

Student Conduct Committee

Training Packet

2020-2021

Mission Statement

The Office of Student Conduct handles violations of the Code of Student Responsibility. All members of the University community have a responsibility to maintain a level of behavior that reflects favorably upon the person and the University. The University expects students who live on and off campus to abide by local, state, and federal laws as well as University policies, procedures and regulations.

Western Oregon University has a commitment to its students and the community to address allegations of misconduct whether they occur on or off campus. This process is educational and non-adversarial.

Expectations

Statement of Expectations

As members of the University Student Conduct Committee and the Residential Conduct Board, it is expected that:

- Adhere to provisions of the Code and the Guide
- Attend scheduled trainings, meetings, hearings
- Let Tina or Maria know if you have bias prior to a case
- Be available, within reason
- Ask questions during the hearing
- Act in the best interest of the student and WOU
- Understand the basic rights of our students
- Thoroughly review cases before the hearing
- Maintain confidentiality
- Don't make decisions without being satisfied that you have all the information possible
- Be educational
- Communicate any questions or concerns to the Office of Student Conduct.

Educational Philosophy

Most people who have not been to a student discipline hearing think it's like going to trial. Nothing could be further from the truth. In fact, ample case law, from the Supreme Court on down, has established that the analogy of the student conduct hearing as criminal court trial is completely inappropriate. We are not a criminal court of law. Rather, we are an administrative process of justice operating in an educational setting. Though we follow strict due process guidelines (as required by law), we do not follow the same standards of proof, process, or sanctioning as do criminal courts of law.

The underlying philosophy is one of education and not punishment. This does not mean that we never use punitive sanctions. Rather, this means the Student Conduct Program focuses on the education and the development of the individual charged student as well as the protection of community standards. The hearing committee plays a precarious balancing act by striving to educate a person who has damaged their community and ensuring that the community is safe from damaging behavior by students.

Some of the principles of this educational approach to discipline:

- The individual is responsible for resolving the behavior with the aid of the Student Conduct Program.
- The individual is expected to accept responsibility for the behavior.
- The individual is expected to learn from their misconduct.
- Each mistake made by a student can be seen as an educational moment of opportunity.
- The Student Conduct Program reaches and educates students who often times would never become involved with the University.

On Being Educational

Goals of the process

To prevent a student's damaging behavior from recurring in the future, and, to address the cause of the damaging behavior in order to help the student develop and become a positive contributor to the community.

To achieve these goals, you must adhere to several principles, specifically:

Respectful Attitude and Manner

In order for students to believe in our purpose and the genuineness of our desire to help them develop, we must act sincerely and with care. From the initial contact with the charged student through the completion of sanctions, the student should feel respected, trusted, comfortable with the process, and validated. The use of manipulation, threats, or intimidation cannot be a part of this process. This does not mean students should be coddled. A developmental conduct system both holds the student accountable to high standards of behavior while modeling respectful behavior toward the student.

Having a developmental attitude also provides positive role modeling for students. Honest, straightforward responses model constructive behavior to students who have been dishonest. Students who are manipulative can learn new behaviors from hearing committee members who refuse to use manipulation. Role modeling behaviors can be one of the most useful tools we have in teaching new skills.

Language

The language we use also reflects our attitude toward the process. Below are two lists of similar meaning words to describe parts of the conduct process:

<u>Educationally Grounded</u>	<u>Punitively Grounded</u>
Conduct	Discipline
Referred	Written-up
Confronted	Busted
Conduct Hearing	Trial
Charged student	Accused, Offender
Violation	Offense
Damaging behavior	Bad person
Responsible, not responsible	Guilty, innocent

Doing the right thing for the right reasons

The criminal court system, being punitive, generally teaches people that they should obey the rules to avoid punishment. WOU's Student Conduct Program, being developmental, teaches students that they should do the right thing because it will benefit their community. There can be a considerable difference between the character of a person who obeys rules simply to avoid pain (in the form of punishment) and a person who follows the rules because it serves the greater good.

The *Inward Thinking Student* follows selfish motives (“I don’t want to cause harm to my community because that will bring harm to myself in the form of punishment”). The *Outward Thinking Student* is far more selfless (“I will conduct myself respectfully because that will benefit my community”). Of course, there is an element of selfishness in all of our behaviors - the Outward Thinking Student stands to gain much benefit from dealing respectfully with their community - but our goal is to help students think more like the Outward Thinking Student. It is true that we want students to follow the rules. But we should want them to follow rules for reasons more venerable than simply to avoid harm. We should want our students, future leaders of society, to be Outward Thinking Students.

