

Section IV: Process for Enforcement of the Code

1. Filing a Complaint

Any student who has been charged with committing a violation of the *Code* will be subject to the judicial process upon receipt of the filing of a complaint through submission of an *Allegation of a Violation of the Howard University Student Code of Conduct* form, a referral of a student by a member of the University administration, a *Request for Resolution of an Alleged Violation of the Student Code of Conduct* form, a written Incident Report taken by the Department of Public Safety.

If a student wishes to file a complaint against another student for a violation of the *Code*, the Complainant must review the *Code* to determine the specific provisions the Accused Student violated. The Complainant must then obtain, complete, and submit to the Director of Student Conduct & Community Standards either an *Allegation Violation of the Howard University Student Code of Conduct* complainant form or an *Alleged Violation of the Student Code of Conduct* respondent form. More than one provision of the *Code* may be cited in the complaint form. The forms are available in the Office of Student Conduct & Community Standards (OSC).

The appropriate form must be submitted within five (5) calendar days of the date upon which the incident and/or interaction with the Accused Student occurred or within five (5) calendar days of when the Complainant knew or had reason to know about the alleged Code violation. Alleged *Code* violations supplied on forms submitted after this five (5) calendar day period will be evaluated by the Director of Student Conduct & Community Standards on a case-by- case basis and will only be adjudicated if extenuating circumstances are present.

Once the appropriate form has been submitted to the Associate Vice President for Student Affairs or Director of Student Conduct & Community Standards, the Accused Student will receive written notice from the Director of Student Conduct & Community Standards. The notice will be sent to the student, in writing, via certified mail or email. The Director of Student Conduct & Community Standards will use their best efforts to contact the Accused Student at their local and/or permanent address as well as at any and all email addresses the University has on file. The notice will contain information regarding the alleged violation; it will also request that the Accused Student report to the Director of Student Conduct & Community Standards within forty-eight (48) hours of receipt of the notice for an initial in-take interview.

2. Administrative Action on Allegations of Violations of the Code: The Investigation and Hearing Processes

Following the initial in-take interview, the Director of Student Conduct & Community Standards will assess whether the alleged behavior may be a violation of the *Code*. If a determination is made that a violation of the *Code* may have occurred, the Complainant(s) and the Accused Student(s) will be contacted by the Director of Student Conduct & Community Standards no more than five (5) business days after receiving the completed *Allegation of an Off-Campus Violation of the Howard University Student Code of Conduct* form or the *Request for Resolution of an Alleged Violation of the Student Code of Conduct* form. Both the Complainant(s) and the Accused Student(s) are expected to respond within forty-eight (48) hours of being contacted by the Director of Student Conduct & Community Standards. However, if the Accused Student(s) fails to respond within five (5) business days of the date of the communication, the Director of Student Conduct & Community Standards will proceed with scheduling and convening a hearing to resolve the matter.

After each individual is contacted by the Director of Student Conduct & Community Standards, both the Complainant(s) and the Accused Student(s) will be required to submit individual written Incident Statements

outlining the events and/or incidences that led to the complaint that is now before the Director of Student Conduct & Community Standards. This written account of the incident must be submitted to the Director of Student Conduct & Community Standards no later than five (5) business days of speaking and/or meeting with the Director of Student Conduct & Community Standards. Upon written request to the Director of Student Conduct & Community Standards, the Complainant(s) and/or the Accused Student(s) may request that their full written account be submitted to University Police so that it may be substituted for their incident statement. The Incident Statements of the Complainant(s) and Accused(s) will be shared with both parties, upon written consent of both parties.

The Incident Statement provides the Accused Student(s) with an opportunity to provide their response to the allegation and to submit any and all related information that may support their version of the facts. Within the Incident Statement, the Accused Student(s) will also have an opportunity to plead "Responsible" or "Not Responsible" to the allegations presented in the Complaint.

If the Accused Student(s) indicates that he or she is "Not Responsible" for violating the *Code*, the case will automatically be sent to an Administrative Hearing Officer or an Administrative Hearing Panel for a hearing. After the case has been sent to an Administrative Hearing Officer or Administrative Hearing Panel, the Accused Student(s) and the Complainant(s) will receive written notification of the date, time and place of the hearing no more than ten (10) business days after pleading "Not Responsible".

If the Accused Student(s) indicates that he or she is "Responsible" for violating the *Code*, the case will be sent to the Director of Student Conduct & Community Standards for a determination regarding appropriate sanction(s) to be imposed. Once the Director of Student Conduct & Community Standards has determined the appropriate sanctions for the Accused Student(s), both the Complainant(s) and the Accused Student(s) will be notified of the sanction(s), in writing. The Accused Student(s) may appeal the sanction(s) handed down by the Director of Student Conduct & Community Standards by submitting a written notice of appeal to the Associate Vice President for Student Affairs. The appeals process is outlined in Section IV, Paragraph 3 below.

