

C. SEXUAL MISCONDUCT POLICIES

For University purposes, Sexual Misconduct includes the following specific policies: Dating Violence, Domestic Violence, Sex or Gender Based Discrimination, Sexual Assault (including Sexual Battery), Sexual Exploitation, Sexual Harassment, and Stalking. Sexual Misconduct is prohibited and may result in conduct action consistent with the Conduct Procedures for Reported Incidents of Sexual Misconduct (page 77).

Students found responsible for violating Sexual Misconduct policies may be subject to the full range of disciplinary actions described in this handbook, including the possibility of suspension or expulsion.

You may report sexual misconduct to the University online at www.miami.edu/itsonus or in person by contacting the Dean of Students Office (305-284-5353) or the University's Title IX Coordinator (305-284-8624). You may report sexual misconduct to the police by reaching UMPD (305-284-6666).

For more information and resources on sexual misconduct and how to overcome sexual violence at UM, you may contact the Sexual Assault Resource Team's hotline at 305-798-6666 or visit www.miami.edu/itsonus.

The Sexual Misconduct policies and procedures outlined in this Handbook are consistent with the campus-wide Sexual Misconduct Policy available at https://compliance.miami.edu/policies/sexual_misconduct/sexual-misconduct-policy-final.pdf.

Note: In order to encourage reporting of these issues, amnesty may be granted to students who in reporting an incident, or in the course of collaborating in a sexual misconduct investigation, disclose that at the time of the incident they may have violated portions of the Alcohol or Illegal Drugs policies, or other policies herein. For example, a charge for personal consumption of alcohol in violation of the policies outlined in this handbook will not be applied to a student who, in reporting an incident of sexual misconduct or gender discrimination, reports that they were under the influence of alcohol at the time when they were the target of the misconduct. This policy is designed to encourage reporting and it is not intended to be used as a defense after a student is found to have been in violation of University policies.

C.1 Relationship Violence includes any act of sexual, physical, or psychological violence, abuse, or aggression, or threats thereof, which is committed by one person against another person with whom they are (or were) in a dating/intimate or domestic relationship. Dating Violence and Domestic Violence, each defined below) are forms of Relationship Violence. Dating Violence and Domestic Violence are prohibited regardless of the sexuality of the persons involved, or the presence of multiple parties in the relationship.

- a. **Dating Violence** means violence committed by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by the length, type, and frequency of interaction between the parties involved. Dating Violence can take on the same forms as Domestic Violence (defined below).
- b. **Domestic Violence** means abusive behavior that is used by an intimate partner to gain or maintain power and control over the other party. Domestic Violence can take the form of assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Examples of domestic relationships include: current or former spouses; individuals who have a child in common or with whom a child in common has been conceived; individuals who have lived together in a domestic partnership; and a child or other protected individual of the person.

C.2 Sex or Gender Based Discrimination means unlawful discrimination against an individual because of the individual's actual or perceived sex or gender in regard to hiring, termination, promotion, compensation, training, admission, dismissal, advancement, graduation or any other term, condition or privilege of employment or student status. Prohibited sex discrimination under Title IX includes, but is not limited to: (1) harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature; (2) applying any rule concerning parental, family, or marital status that treats persons differently on the basis of sex; and (3) discriminating against or excluding any student

from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

C.3 Sexual Assault / Battery means any act, of a sexual nature, directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. For purposes of this Policy, Sexual Assault/ Battery includes the following acts:

- a. **Rape** is defined as the 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 the victim.
- b. **Fondling** is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/ her age or because of his/her temporary or permanent mental incapacity.
- c. **Incest** is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. **Statutory Rape** is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent.

For purposes of this Policy, Sexual Assault also includes sexual intercourse by any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, or human immunodeficiency virus infection, when such person knows they are infected with one or more of these diseases and when such person has been informed that they may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

Consent means an intelligent, knowing, and voluntary agreement to engage in specific activity, and shall not be construed to include submission obtained by force, intimidation, threat, blackmail, extortion, or any other method of coercion or duress. For purposes of this definition:

- Intelligent means verbally or otherwise communicated;
- Knowing means the person must have specific knowledge of each activity they are agreeing to engage in; and
- Voluntary means done, given, or acting of one's own free will, and not through force, intimidation, threat, blackmail, extortion, or any other method of coercion or duress; "giving in" is not the same as providing consent.

Consent cannot be given:

- By someone who Respondent knew or should have known was under 18 years of age; or
- By someone who Respondent knew or should have known had a temporary or permanent disability making them unable to consent; or
- By someone who Respondent knew or should have known was intoxicated (by alcohol or another substance).

While this is not an exhaustive list of indicators for intoxication, the following factors should be considered in determining whether a person was intoxicated:

- Respondent knew the person had been drinking or using drugs, and/or knew how much the person had consumed;
- The person was visibly stumbling or otherwise was at a loss of equilibrium;
- The person had noticeably bloodshot, glassy or unfocused eyes;
- The person exhibited any of the signs of alcohol poisoning;
- The person was known to have vomited as a result of consumption of an intoxicating substance;
- The person was known to be disoriented or confused as to their whereabouts, or the time and date; or
- The person has exhibited the loss of consciousness at any point between the consumption of the intoxicating substance and the alleged sexual activity.

C.4 Sexual Exploitation means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit, or for the advantage or benefit of anyone other than the person being exploited.

For purposes of this Policy, Sexual Exploitation also includes: (1) Knowingly compiling, entering into, or transmitting by use of computer, computer online service, Internet service, local bulletin, board service, cellular phone, or any other device capable of electronic data storage or transmission; (2) Making, printing, publishing, or reproducing by any means; (3) Knowingly causing or allowing to be entered into or transmitted; or (4) Buying, selling, receiving, exchanging, or disseminating, any of the following:

- a. Any notice, statement, or advertisement of a person's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with that individual; or
- b. Any audio recording and/or visual depiction of sexual conduct with an individual.