Attribute the Best Motive

Nel Noddings, in her book, *A Feminine Approach to Ethics and Moral Education* says, “Nothing is more important in nurturing the ethical ideal than attribution and explication of the best possible motive.” In deciding whether a student has violated policy, you should begin with the belief that the student had a decent motive for doing what they did. Only in the face of strong information to the contrary should you change your mind. This type of thinking is similar to the “innocent until proven guilty” mindset used in the criminal court system. Attributing the best motive, however, agrees more with a developmental philosophy.

Often our first assumption upon seeing a person violate a community standard is to assume that person is “bad,” that the person meant to cause harm. When your mind begins by attributing the best motive, however, you see the possibility that the student had a good reason for behaving in a way to land themselves in front of the hearing committee. With this attitude, you approach the charged student with the hope that they will see the example of good conduct that you hold out to them in the form of sanctions and by your attitude. By approaching the student in this way, they can feel that the behavior caused harm, *and* that such behavior still could occur with a decent motive. This allows the student to maintain respect even while knowing that they caused harm. The aim is to help the student know why it is good to do the right thing for the right reasons.

Zero-sum Thinking

Zero-sum thinking occurs when you think that if someone wins, then someone must lose. With this type of thinking a gain by someone in the community means that someone else must have lost something. It is a type of thinking which makes it very difficult to help both the community and the charged student benefit from your work. Within the Student Conduct Program, you must strive to avoid this type of thinking as much as possible and think in terms of win-win where both the charged student and the

community feel validated, protected, and cared for (when appropriate). This type of thinking involves gathering input from charged students as to what consequences they will face. The idea is that students who have a role in creating their own sanctions and consequences will be more likely to gain from them. Of course, many students will have no idea what is appropriate. Still, there are ways to discover things about a charged student which will aid in the sanctioning process. The other part of a win-win conduct process is that.

Respect for the Rights of the Individual

Respecting a charged student's rights includes giving full due process, assuming the allegations are not correct until you are persuaded otherwise, and assigning sanctions which correspond to the behavior. Even when the rights of the community are in jeopardy, the basic rights of the individual must be preserved.

The "Teachable Moment"

A developmental student conduct program looks for *the teachable moment* - the point at which the student displays an interest in, or ability to, understand key developmental stumbling blocks that have gotten in their way. When a student sees the source of their troubles, they can be motivated to change the source of the trouble. All conduct processes, from confrontations to hearings, must have as their goal the exploitation of the "teachable moment."

Choices

A conduct process that is educationally based offers choices to students. The choices offered may be very limited, but the attitude reflected is one of options. Choices that might be offered include choosing self-responsibility instead of submitting to peer pressure. Your responsibility as a hearing committee is to help students make positive choices for themselves and to challenge them to accept responsibility for damaging behavior.

Student oriented

A developmental conduct process reflects what is best for the student and the community. Questions like, "how can the student best benefit from this process?", "what does the student need to learn from this process?", and "what is an appropriate response from us to help the student advance developmentally?" are good questions to focus on during sanctioning.

Sanctions fit

The most effective sanctions will be those that address the cause of the inappropriate behavior, are generally non-punitive, and directly related to the developmental issues that the student needs to learn. The sanctions you assign will relate directly to the situation, the student's attitude, commitment to change behavior, willingness to accept responsibility, and personal circumstances as well as what is best for the community.

Rights and Due Process

Since the case of *Dixon v. Alabama State Board of Education* in 1961, all student conduct processes in public institutions of higher education must follow procedures of process to ensure fairness to the charged student. This is called granting due process. The most basic rule for granting due process is that the amount of process that is due is directly related to the importance of the right the University seeks to deprive the student.

Rights of Charged Students

1. Five working days notice of a hearing
2. Knowledge of charges and accusers
3. To have an advisor present
4. To challenge the statements of the accusers
5. To challenge the witnesses
6. Advance notification of the hearing procedures
7. Notification of the hearing outcome in writing within five working days

A student may waive these rights in writing. For instance, a student may wish a hearing sooner than five days and so may indicate that in a written waiver to the Dean of Students.