A. Administrative Hearings

An Administrative Hearing may be employed in any of the following circumstances:

- 1) When a student is charged with a *Code* violation that does not merit indefinite suspension, withdrawal, or expulsion.
- 2) When the nature of the case is such that the Director of Student Conduct & Community Standards, the Associate Vice President for Student Affairs, and the Complainant(s) believe that the best interest of the student and/or the University would be served by using an Administrative Hearing. If the Complainant or the Accused Student objects to use of an Administrative Hearing, either party may appeal this decision, in writing, to the Associate Vice President for Student Affairs, within five (5) calendar days after receiving written notice of the Administrative Hearing. The Vice President for Student Affairs shall render a decision within three (3) business days after receiving the written notice of appeal.

The Director of Student Conduct & Community Standards or the Associate Vice President for Student Affairs reserve the exclusive right to determine which cases will be heard through the Administrative Hearing process and whether these cases will be heard by an Administrative Hearing Officer or an Administrative Hearing Panel. In most cases, the adjudication of alleged violations of the *Code* will be conducted by a duly appointed Administrative Hearing Officer. However, in cases that involve charges that may result in a possible indefinite suspension, withdrawal or expulsion, an Administrative Hearing Panel will be convened.

Administrative Hearing Officers shall be selected by the Director of Student Conduct & Community Standards from a pool of qualified and trained administrative staff and faculty members. The Administrative Hearing Officer is responsible for reviewing all of the relevant information, conducting a hearing, rendering a decision

of responsible or not responsible and making recommendations for sanctions, if any, to the Associate Vice President for Student Affairs or Director of Student Conduct & Community Standards. The Hearing officer shall be the sole judge of the relevancy and admissibility of evidence presented for consideration.

B. Hearing Particulars

1) Notification of Hearing

Once it has been determined that a matter will be adjudicated before an Administrative Hearing Officer or Administrative Hearing Panel, the Director of Student Conduct & Community Standards shall provide the Hearing Officer or Hearing Panel, the Accused Student(s), and the Complainant(s) with a written hearing notice. This notice will contain the date, time and location of the scheduled hearing and will be sent no less than ten (10) business days prior to the hearing date (excluding holidays and University closure days). The hearing notice shall also inform both the Complainant(s) and the Accused Student(s) that they are responsible for contacting their own witnesses, informing them of the hearing particulars, and ensuring their attendance at the hearing. Such notification shall be hand-delivered, mailed, e-mailed or delivered to the local address of record. In the event any party to the hearing elects to present witnesses, he or she must submit a witness list to the Director of Student Conduct & Community Standards at least two (2) business days prior to the hearing. Upon request, copies of the witness list will be made available to the parties.

Please note, upon request, excused absence letters for students who miss class due to participation in a disciplinary procedure will be provided for students to submit to their professors.

2) Notification of Inability to Attend a Hearing

If either the Accused Student(s) or the Complainant(s) cannot attend a scheduled hearing due to compelling circumstances, they must notify the Director of Student Conduct & Community Standards as soon as this information is known. If such a request is made, written documentation of the extenuating circumstances must be provided. Failure to adhere to this policy may result in the imposition of additional disciplinary action and/or the University conducting the proceeding without the benefit of the absent person's participation.

3) Postponement

A one-time request for postponement by either the Accused Student or the Complainant(s) may be considered by the Director of Student Conduct & Community Standards and granted only when it is determined that there is a compelling reason for the delay. If the postponement is granted, the Director of Student Conduct & Community Standards will set a new date for the hearing and notify all parties involved. Further requests for postponement do not have to be considered and a hearing may be held in the absence of either party.

4) Witnesses

Only those persons with direct knowledge of the incident shall be allowed to appear as witnesses. Those attesting to character alone are not allowed to serve as witnesses. A list of any witnesses speaking on behalf of the Accused Student or Complainant must be submitted in accordance with the timeline established herein.

In those situations when an Officer of the Howard University Department of Public Safety takes a report and/or investigates an incident relevant to the proceeding, OSC, the Complainant or the Accused Student may request that the Officer attend and/or participate in a hearing as a witness. Such attendance or participation will be permitted if the Hearing Officer or the Hearing Panel determines that the Officer's presence will facilitate the finding of facts. The Complainant or the Accused Student should contact the Howard University Public Safety Officer directly to make such a request. The student making such a request must also notify the Director of Student Conduct & Community Standards that this request has been made.

