accepts responsibility for violation(s), post-charges

If after receiving notice of a violation of the Code of Student Conduct, a respondent wishes to accept responsibility for all violation(s) of the Code of Student Conduct and waive the respondent's opportunity for a formal hearing, the respondent may do so by providing notice to the Director of Student of Conduct in writing. If a respondent accepts responsibility for all violations the following procedure shall apply:

1. After the respondent has provided this notice, the Office of Student Conduct will notify the complainant that the respondent has chosen to accept responsibility and waive the hearing.

2. Both parties shall have the opportunity to submit a written statement detailing both the impact of the behavior, sanction recommendations, and any supporting documentation relevant to the sanctioning decision. Once the notice in item 1 above has occurred, each party must submit the written statement within five (5) business days of the date of the notice sent by the Office of Student Conduct. If a student submits the statement after the deadline it will not be considered by the hearing officer. A copy of each impact statement will be provided to the other party. These statements will be reviewed and considered by the sanction officer in determining a sanction.
3. The hearing officer will make a recommendation of appropriate sanction(s) to the Director of the Office of Student Conduct or designee. When recommending sanctions, the hearing officer may consider, but is not limited to, the following factors:
 - The severity, persistence, or pervasiveness of the violation;
 - The nature or violence of the violation;
 - The perceived impact of the violation on the complainant;
 - The perceived impact on the University community;
 - The prior disciplinary record of the respondent;
 - The maintenance of a safe, nondiscriminatory environment that is conducive to learning; and
 - Any other mitigating or compelling factors.

Students who are found in violation of the Sexual Misconduct policy may be considered for suspension or expulsion. The final decision regarding sanctions shall be made by the Director of the Office of Student Conduct or designee after taking into account the recommendation of the hearing officer and the factors listed above. Sanctions may range from a warning through expulsion from the University. A full list and description of sanctions are detailed in the Code of Student Conduct, (<http://studentconduct.gmu.edu/university-policies/code-of-student-conduct/>).

4. Both the complainant and respondent will be notified of the sanctions in writing, on or about the same date and time. Both parties will receive the same notification, which will include a rationale for the findings and sanctions. This notification should be released to both parties within 5 business days of the conclusion of the hearing. However, a longer period of time may be warranted at the discretion of the hearing officer.
5. The sanction(s) may be appealed in accordance with the *Appeals* section as described below. The outcome may be appealed only on the grounds of severity of sanction.

Respondent contests Student Conduct charges

If after receiving the notice of a violation of the Code, the student wishes to contest responsibility for some or all of the alleged violations the following procedures shall apply.

In addition to the pre-hearing procedures discussed above, the following additional procedures shall apply when a Respondent contests the charges:

1. Five days prior to the hearing, the complainant and respondent shall provide to the Office of Student Conduct any documents¹ and/or witnesses they would like to present at the hearing. For any witness, the party must also at that time submit a witness statement providing the witness's testimony. The Office of Student Conduct shall send each party the documents and witness statements provided by the other party.
2. Two days prior to the hearing the complainant and respondent shall provide the Office of Student Conduct any documents and/or witnesses they would like to present in rebuttal to documents or witnesses the other party intends to offer. For any witness, the party must also at that time submit a witness statement providing the witness's testimony. The Office of Student Conduct may decide to exclude any material submitted that is not rebuttal information. The Office of Student Conduct shall send each party the documents and witness statements provided by the other party.
3. If the respondent and/or complainant identify documents or witnesses who were not identified during the investigative phase, the Director of the Office of Student Conduct or designee, in conjunction with the Title IX coordinator, may refer the case back to the Title IX Office for further investigation.

Hearing:

1. The hearing officer will use a procedural outline and a script to facilitate the hearing. A representative of the Office of Student Conduct shall be present at the hearing to provide logistical support, facilitate the hearing, and ensure that the hearing complies with these procedures. In certain circumstances, if the complainant does not wish to participate in the hearing, a representative from the University may serve as the complaining party.
2. At the hearing, the complainant and the respondent meet with the hearing officer simultaneously. Prior to the hearing either party may request a partition in the room to visually separate the complainant and respondent, or they may request to be physically located outside the presence of the other individual and participate by teleconference. This request must be provided to the hearing officer no later than five (5) business days before the scheduled date of the hearing.
3. Both parties will be offered an opportunity to provide a verbal statement and respond to questions posed by the hearing officer. All questions and answers must be directed to and from the hearing officer. Neither party is permitted to directly question or have any dialogue with the other party.
4. The respondent may admit responsibility for any of the violations during the hearing.

¹ Documents include any recording of information, including written recordings, audio recordings, graphic recordings, and electronic recordings.