CII.5 Sexual Harassment means any unwelcome sexual advance, unwelcome request for sexual favors, or unwelcome verbal or physical conduct of a sexual nature, generally characterized by non-consensual, unwelcome sexual behavior whether between people of the same gender or different genders or sexual orientation when:

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity;
2. Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation-related decisions affecting an individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment, (a) of a specific individual or those around them; (b) even if someone else is the target of the behavior; or (c) even if the individual is initially unaware of the behavior.
4. Sexual Harassment, including sexual violence, can include any or all of the following behaviors, as well as others which are not listed:
 - a. Harassment through public or private insult, sexually suggestive comments concerning a person's body or behavior, and sexual demands;
 - b. Subtle or overt pressure to comply with demands of sexual activity;
 - c. Remarks about another person's clothing, body, sexual activities, sexual preferences, gender identity or sexual orientation, as well as teasing, jokes, remarks, or gestures which are sexual in nature;
 - d. Unnecessary touching, pinching, patting, or exposure of another person's body;
 - e. Unwarranted staring at another person's body;
 - f. Unwanted communications of a sexual nature in any form, over any medium, and in any media;
 - g. Requests or demands for sexual favors accompanied by implied or overt threats or promised rewards, e.g., grades, class or clinical assignments, recommendations, student employment (for students) or assignments, promotions, discipline, references (for employees);
 - h. Repetition of unwanted invitations for dates; or
 - i. Physical assault of a sexual nature, up to and including attempted or actual rape.

CII.6 Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices are used.

STUDENT CONDUCT PROCEDURES FOR REPORTED SEXUAL MISCONDUCT

INTRODUCTION

The following procedures will be used to address alleged violations of the Sexual Misconduct Policies outlined in this handbook (page 35). For University purposes, Sexual Misconduct includes: Dating Violence, Domestic Violence, Sex- or Gender-Based Discrimination, Sexual Assault (including Sexual Battery), Sexual Exploitation, Sexual Harassment, and Stalking. Additionally, this process will be used to adjudicate issues of retaliation related to sexual misconduct and to adjudicate violations of protective measures issued within the Sexual Misconduct investigative process.

These procedures will be utilized for all cases where the accused person (the “Respondent”) is a student at the University of Miami. To report a violation of any policy to the University you may contact the Dean of Students Office at 305-284-5353.

Upon receipt of a report of alleged sexual misconduct from the individual making the complaint (the “Complainant”), the University will work closely with all students involved to provide support services and explain available options for addressing the issues. These options include the right to choose any or all of the following:

- Counseling and mental health services (305-284-5511); and/or
 - Administratively enforced protective measures; and/or
 - Formal (administrative) student conduct process; and/or
 - Informing the individual of their right to also report the incident/s to the Police and pursue subsequent legal action.
- Students may contact UMPD at 305-284-6666.

In explaining these options, the University will provide thorough information to empower the student to make a choice that suits their preferred method of addressing the situation. The University will not coerce or pressure the student to select a particular course of action over another.

If the student indicates that they would like to engage with the formal student conduct process, the University will launch an investigation into the allegations. Unless there is substantial information showing that the alleged behavior could not have occurred, the University will charge the Respondent so that a formal disciplinary hearing can be held to determine whether or not the respondent is responsible for violating University policy.

In a case where a report has first been made to the police, University student conduct investigations may be delayed until the police have completed their initial investigative interviews. This will be done to ensure that the University investigation does not interfere with a legal investigation. However, based on Federal guidelines issued by the Office of Civil Rights, investigations into cases of alleged Sexual Assault/Battery may not be delayed to allow for criminal court cases to conclude.

The student conduct process is not a legal one. While reports made by the police may be utilized as an investigative tool, findings and/or other rulings in a public court of law shall not be considered as conclusive in the student conduct process.

When a formal hearing is necessary, the University will make every reasonable effort to have the case heard by a panel, in cases where student or faculty panel members are not available for extended periods of University recess, the case may be heard by an individual Student Affairs Dean following the same Disciplinary Hearing Process. The student and faculty representatives on the Panel that will hear the case will be selected based on the following guidelines:

1. For hearings where the respondent is an undergraduate student, the student panel member will be an undergraduate student with junior or senior status and the faculty member will be one that teaches at the undergraduate level.
2. For hearings where the respondent is a graduate student, the student panel member will be a graduate student and the faculty member will be one that teaches at the graduate level.
3. For hearings where the respondent is a student in the School of Law, the student panel member will be a student in the School of Law and the faculty member will be one that teaches in the School of Law.
4. For hearings where the respondent is a student in the School of Medicine, the student panel member will be a student in the School of Medicine and the faculty member will be one that teaches in the School of Medicine.

5. For hearings where the respondent is a student organization made up of undergraduate, graduate, or law students, medical students, or any combination thereof, the student panel member will be an undergraduate student with senior status and the faculty member may be one that teaches at any level of within the University.

The student conduct process through which students are held accountable to University policies and procedures is not intended to be an adversarial one; rather it is intended to be educational. The following processes occurs only between the University and each individual student involved in an investigation and the students involved are expected to present information on their own behalf.

In cases where the Respondent is also charged with additional violations of the Code of Conduct, the same Disciplinary Hearing Panel will hear and decide upon all charges.

In cases where a hearing panel has determined that the Respondent is responsible for violating one or more University policy/ies, the Respondent will then be referred for a mitigation hearing where sanctions appropriate to the severity of the violation will be determined. Appeals based on the perceived inappropriateness of the severity of sanction decided, and/or on perceived procedural error can be filed by the Complainant or the Respondent.

If requested by either party, provisions may be made to conduct the disciplinary hearing in a manner whereby the complainant and the respondent are not in the same physical location, but rather providing their input from another room as long as doing so does not impede discussion of the facts involved in the incident.

The University will work to ensure that any legally binding orders that restrict the proximity or contact between of a respondent and the complainant are enforced. Additionally, in cases involving alleged violations of the Sexual Misconduct and Gender Discrimination Policies, the University will take measures to ensure the perceived safety of complainants in related cases by ensuring that respondents have restricted access to residential areas and academic courses, and are reassigned to different residential areas and courses where applicable.