5) Document Access

Both the Accused Student(s) and the Complaint (s) shall have reasonable access to all of the relevant case documents that are maintained in the Office of Student Conduct & Community Standards.

Documents shall also be available for review by the Hearing Officer or members of the Hearing Panel prior to a hearing. Any documents prepared by the Director of Student Conduct & Community Standards, all documents submitted during the hearing and any written and/or oral statements related to a matter are considered to be the record and all of these documents will be reviewed by the Hearing Officer or the Hearing Panel in an administrative hearing proceeding.

6) Briefings and Consultations

Prior to the administrative hearing proceeding, Hearing Officers or members of the Hearing Panel will be briefed by the Director of Student Conduct & Community Standards on factual and procedural matters.

7) Failure to Attend

A student who fails to attend a scheduled hearing, after receiving notice that they have been accused of violating the *Code* and after receiving appropriate notification of the hearing, may be subject to further disciplinary action by the Associate Vice President for Student Affairs. Under these circumstances, the Hearing Officer or the Hearing Panel may elect to proceed with the hearing without the Accused Student and render a decision based on the evidence presented.

A witness with evidence critical to any adjudication process related to a violation of the *Code*, who refuses to attend a scheduled hearing, after being called by the Director of Student Conduct & Community Standards, a Hearing Officer, or the Hearing Panel and receiving reasonable notification of a hearing may be subject to disciplinary action.

8) Closed Hearings

All hearings are closed. Therefore, only those persons directly involved, to include the Accused Student, the Complainant, staff, witnesses and University counsel, when appropriate, may be present, unless the Hearing Officer or Hearing Panel, in consultation with the Director of Student Conduct & Community Standards, determines otherwise.

9) Rules of Evidence and Legal Representation

Any disciplinary proceeding related to alleged violations of the *Code* are not subject to the formal rules of process, procedure, and/or evidence, as utilized and applied in criminal or civil court proceedings. These are internal proceedings that will be governed by the rules and regulations contained herein. Additionally, these proceedings do not use the same evidentiary standard used in a court of law. Rather, any decision made by a Hearing Officer or Hearing Panel is based solely on whether the record makes it more likely than not that the charges are true and the *Code* was violated.

Please note, prior to any administrative hearing, both the Accused Student(s) and the Complainant(s) may consult with their own personal legal counsel to prepare for the hearing. However, attorneys are not permitted to attend and/or participate in any disciplinary hearing; they also cannot represent a student at a hearing. A student may, however, elect to have a peer advisor present at their hearing. The peer advisor shall serve in an advisory capacity only. Advisors are not permitted to speak and/or directly participate in the hearing. Peer advisors must be current students in good academic, disciplinary and financial standing with the University.

10) Burden of Proof

The Complainant carries the burden of proof to establish that the Accused Student violated the *Code*. The Accused Student should be prepared to respond to all charges and evidence presented against him/her with witnesses and/or documents, as appropriate.

11) Scope of Evidence Considered in a Disciplinary Hearing

The Hearing Officer or the Hearing Panel shall be the sole judge of the relevancy and admissibility of any and all evidence presented for consideration.

12) Role of the Administrative Hearing Officer and Hearing Panel

The Administrative Hearing Officer and the Hearing Panel are responsible for conducting the hearing in a fair and impartial manner and for recommending such action(s) as necessary to sanction, control and prevent disruptive or inappropriate behavior.

13) Steps in the Hearing

Each hearing shall follow a standardized format. Copies of the procedures may be secured from the Director of Student Conduct & Community Standards in the Office of Student Conduct & Community Standards.

14) Deliberation, Decision Making and Reporting Results

- a. The Hearing Officer/Hearing Panel shall consider all information contained within the record.
- b. The Hearing Officer/Hearing Panel shall prepare a written report including any recommended sanctions and submit the report to the Director of Student Conduct & Community Standards no later than five (5) business days after the date of the hearing.
- c. Any sensitive information considered by the Director of Student Conduct & Community Standards in determining appropriate sanctions for the Accused Student(s) shall be deemed confidential and will not be shared with students, except upon written request from any alleged victim of a crime of violence or non-forcible sex act. Under these circumstances, the results of the University's disciplinary proceedings as well as any sensitive information regarding the Accused student will be disclosed.