Rights of Survivor/Victim

Persons who have been survivors/victims of the charged student's behavior have special rights and usually require special treatment. Often survivors/victims feel powerless through student conduct processes. Sometimes they feel they are the ones "on trial" or that they are presumed guilty. This occurs because the nature of a student conduct process, to uncover facts and render a decision based on those facts, requires the hearing committee to ask probing and difficult questions. The DOS or CCCS will brief the Chairperson about any special treatment a survivor/victim has requested (e.g. to have a screen put up so the survivor/victim does not actually have to see the charged student). But the following general guidelines should always be followed by the hearing committee with respect to survivors/victims:

1. Do not assume anything about the survivor/victim
2. Do not ever ask questions about the survivor/ victim's past behavior
3. Ask questions to uncover facts about the case, not to uncover facts about the survivor/victim's life.
4. Treat the survivor/victim with respect and consideration.
5. Do not allow the charged student to question the survivor/victim directly.
6. Do not allow the charged student to intimidate the survivor/victim.

It is possible to over do the “special treatment” a survivor/victim deserves. The best policy when dealing with survivors/victims, therefore, is to act with common sense and not treat them in any way you would not want to be treated.

In addition to these guidelines, *The Code of Student Responsibility* grants survivors/victims the following rights:

1. To have an Advisor present during the hearing.
2. To not be questioned about past behavior.
3. To be notified of the outcome of the hearing in writing.
4. To make a survivor/victim impact statement for purposes of sanctioning.

Questions?

If you have any questions about your very important role as a member of a student conduct hearing body, please talk with someone from the Office of Student Conduct.

The Hearing

What is a hearing?

A hearing is a formal conversation between the charged student and the hearing committee. The hearing committee also engages in conversation with witnesses, complainants, and the University's representative. The conversation is formal in that charged student(s) and complainant(s) present their information to the hearing committee by following a set procedure.

Charged student(s) and complainant(s) do not engage in conversation with each other. Since a charged student(s) may be evicted (RCB) or suspended or expelled (USCC), the hearing committee must carefully adhere to procedure and must carefully review the evidence. Hearings may be emotional, intense, and disruptive. Hearing committee members must be rational, calm, and reasonable in the face of such adversity.

The results of a hearing include: a set of facts found by the hearing committee through questioning and review of the evidence; a decision about each alleged violation of policy; and, if a violation was determined to occur, a set of punitive and/or educational sanctions.

Reviewing a Case

When you are called to serve on a hearing committee, you become responsible for knowing everything you can about the case based on the information present within the case file. The case file is reviewed online through Maxient, our conduct management system. You will be notified by an email "ping notification" that the case file is ready for review. When reviewing the case file, for confidentiality reasons, **do not print out the documents**. A hard copy of the case file will be supplied for you to use at the hearing. We ask that you take notes as you review the case file and bring the notes to the hearing with you. We trust that you will keep the notes confidential. The notes will be collected at the end of the hearing and they will be shredded.

You should do the following when reviewing the case file:

- Read the entire file including all written statements, notes by the Advisor, DOS, or CCCS and reports.
- Determine the time sequence of the events that allegedly occurred.
- Establish for yourself the main areas which need resolution.
- Determine the questions you want to know the answers to.

- Decide if you know the charged student or complainant or if you feel biased by this case so that you should not serve.
- Ask questions.

Conducting the Hearing

Introduction

The hearing begins with all participants in the room, including witnesses, so that the Chairperson may make introductions and explain the procedures. If the charged student fails to appear for the hearing, the Chairperson will consult with the Advisor, DOS or CCCS to determine if the hearing will occur with the student in absentia.

PROCEDURES FOR STUDENT CONDUCT COMMITTEE HEARING

1. Call to order and identify recorder. Turn on recording device.

I would like to call this hearing to order. The time is <TIME>.

<OSC>, for the record, please confirm that the recording device is on. For the record, this hearing is being recorded using a digital recording device.

2. Introduction of Committee

My name is <CHAIR> and I will serve as chairperson for this Student Conduct Hearing. Before we begin, I would like the remaining committee members to introduce themselves.

Student Conduct Committee Hearings are administrative and educational in nature and should not be compared to criminal or civil proceedings. The objective of the hearing is to determine the facts of the case, to decide to uphold or drop the allegations of misconduct, and to assign sanctions if appropriate.

Western Oregon University expects that all information presented at this hearing will be true and correct. If a student willfully provides false information they will be charged with violating the Code of Student Responsibility and may face disciplinary action. I would like to remind everyone that this is a confidential proceeding and we ask all participants to surrender all documents associated with this case following this hearing.