PROTECTIVE MEASURES

After reporting an incident of this nature the University is able to provide these measures to create a greater sense of safety and security for the complainant. These are addressed on a case by case basis. Examples of protective remedies include, but are not limited to:

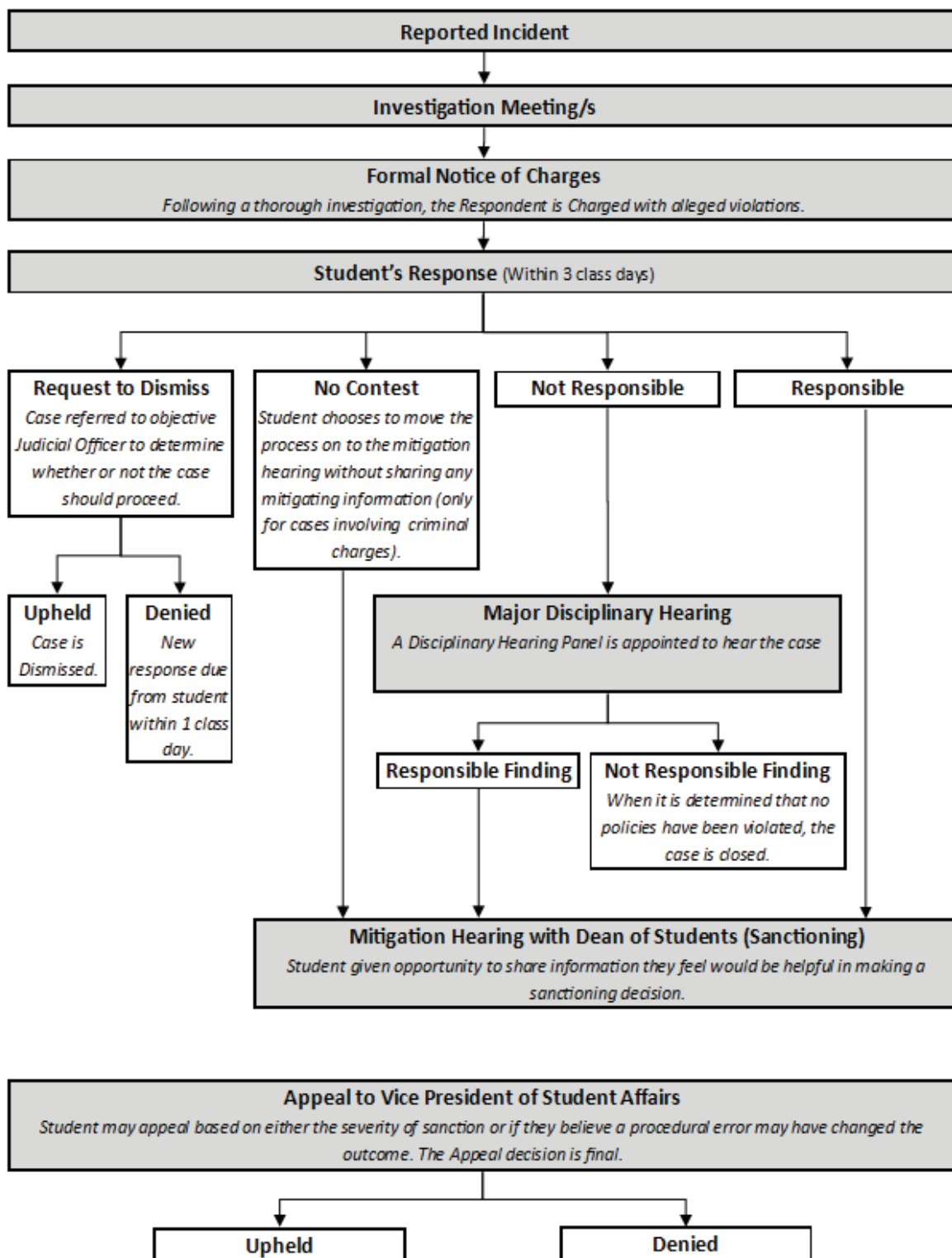
- Administrative “No Contact” orders,
- Change of residence halls housing assignments,
- Change of course registration,
- Restrictions for use of campus facilities or attendance at University-sponsored events,
- Request to faculty for consideration on course deadlines.

The University actively works to ensure that our policies and procedures are in compliance with all federal guidelines, regulations, and laws related to violence against women, relationship violence, and gender discrimination. As a result, both the complainant and the respondent shall have equal right to each of the personal and procedural rights contained herein. Additionally, the University works to ensure:

- Adequate, reliable, and impartial investigation of complaints including the opportunity for both parties to present witnesses and other evidence.
- All reported incidents that involve alleged violations of policy that have Title IX implications will be investigated by the University to the fullest extent possible.
- Both the complainant and respondent will receive written notice of each step of the investigation and adjudication of the case, including charges presented, notice of hearing, notice of the outcome of the hearing, notice of sanction, notice of appeal (where applicable), and notice of the outcome of the appeal (where applicable). Written notices of this type will be sent simultaneously to both the complainant and respondent.

Figure 3, below, illustrates the Disciplinary Student Conduct Process:

FIGURE 3: CONDUCT PROCEDURES FOR REPORTED SEXUAL MISCONDUCT OR GENDER DISCRIMINATION



The following sections more fully explain the Student Conduct Process that commences following the report of an alleged violation of the student Code of Conduct as previously described. The personal and procedural rights described herein are guaranteed to both the complainant and the respondent during the student conduct process.

SECTION I. PERSONAL RIGHTS OF STUDENT DURING THIS STUDENT CONDUCT PROCESS

A. The right to abstain from verbal participation

Students are not required to share their version of the incident in question, but must understand that their non-participation will not preclude a student conduct officer from making a decision on charges or responsibility.

B. The right to an advisor

Students may choose to seek out an advisor of their choice and have that individual present with them during all meetings and/or hearings during a student conduct case.