C. Notification of Hearing Outcome

The Associate Vice President for Student Affairs shall review the recommendations of the Administrative Hearing Officer/Hearing Panel and the Director of Student Conduct & Community Standards and shall make a final determination regarding which sanctions to render, when applicable. Both the Accused Student(s) and the Complainant(s) will be notified of the hearing outcome within ten (10) business days of the date the Director of Student Conduct & Community Standards receives the written report. If it is determined that a student is Responsible for violating the *Code*, the Director of Student Conduct & Community Standards shall prepare a written memorandum setting forth the decision and any sanctions imposed. The Complainant(s) will be notified of the hearing outcome but not of the specific action taken against the Responsible Party, in accordance with the provisions of the Family Educational Rights and Privacy Act. Please note, the Associate Vice President for Student Affairs reserves the right to delay notification when it determines that such delay is in the best interest of the University. Under these circumstances, the Director of Student Conduct & Community Standards will notify both the Accused Student(s) and the Complainant(s) of the University's determination and provide an anticipated date for notification.

When deemed necessary or appropriate, relevant University officers, officials, units and organizations will also receive notification of hearing outcomes and sanctions.

3. Process for Appealing a Disciplinary Hearing Decision

A. Criteria for an Appeal

A student found Responsible for violating the *Code* may appeal the finding and/or the sanctions imposed. An appeal is not an opportunity to have a new hearing on the matter. As such, an appeal will only be granted under the following circumstances:

1) Procedural Error

An appeal request will be granted when an important procedure leading up to or during the original hearing was ignored or so flawed that the hearing was not fair and impartial.

2) Substantive Error

An appeal request will be granted when there was an error in identifying or interpreting the controlling and relevant University policy or standard of conduct and this substantially affected the hearing and resulted in the Accused being denied a fair hearing outcome.

3) New Evidence

An appeal request will be granted when relevant new evidence has surfaced that could materially affect the decision or finding of the Hearing Panel/Hearing Officer. This evidence must be produced and substantiated or documented and it is required that proof be provided that this information was not available at the time of the hearing.

4) Disproportionate Sanction

An appeal request will be granted when the sanction levied against the Responsible party is manifestly unjust because it is overtly disproportionate to the offense.

B. Process for Filing an Appeal of Disciplinary Action

The student found Responsible of violating the *Code* must submit an *Appeal of Disciplinary Action* form to the Director of Student Conduct & Community Standards within five (5) business days of receiving the written notice of hearing outcome. The form should be typewritten or printed very legibly, with an attached statement of no more than five double-spaced pages in length. The statement must clearly specify the grounds on which the appeal request is being submitted and it must be accompanied by any relevant supporting documentation. Each case may be appealed only once.

C. Appeal Review Process

Upon receipt of the *Appeal of Disciplinary Action* form and all supporting documentation, the Director of Student Conduct & Community Standards will forward the appeal request to the Vice President for Student Affairs or designee, who shall serve as the Administrative Appeal Officer. The Officer shall have the authority to determine if the appeal could reasonably be expected to meet at least one of the four stated criteria. If the Officer so rules, they will set up an appeal hearing and notify the parties of its date, time, and location.

D. Appeal Hearing

Appeal hearings will be limited to a presentation of evidence by the appellant that directly addresses the grounds for the appeal. No witnesses may be called. Appeal hearings will follow a standardized format.

E. Remedies on Appeal

Once the appeal requested is granted, the Administrative Appeals Officer may take one of the following actions:

- 1) Affirm the findings of the original Hearing Officer/Hearing Panel.
- 2) Affirm the findings but change the sanction(s) levied.
- 3) Overturn the findings of the original Hearing Officer/Hearing Panel and remand the matter to the original Hearing Officer/Hearing Panel for a new hearing.

F. Notification of Finding

Upon reaching a final resolution regarding the appeal review, the Administrative Appeals Officer will notify the Associate Vice President for Student Affairs of the results of the appeal review within ten (10) business days of the decision. If necessary, the Associate Vice President for Student Affairs may extend this timeline, when an extension is requested by the Administrative Appeals Officer. Within five (5) business days, the Associate Vice President for Student Affairs will inform the Appellant and the Complainant of the appeal decision. If the case is remanded for a new hearing, the Director of Student Conduct & Community Standards will contact the student about that new hearing.

G. Limitations

- 1) Each case may be appealed only once. Therefore, the finding of the designated Administrative Appeal Officer is final and binding.
- 2) Only the Accused Student may file an appeal.
- 3) Appeals filed after the stated deadline will not be considered, except in compelling circumstances as determined by the Associate Vice President for Student Affairs.

H. Stay of Sanction(s) During the Appeal Process

The Associate Vice President for Student Affairs will determine if the sanction(s) imposed on an appellant will be stayed during the appeal process.