5. Either party may present documents or witnesses that were identified prior to the hearing as provided above. The hearing officer shall have the discretion to decide whether documents or witnesses presented are relevant and may exclude evidence or witnesses that they decide are irrelevant. Documents or witnesses will be considered relevant if they make a fact in question more or less likely to be true.
6. If the hearing officer determines that a witness's statement contains relevant information, the hearing officer shall consider the witness statement as the witness's testimony. The witness must be present at the time of the hearing to answer questions from the hearing officer and opposing party, only. The hearing officer may ask questions of any witness and the opposing party may submit written questions to the hearing officer for him/her to ask any witness, if he/she determines that the question is relevant.
7. The investigator will be available at the time of the hearing to clarify information contained in the investigative report. Both parties and the hearing officer may ask questions of the investigator. Questions from the parties shall be submitted in writing to the hearing officer.
8. The hearing will be audio recorded. The recording will be stored in the Office of Student Conduct. Upon request, either party may be provided access to review the recording. Additional recordings or recording devices are strictly prohibited.
9. Either party may decline to participate in the actual hearing. If a party declines to participate, the party's absence will not be used as an inference of responsibility or lack of cooperation.
10. The hearing officer may, if necessary, request any additional information or documents from any party or witness or may request the opportunity to speak with additional witnesses. If necessary, the hearing officer may continue the hearing to a future date to allow for this additional inquiry.
11. After all relevant information is presented by the parties and the investigator, the hearing officer will render a determination of responsibility (responsible or not responsible). The hearing officer will apply a preponderance of evidence standard (more likely than not) in determining responsibility for the alleged violation(s).

If a student is found not responsible for all violation(s), the matter is concluded, pending appeal (see the section on Appeals below).

12. If the respondent is found responsible for any violation(s), both the complainant and respondent may submit an impact statement (either in writing or orally) and recommendation for sanction(s).

13. The hearing officer will decide on sanction recommendations to be made to the Director of Student Conduct, or designee. The Office of Student Conduct may elect to accept, reject, or modify the recommendations of the hearing officer.
14. Factors included in the determination of recommended sanctions include, but are not limited to:
 - The severity, persistence, or pervasiveness of the violation;
 - The nature or violence of the violation;
 - The perceived impact of the violation on the complainant;
 - The perceived impact on the University community;
 - The prior disciplinary record of the respondent;
 - The maintenance of a safe, nondiscriminatory environment that is conducive to learning; and
 - Any other mitigating or compelling factors.

Sanctions may range from a warning, through expulsion from the University. Students who are found in violation of the Sexual Misconduct policy may be considered for suspension or expulsion. A full list and description of sanctions are detailed in the Code of Student Conduct, (<http://studentconduct.gmu.edu/university-policies/code-of-student-conduct/>).

Post-Hearing

1. The hearing officer shall provide a written report to the Office of Student Conduct containing the findings of fact made by the hearing officer, the finding of responsibility or non-responsibility with the rationale for that finding, the sanctions (if applicable), and the rationale for the sanctions.
2. Both the complainant and respondent will be notified of the findings and sanctions in writing, on or about the same date and time. Both parties will receive the same notification, which will include a rationale for the findings and sanctions. This notification should be released to both parties within five business days of the conclusion of the hearing unless a longer period of time is deemed necessary.
3. If an appeal is not filed within the timelines stated below, the decision is final.

Appeals

Either the respondent or the complainant may file an appeal of the decision. Valid grounds for an appeal of the decision are limited to:

- Material procedural irregularity in any part of the investigative or hearing process, that had a material and significant impact on the outcome of the process;
- Bias of the hearing officer, for reasons other than the stated rationale for the decision or the gender of the hearing officer;
- Severity of sanction;
- The discovery of new and material information that was unavailable at the time of the hearing, that, had it been available, it would likely have resulted in a different outcome of either the

findings or sanctions. Information is unavailable if it was not known or could not have been discovered by the party through the exercise of reasonable diligence prior to the hearing. A witness or party failing to appear at the hearing is not valid grounds for an appeal.

In order to file an appeal, the student must fill out the form located at:

<http://studentconduct.gmu.edu/our-process/contact/>. **The appeal form must be submitted within five business days following the date of the notice of findings by 5:00 p.m.. Late appeals will NOT be considered.**

Upon receipt of the appeal request, the Director of the Office of Student Conduct or designee will assign the appeal to an appeals officer. The appeals officer will be a person who has no prior substantive knowledge of the facts of the case, and has no personal knowledge of, or association with either the respondent or complainant. The complainant or respondent may challenge the impartiality of an appeals officer in writing to the Director of Student Conduct or designee. Following a review of this documentation, the appeal may proceed or a new appeals officer may be assigned. The decision of the Director of Student Conduct or designee is final.

The appeals officer will provide the non-appealing student a copy of written materials provided by the appellant. The non-appealing party may submit a written response to the appeal request. If the non-appealing party wishes to provide a response, documentation must be provided no later than five (5) business days following the request (by 5:00 p.m.). After receipt of such written materials, the appeals officer shall provide a copy of the response to the appealing party.

The appeals officer will base their decision on the written appeal request, all case materials, and the recording of the hearing. The appeals officer may:

- Deny the Appeal;
- Modify the sanctions;
- Remand the case to the Office of Student Conduct with instructions to conduct a new hearing.

Appeals will ordinarily conclude within 15 business days unless a longer period of time is deemed necessary.

The appeals officer shall issue the written decision to both the respondent and complainant, on or about the same date and time. The documentation will contain the rationale for the appeal decision.

Transcript Notations

As is required by Virginia law, a student who has been suspended or expelled for a sexual misconduct violation shall have a notation placed on his or her academic transcript. The notation will state that a student has been "Suspended or Dismissed for a Violation of the Code of Student Conduct".

Additionally, any student who is alleged to have violated this policy who withdraws from the University while under investigation will also have a notation placed on her or his academic transcript; this notation will state that the student has withdrawn from the institution while under investigation for a violation. The University may also move forward with conduct proceedings if the student(s) has withdrawn.

Reasonable Alterations

The Office of Student Conduct and the Office of Compliance, Diversity and Ethics may alter this process at their sole discretion, when extenuating circumstances exist.