1. An advisor should be someone who:
 - a. understands the policies and procedures used in the student conduct process,
 - b. can help the student understand those policies and procedures to make more informed decisions throughout the student conduct process, and
 - c. is available during the same days and times as the student (meetings and hearings will be scheduled based upon the student's class and schedule).
2. An advisor may not "represent" a student, serve as "proxy," or speak for them at any point; rather, an advisor may be present to answer questions the involved student poses directly to the advisor during the meeting/s and offer guidance directly to that student. Student Conduct proceedings will not move forward with only the participation of an advisor; the student must also participate.
3. Regardless of whether a student chooses to utilize an advisor, every effort will be made by the student conduct officer adjudicating the case to answer any questions a student may have before and during a formal hearing in order to prepare that student for their formal hearing and the decisions that they will make on their own behalf.

C. The right to a support person

Students may choose to seek out a support person and have that individual present with them during all meetings and/or hearings during a student conduct case.

1. A support person must be a current full-time faculty or staff member, or another full-time enrolled student, at the University of Miami.
2. A support person should be someone who knows of the incident in question and the student for whom they are providing support.
3. A support person may not "represent" a student or speak for them at any point; rather, a support person may be present to provide emotional support for a particular individual.
4. Students who are under 18 years of age may choose to have a parent present to serve as their support person throughout the student conduct investigation and hearing.

D. The right to a formal hearing

Meetings with a student conduct officer prior to and during the presentation of charges during a preliminary hearing will be formal, yet conversational. When a student is charged with a violation of the Code of Conduct, that student is given the right to respond to that charge. When a student does not believe their actions violated the Code of Conduct, that student is then given the opportunity to have the decision of their responsibility made by an impartial, trained Disciplinary Hearing Panel (see below for details). Decisions are then made during formal hearings which are scripted and recorded for the official record of the student conduct case.

E. The right to review related information and question witnesses, and provide the same on their own behalf during a formal disciplinary hearing

In cases where there was more than one student involved in an incident, when there were witnesses to an incident, or when there are secondary witnesses that can either corroborate or invalidate the details of a particular incident, both the investigating student conduct officer and the student in question have the opportunity to ask questions of those individuals to more fully understand the incident and the actions of the student during that incident. This opportunity will be afforded during a formal disciplinary hearing. Where there is either incriminating or exonerating information it will be shared between the student and the student conduct officer. This information may be explained to a student prior to a formal disciplinary hearing. The procedure for questioning witnesses will be determined by the hearing chair person or the student affairs dean serving as the hearing officer. The use of the following are not permitted for consideration during the investigation or hearing process:

- results of polygraph tests
- expert testimony

- interviews or other documents prepared by private investigators or like persons on behalf of the student. Instead, students are welcome to have witnesses appear for questioning during the hearing.

SECTION II. PROCEDURAL RIGHTS FOR STUDENTS DURING THIS STUDENT CONDUCT PROCESS

The following are the procedural requirements of a student conduct case involving charges of this nature. Note that it is possible for SECTION II, parts A through F, and part I – with all of the sub-parts for each – to be accomplished during a single meeting between a Student Conduct Officer and a student who has been charged with a violation of the Code of Conduct.

SECTION II, parts G and H as well as J and K only occur following a decision made by the student and at their request as noted below.

A. Explanation of Personal Rights

At the beginning of the investigative process the Student Conduct Officer shall ensure that each student who may be charged with a violation of the Code of Conduct understands her/his personal rights, as explained above.

B. Investigation

An investigation into an alleged violation of the Code of Conduct may include, but is not limited to, a thorough review of any information deemed pertinent to the case. This will include, but may not be limited to the information initially reported by University faculty, staff, or students, law enforcement agencies, or non-university community members, information collected during meeting/s with the reporting parties and the students involved in an incident, as well as any potential witnesses identified by the report or by the involved students. Other audio-, photo-, and video-graphic evidence may also be considered. Every report received shall necessitate an investigation.

1. Investigating Student Conduct Officers shall be specially trained and serve the Institution as a Title IX Investigator, Student Affairs Dean, and/or professional staff member from the Division of Student Affairs.
2. Under normal circumstances, investigations shall take no more than 30 class days and any subsequent adjudication of policy violations will follow immediately based on the timelines contained herein. The entire process should normally be completed within 60 class days.
3. Reports from law enforcement agencies may be used throughout the student conduct process in order to gain further perspective on an incident. Information regarding prosecutorial or procedural decisions or information related to court decisions will not be considered at any point in the student conduct process.

C. Notice of Charge

Unless there is substantial information showing that the alleged conduct could not have happened, the investigating student conduct officer will present the accused student with a document that specifically explains which policies are involved and how they may have been violated. In conjunction with this document, the investigating student conduct officer shall:

1. Review the student's personal rights,
2. Give the student another opportunity to make any statement or explanation they wish, and
3. Inform the student that the charges constitute a "Sexual Misconduct or Gender Discrimination Offense" and the full range of sanctions will be available if they are determined to be responsible for violating University policy or policies.
4. Advise that the student review their personal rights as outlined in this Handbook,
5. Inform the student of the specific Code of Conduct violations they are charged with, and
6. Afford the respondent with the opportunity to enter a response addressing the charge(s).

D. Possible Responses to Charges

Students will be given a maximum of three (3) class days to respond to charges after receiving a Notice of Charge for a violation of this nature. Students may respond by choosing to enter a "Request to Dismiss," by responding that they are "Responsible" or "Not Responsible" for violating the policies noted, or by choosing to enter a "No Contest" response. If the student does not respond to the charges within the prescribed time period, they shall be deemed to have responded "Not Responsible".

The following procedures shall apply for each of the available responses from the student:

1. Request to Dismiss

If the charged student believes that the University has not followed the conduct procedures as outlined in this manual or one of their rights has been violated, the Respondent may enter a Request to Dismiss. The Request must be in writing and set forth the specific reasons the matter should be dismissed. All Requests to Dismiss must be submitted to the Dean of Students Office and contain:

- a. The name, address and telephone number of the person submitting the Request to Dismiss;
- b. List and describe the charges brought against the student by the Student Conduct Officer;
- c. Specifically outline the basis of the Request to Dismiss; and,
- d. Be signed by the person submitting the Request to Dismiss.

Failure to follow the four requirements outlined above may result in denial of the Request to Dismiss. Upon receipt of a properly filed Request to Dismiss, a Judicial Officer will make a review of the request.

If a Request to Dismiss is properly made, the matter shall immediately be referred to the Director of Student Conduct or their designee for determination. The Judicial Officer has the option to determine if a hearing should be afforded to a student entering such a request. The determination on a Request to Dismiss shall be made within ten (10) class days of its submission to the Dean of Students Office. If the Judicial Officer determines that the request is without merit, the student must enter a new response of either Responsible or Not Responsible, or No Contest within one class day of receiving the response to the request to dismiss.

2. Responsible

If the student believes they are Responsible, the investigating Student Conduct Officer shall immediately refer the case to the Dean of Students or their designee for a Mitigation Hearing (information related to what constitutes a Mitigation Hearing is found later in this section of the Handbook).

3. Not Responsible

If the student believes they are Not Responsible or fails to respond within the allotted time, they shall have the right to a formal disciplinary hearing before a Disciplinary Hearing Panel.

- a. **Scheduling.** The Dean of Students Office shall set the date, time, and place of the hearing based on the involved students' class schedule and any academic or work related obligations they may have. Extra-curricular activities and the schedule of individuals as potential advisors will not be a factor in determining the schedule for a formal hearing. Formal hearings will not be held during examination periods unless specifically requested by the student.
- b. **Timing.** Formal hearings will normally be held within 20 class days of receiving the response from the student. The Dean of Students Office may extend the date of the hearing for good reason including, but not limited to, the availability of hearing panel members.
- c. **Cases spanning more than one academic term.** If a student has been charged and the case has not been fully adjudicated at the conclusion of an academic term, the University may enact a "Hold" on the student's transcript or deny the future enrollment or graduation until such time as the case is adjudicated. Likewise, where necessary the University may also choose to hear the case during these time periods if the parties involve so desire. Students may not be permitted to participate in University organized summer or intersession programs such as study abroad or alternative breaks when a case of this nature has not yet been fully investigated or adjudicated.
- d. **Responsible findings.** If the student is found Responsible at a formal hearing, the case will be forwarded to the Dean of Students, or their designee, for a Mitigation hearing.

4. No Contest

A response of No Contest will constitute neither an admission nor a denial of responsibility and will subject the student to any sanction the deemed proper following a Mitigation Hearing (see Section II, J. for details on a Mitigation Hearing). A No Contest response is not in any way to be considered or construed as evidence against interest. When this response is given, the respondent will move directly to a mitigation hearing with the Dean of Students, or their designee, for sanctioning.

E. Student Conduct Hearing Panels

In most cases, a Disciplinary Hearing Panel will be used to decide responsibility in cases utilizing these Student Conduct Procedures. Each panel shall be composed of one student and one faculty member, each from a larger pool of prospective panelists who are trained to hear and decide upon discipline cases of this nature. The student panelist will be selected from the same student population as the charged students (undergraduate, graduate, law, or medical) and the faculty panel member will be selected from the faculty for that same population. In addition to faculty and student body representatives, an objective Student Affairs Dean from the Coral Gables Campus will serve as Chairperson for the hearing. A Disciplinary Hearing Panel member may not serve as an Advisor or Support Person to a Complainant or a

Respondent.

1. Selection of Faculty Member

The Provost, or their designee, will appoint faculty members from each academic college or school for undergraduate and graduate students to become trained panel members to hear cases where the respondent is an undergraduate or graduate student. The Dean of the Law School, or their designee, will select faculty members from the law faculty to become trained panel members to hear cases where the respondent is a law student. The Dean of the Medical School, or their designee, will select faculty members from the medical faculty to become trained panel members to hear cases where the respondent is a medical student. Each of these faculty panel members will be specially trained to interpret the facts presented for a particular case of this nature and make determinations on whether or not the respondent will be found responsible for violating University policy.

2. Selection of Student Member

Undergraduate student panel members will be selected by the Dean of Students Office and approved by the Provost or their designee. Each must be a full-time student with at least 60 earned credit hours (junior or senior standing) who maintain a minimum 2.5 cumulative GPA; graduate, law, and medical students will be selected by their respective Deans and must have a cumulative GPA of 3.0. In all cases, students must not be currently on disciplinary probation, must have been students at the University for at least one full academic year, and have expressed their willingness to serve in this capacity. All panelists will be trained at the beginning of each academic year and provided with supplemental training where necessary.

3. Panel Responsibilities:

- a. To explain University policy B.22 (prohibiting the False Information from being shared during a hearing) and B.30 and (prohibiting interfering with a hearing in any way) as well as the possible consequences for each;
- b. To allow a Panel member to excuse themselves in a particular case in the event that they feel that their presence may be prejudicial to the case;
- c. To allow the panel members, the student conduct officer, the respondent and/or the complainant to bring any information to the Panel, regarding possible prejudice of a Panel member (if a student asserts valid grounds for the possible prejudice on the part of a Panel member, the hearing chairperson may dismiss the Panel member if they fail to self-dismiss);
- d. To briefly explain to the student the manner by which the hearing will be conducted at the beginning of a disciplinary proceeding;
- e. To ensure, to the extent possible, that all questions asked and information offered are relevant to the question of responsibility in the fact-finding portion of a hearing and, if the student is found responsible, that information relevant to mitigating circumstances is reserved for the sanctioning portion of the hearing;
- f. To compile for the Dean of Students Office a complete file of any cases heard. The files must include any recordings of the hearing, a list of any witnesses presenting information during the hearing, and all evidence utilized in the proceedings and the Panel's decision. Only the complainant and respondent and authorized University officials shall have access to the record of the hearing, which shall be available only for review in the Dean of Students Office, until the period for filing a notice of appeal has expired or until the decision on appeal has been made.

4. Waiver of a Hearing Panel

Alleged violation/s of sexual misconduct or gender discrimination will normally be heard by a hearing panel. However should an incident occur within 20 class days of the end of an academic term, or if hearings become necessary within 20 class days of the end of an academic term or during a time period other than normal University operation (i.e., summer or exam periods), the case will only be heard by a conduct hearing panel if there are trained panel members available for such a hearing. If trained panel members are not available, the hearing will be conducted by an individual, objective Student Affairs Dean (not the same individual who served as the investigator). The unavailability of panel members may not be used as a basis of appeal in the event of a finding of responsible.

F. Procedures for the Formal Student Conduct Hearing

The following are procedural assurances for all formal student conduct hearings.

1. University Oversight

All formal disciplinary hearings will be presided over by an objective Student Affairs Dean (not the same

individual who served as Investigator). This Hearing chairperson will be one part of a three-person panel ensure that proper protocols are adhered to or as the University's lone representative for deciding the outcome of the hearing and on the sanctions where applicable. The hearing Chairperson reserves the right to excuse any participant, at any time, for causing a disruption of the formal disciplinary hearing process following a warning to describe the disruptive behavior and prohibit the behavior from occurring further.

2. Nature of the Hearing

All hearings are intended to be non-adversarial and conducted in the interest of gathering honest and truthful information regarding a particular incident or incidents. Students are reminded that they are expected to uphold the Honor Code and its values of Honesty, Responsibility, and Integrity during all disciplinary hearings.

3. Closed Hearings

Formal disciplinary hearings are closed to the public. Staff members of the University Division of Student Affairs may observe a hearing for training purposes, but only with the permission of both the respondent and the complainant.

a. Advisors

Advisors for both the complainant and the respondent are permitted to attend Disciplinary Hearings as described in Section I, B of these Disciplinary Procedures. Students must inform the Dean of Students Office in writing no less than 3 class days prior to a formal disciplinary hearing if they are planning to bring an advisor to a meeting or hearing. This notice must include the name, telephone number, and e-mail address. If the student fails to provide such information in writing and in the time prescribed, the Advisor may be excluded from the hearing. Advisors may not also serve as a witness.

b. Support persons

Support persons for both the complainant and the respondent are permitted to attend Disciplinary Hearings as described in Section I, C of these Student Conduct Procedures. Students must inform the Dean of Students Office in writing no less than 3 class days prior to a formal disciplinary hearing if they are planning to bring a support person to a meeting or hearing. Support Persons may not also serve as Witnesses.

c. Witnesses

Witnesses will be permitted to participate in a hearing for a select period of time only. For the purposes of a formal disciplinary hearing, a "witnesses" may be an individuals who has first-hand knowledge of the incident in question and is able to speak to the facts of the case at hand, or an individual who has knowledge of the incident directly from either the complainant or respondent. If a witness is to be called that is not on the list of witnesses for the investigator, the person calling that witness (complainant or respondent) bears the responsibility of notifying the witnesses that will appear on their behalf during the hearing. All reasonable efforts will be made to entertain the insights of witness/es. Students must inform the investigator in writing no less than 3 three class days prior to a disciplinary hearing if they are planning to bring one or more witnesses to the hearing and provide a witness list. Upon written request and submission of the Respondent's witness list, the University will supply to the Respondent a list of the Witness/es that will be called during a hearing on its behalf. Witnesses may not also serve as Advisors or as a Support Person.

4. Hearings in Absentia

In instances where either the respondent or complainant does not attend the hearing, the hearing panel/chairperson shall have the discretion to hear and decide upon the facts of the case without the input from or in their absence.

5. Silent participation

The complainant and the respondent reserve the right to be present yet abstain from participation in the Hearing and will not be compelled to share information related to the case on their own behalf. Silent participation does not afford an advisor the right to speak on behalf of a student.

6. Requests or Orders

Witnesses must cooperate in all phases of the student conduct process described herein. The Hearing chairperson shall request the appearance of students whose insight is deemed relevant to a full disclosure of the facts at a hearing. Any student refusing to respond to a Hearing chairperson's request may be charged with failure to comply with University policy B. 42, Requests or Orders.

7. Related Information

Both the complainant and the respondent will be afforded the opportunity, during a hearing, to ask questions of any related information and question any witnesses offering information that may be used to determine responsibility in that a particular case. The procedure for questioning witnesses will be determined by the hearing chair person or the student affairs dean serving as the hearing officer. The introduction or use of polygraph evidence or other evidence prepared by experts or like persons is prohibited. Witnesses must have factual knowledge relating to the allegation; character witnesses are not permissible. .

8. Sharing of Information Prior to a Hearing

Complainants and respondents must submit to the Investigator all information that they want the investigator to consider in creating the University's Investigative Report (such as personal statements, text messages, photos, etc.) at least eight class days prior to the formal disciplinary hearing. The Investigative Report is the formal document that the Investigator submits to the hearing panel for the panel to review and consider as part of the hearing and prior to issuing a finding of responsible or not responsible.

At least five class days before the disciplinary hearing, the Investigative Report and all the information that the Investigator plans to present at the hearing will be shared with the complainant and respondent.

If, upon review of the Investigative Report or any other information disclosed by the Investigator, either student wants to present additional information, the student must notify the Investigator at least three class days before the disciplinary hearing and provide a copy of such additional information to the Investigator. Alerting the investigator about the additional information will enable the student to share that information directly with the panel during the hearing - the investigator need not modify their presentation to include the new information. Any information that has not been shared with the Investigator in advance of the hearing will be presumed inadmissible at the formal disciplinary hearing.

The Investigator's notes related to the investigation and charges will not be disclosed unless they are to be read, verbatim, into the record during the hearing. The Dean of Students or their designee may make exceptions to this policy.

9. Pre-Hearing Conference

The hearing chairperson may schedule a mandatory pre-Hearing Conference upon their initiative or upon the self-initiated written request from the complainant or respondent.

10. Requests

The Hearing chairperson may entertain any requests that are deemed appropriate prior to and/or during the formal disciplinary hearing. However, during the hearing, no requests to strip the hearing body of its duty to reach a decision on the issue of responsibility and/or sanctioning will be considered.

11. Decorum

The Hearing chairperson is charged with the responsibility for maintaining proper decorum and order during the hearing. They may use any reasonable means necessary to maintain decorum and may exclude any person whom, in their opinion, has no legitimate interest in the hearing, or whose conduct impedes or threatens to impede a fair and orderly hearing. Disruptive behavior may constitute a Major offense of the Code of Conduct, policy number B.30, Interference with University Investigations, Conduct Proceedings, or Records.

12. Standard of Proof

In the University's Student Conduct Proceedings, decisions are made based on the "preponderance of evidence" rule. This means that the adjudicating Panel/Dean determines which facts are more likely than not to be true.

13. Paused and Reconvened Hearings

In rare circumstances, it may become necessary for the Hearing Chairperson to pause a hearing after it has begun and to reconvene that hearing at a later time.

14. Decision

Following the presentation of all related information and the closing statements by the parties involved, the hearing will conclude and all parties will be dismissed. The Conduct Hearing Panel is afforded three business days to make a decision on responsibility and deliver their decision to the Dean of Students Office. A written notice of the decision/s must be delivered to both the complainant and the respondent within 1 class day of the decision.

15. Improper Procedure

Improper procedure may be declared at any stage of the hearing by the hearing chairperson upon a finding that the Panel has been exposed to some misconduct in the hearing, which may prevent the rendering of a fair

decision. Declaration of improper procedure shall result in the scheduling of a new hearing within 15 class days with the same hearing chairperson and new panel members.

16. Record of Hearings

A digital audio recording of the formal disciplinary hearing shall be made and this record, together with all formal documents and other evidence presented during the hearing, shall constitute the “official record” of the hearing. No other audio recording of the hearing will be permitted. Upon their request, and for the purpose of appeal only, the respondent and the complainant shall have access to review and/or listen to the record of the hearing in the Dean of Student Office, by appointment only. The recording of the hearing itself shall be available until the period for filing an appeal has expired, or where an appeal has been filed, until the decision on appeal has been made.

After the aforementioned times have elapsed, recordings may be destroyed.

G. Determination of Responsibility

When tasked with determining a student’s responsibility, a disciplinary hearing panel or Hearing chairperson will consider the objective facts presented surrounding a particular incident, taking into consideration what happened and whether or not an action was in violation of the Code of Conduct. When students are deciding their response to a disciplinary charge or charges they are advised to do the same.

H. Mitigation Hearing

When a student claims they are responsible for violating a particular aspect of the Code of Conduct, or if they are found responsible of such during a formal hearing, the *subjective* reasons for *why and how* the Code of Conduct was violated shall be taken into consideration for determining the sanctions that will be assessed. If a student enters a response of No Contest, a mitigation hearing will also be scheduled to set a proper sanction without a finding of responsibility.

The Dean of Students or their designee shall hear all mitigating/aggravating circumstances during a Mitigation Hearing and decide upon sanctions for all student conduct cases involving alleged violations of Sexual Misconduct or Gender Discrimination. Additionally, both the complainant and the respondent have the opportunity to present an “impact statement” to the Dean of Students or their designee describing the impact of the alleged violation on their wellbeing. This may be done verbally and/or in writing. The Dean of Students will consider these statements during mitigation and prior to sanctioning.

In instances where either the student fails to attend a mitigation hearing after proper notice, the Dean of Students or their designee shall have the discretion to decide upon the sanctions for the case without input from the student or in their absence.

I. Disciplinary Decisions/Sanctions

When a student has been found responsible for violating University policy or has entered a response of no contest, a sanction will be imposed by the University. Any sanction/s set out in the procedures of this Handbook may be imposed by the University:

- 1. Educational Sanctions (ED)** a required opportunity for the student to develop a knowledge base designed to help him/her make more informed choices in the future
- 2. Disciplinary Warning (DW)** lasting for a period of 1-2 semesters
- 3. Strict Disciplinary Probation (SDP)** lasting for a period of 1-3 semesters
- 4. Final Disciplinary Probation (FDP)** lasting until a student graduates or otherwise separates from the University permanently
- 5. Suspension (Susp)** a complete separation from the University for a predefined period of time.
- 6. Expulsion (Exp)** permanent dismissal from the University with no right for future readmission into another school/college within the University under any circumstances. A student who has been expelled shall be barred from campus visiting privileges.
- 7. Termination of Residency (TR):** the forced cancellation of a housing contract; this can be applied to on-campus residences only
- 8. Change of Residency (CR):** the forced change of a room and/or building assignment for a housing contract; this can be applied to on-campus residences only
- 9. Restitution (Rest):** the monetary repayment of the cost of an item that was taken or damaged by the student found responsible from another individual.
- 10. Administrative Charge (AC)** paid to the University in order to offset any costs accrued by the University in the

investigation and adjudication of a student conduct case

11. Fine (Fine) paid to the University and serving as a deterrent to similar future violations

Unless the Dean of Students or their designee determines otherwise, all sanctions of Suspension or Expulsion may be effective as of the date of the precipitating incident, even where the student has attended classes and/or taken examinations during the course of the Student Conduct Proceedings.

J. Appeals

Once a decision has been reached on the sanctions related to a particular case, that case can be appealed by the complainant, respondent, or by the University. Only one appeal per case can be submitted and will be considered.

1. Grounds for an Appeal. Appeals will be considered for two reasons:

- a. Procedural error in the investigation or hearing of a particular case;
- b. The sanction received is not appropriate for the nature of the violation.

The determination of responsibility for a disciplinary violation and the entry of a response of no contest are not subject to review on appeal.

2. Timing for the delivery of an appeal letter. Appeals must be turned in to the Office of the Vice President for Student Affairs (244 Ashe Administration Building) by the appealing party and be received within 3 class days of the student receiving the sanctioning decision. All requests for an appeal must be made in writing.

3. Timing for the hearing of an appeal. An appellate hearing shall be conducted within 20 class days of the appeal being received by the Vice President for Student Affairs. Inability to schedule an appeal within 20 class days due to scheduling conflicts, (un)availability of a student conduct officer or panel representative, or scheduled/unscheduled interruption of classes (fall break, inclement weather, spring break, etc.) will not be grounds for dismissal or adjustment of the original hearing decision or sanction.

4. Directions for writing an appeal. Appeals must be written as a formal letter, which may be delivered on paper or in the form of an e-mail, and directed to the "Vice President for Student Affairs," and must contain:

- a. The name and student identification number (C-Number),
- b. The date the appeal was written, and
- c. A detailed explanation of the nature of the appeal.

5. Consideration of an Appeal. Appeals received after the three class-day time frame, or those that do not adhere to the directions listed above, may not be considered.

6. Appellate Officers. The Appellate Officers of the University will decide appeals. The Vice President for Student Affairs, or their designee, shall hear undergraduate student appeals and may consult with the University General Counsel to hear appeals based on procedures. The Dean of the Graduate School, or their designee, shall hear graduate student appeals based on severity of sanction and may consult with the University General Counsel to hear appeals based on procedures. The Dean of the Law School, or their designee, shall hear law student appeals based on severity of sanction and may consult with the University General Counsel to hear appeals based on procedures. The Dean of the Medical School, or their designee, shall hear medical student appeals based on severity of sanction and may consult with the University General Counsel to hear appeals based on procedures.

7. Appeal Hearings. Both the complainant and the respondent will be afforded the right to initiate the appeal process following a decision in a formal hearing and/or mitigation hearing based on either the severity of the sanction rendered or the perception of procedural error.

- a. If either the complainant or the respondent initiates an appeal that is based on the severity of the sanction that was given to the respondent, both the complainant and the respondent (separately) will be afforded the opportunity to meet with the appellate officer separately to discuss the merits of an appeal.
- b. If either the complainant or the respondent initiates an appeal that is based on the perception of a procedural error, the appellate officer may choose to meet with both the complainant and the respondent, or neither the complainant or the respondent, depending on the information that is needed to make the proper determination.

K. Appeal Hearing Procedures

1. Confidentiality. Appeal Hearings are closed to outside participation except where observations and input from

others is requested by the Appellate Officer. Therefore, no witnesses, advisors, attorneys, or other observers are to be present during these proceedings. In addition, no record shall be made of the discussion or vote in these deliberations, other than the Appellate Officer's final decision.

2. **Related Information.** Information related to the incident that was not presented during the formal hearing may be presented, only if it was previously unavailable and only if it addresses the severity of sanction or procedures used during the Hearing.
3. **Exchange of Information.** Upon a reasonable request, the Complainant, Respondent, or Investigator should produce for examination by the other party evidentiary material to be used at the appeal Hearings.
4. **Failure to Appear.** Failure to appear at the Appellate Hearing, without proper notice to the Appellate Officer, will result in a voiding of the appeal.
5. **Decorum.** No person/s involved in an appellate hearing may engage in private conversations while the proceedings are conducted.
6. **Deliberation.** At the conclusion of the Hearing, the Vice President for Student Affairs shall excuse the hearing participants and render a decision.
7. **Findings.** Appeal decisions are final and will be delivered in writing to the complainant and respondent near simultaneously and an official copy of the appeal findings will be sent to the investigating conduct officer for the official file. These decisions may include:
 - a. If the Appellate Officer finds no merit to the appeal, they shall affirm the sanction imposed.
 - b. If the Appellate Officer finds that the student's appeal on procedure is valid, they may confer with the University General Counsel to determine the most appropriate manner in which the case should be reconsidered.
 - c. If the Appellate Officer finds that the penalty assessed by the mitigation officer is too mild or too severe, the Appellate Officer will assess an appropriate penalty.
 - d. Determinations of the appellate officer are final and may not be further appealed.
8. **Interpretation of University Student Conduct Procedures.** Whenever necessary, the University General Counsel shall interpret and/or provide specific clarification on these student conduct procedures.
9. **Procedures Not Specifically Provided Herein.** The Vice President for Student Affairs, the Dean of the Graduate School, the Dean of the Law School, or the Dean of the Medical School may implement procedures that are not specifically prescribed in these policies or procedures, if such implementation would serve to arrive at a full and true disclosure of the facts and/or ensure a fair proceeding, and are instituted with the knowledge and consent of the Dean of Students.

SECTION III. TEMPORARY SUSPENSION

The Provost of the University or their designee may, upon their own initiative or upon the recommendation of the Assistant Vice President / Dean of Students or their designee, temporarily suspend any student whenever they deem that the student's behavior and/or actions constitute a clear and present danger to him/herself or others or that the student's behavior has or may materially disrupt the work or operations of the University.

- A. A Temporary Suspension shall be indefinite and the respondent may, upon the decision of the Provost, be barred being present anywhere on any of the University campuses, including from attending classes and/or taking examinations during the suspension period.
- B. During the course of a Temporary Suspension, an investigation into the incident precipitating the Temporary Suspension may occur, especially where required by the guidelines set forth by the US Department of Education for cases involving sexual violence or sex discrimination.
- C. Within three class days of a receipt of the notice of Temporary Suspension, the respondent must request that a Disciplinary Hearing take place following the procedures set forth herein to answer the alleged violation(s), following a thorough investigation into the incident. Said request shall be made by the respondent in writing to the Assistant Vice President / Dean of Students. The Assistant Vice President / Dean of Students, or their designee, shall determine if and when the matter will be heard.
- D. If the respondent does not request a hearing in writing to the Assistant Vice President / Dean of Students, the respondent will be deemed to have waived their right to participate in a hearing and shall be suspended from the University indefinitely. In such instances, the University reserves the right to investigate and adjudicate the pending

case without the respondent's participation. As part of such an investigation and adjudication, a finding of responsible may be reached and a resulting sanction imposed. The sanction would supersede the indefinite suspension and could include dismissal or expulsion from the University. In the event a respondent is unable to request a hearing due to incarceration or a physical or mental incapacity within the 72 hours, the respondent may appeal to the Provost in writing and the Provost may grant an extension for the request. Respondents will be required to provide documentation of their incarceration and/or incapacity.

- E. The Provost shall decide whether the respondent will be allowed to make up, without prejudice, any class work or examinations missed because of temporary suspension.