Any person may call for a break at any time during the hearing.

3. a. Introduction of Respondent and other participants

I would like everyone present to introduce themselves, beginning with the respondent.

3. b. If there is an advisor present read:

Please remember advisors and those serving as a support person may not represent a student. You cannot address the committee or any other participants during this hearing.

4. Notice of allegations as follows:

<RESPONDENT> was charged on <DATE>, with violating the following University Code of Student Responsibility regulations:

<CHARGES>

More specifically, that on <DATE>, <RESPONDENT> allegedly <DID SOMETHING.>

5. Verification and acknowledgment of receipt of Notice of Allegations:

Did you, <RESPONDENT>, receive a statement of the charges and a copy of the Code of Student Responsibility and the hearing procedures?"

Do you have questions about your rights and responsibilities under this Code of Student Responsibility?

6. Disposition of procedural questions. Participants must respond verbally.

A. The procedures as established by the University for the administration of this hearing will be followed unless there are objections or suggestions to the contrary. Are there any objections or suggestions?

B. Do you, <RESPONDENT> have any objections to any of the Committee members hearing the case?

If the answer is YES for either

C. Which Committee members do you object to and why?

Hearing Committee evaluates this objection and renders a decision on how to proceed.

Reviewing the Facts, Discussion, and Questioning

Following the introduction, the Committee hears information from the participants. This phase allows the charged student, the Committee, and the University's representative to hear all the relevant information in the case. The Chairperson dismisses all witnesses, leaving only the Committee, the charged student and Advisor, and the University's representative. The following is the sequence for the fact finding phase of the hearing.

7. Information

- Do you, <RESPONDENT>, wish to accept responsibility for any or all of the alleged violations of policy?**

If the respondent accepts responsibility for **ALL** the alleged violations, go to **11.A**. Otherwise, proceed to **8.A**.

8. A. Presentation of Information

- We will begin with information from the Office of Student Conduct. Does <OSC> have any information related to the charges the Hearing Committee should hear before we hear from the respondent?**

When the Student Conduct representative has finished with the presentation of information, the chairperson asks:

- <RESPONDENT>, you may make a statement to the Committee about the charges at this time. Do you wish to make a statement?**

After hearing from the Respondent, the Chairperson asks:

- Do Hearing Committee members have any questions?**
- Does <OSC> have any questions?**

8. B. Presentation of Witness Information

If there are witnesses in attendance, the Chairperson reads:

We will now hear information from witnesses.

The Student Conduct representative calls witnesses in the order the Committee requests. Witness List:

_____ _____ _____

For each witness, the Chairperson says:

<WITNESS> thank you for coming today. This hearing is being digitally recorded. Please state your name for the record.

This committee has been charged with making a decision relative to allegations that have been made against <RESPONDENT>. We understand you may have relevant information that will be helpful to our decision making process. Please tell us what you know about the alleged incident.

After hearing from the witness, the Chairperson asks:

- Do Hearing Committee members have any questions?**
- Does <RESPONDENT> have any questions?**
- Does <OSC> have any questions?**

Thank you for participating in today's hearing. At this time you are free to leave.

8.C. Closing Information

Now is the time for closing statements. <RESPONDENT>, and <OSC> may make a concise closing statement if they wish.

- **<RESPONDENT>, would you like to make a closing statement?**
- **<OSC>, would you like to make a closing statement?**

Following statements, the Chairperson reads

Do you, <RESPONDENT>, wish to accept responsibility for any or all of the alleged violations of the policy?

The respondent may accept responsibility for all, some or none of the alleged violations.

If the respondent accepts responsibility for **ALL** the alleged violations, go to **11.A**, Otherwise, the **Chairperson Reads**

The Hearing Committee will now retire to deliberations to settle on the facts and to make a final judgment on the specific charges. <OSC> may be summoned into deliberations to advise the Hearing Committee during certain parts of deliberations concerning policy, procedure, rules, or other relevant areas. We ask that all participants, except hearing committee members now leave the room.

The time is <TIME>. <OSC>, please turn off the recording device.

Making the Decision

The Committee and the Advisor dismiss all participants and go to deliberations to deliberate upon the allegations of misconduct. The objective in deliberations is to come to a majority decision for each allegation of misconduct after reviewing the facts gained during the hearing and from the charged student's file.

9. Deliberations for Findings and Judgment:

The objective in deliberations is to come to a majority decision for each allegation of misconduct after reviewing the facts gained during the hearing and from the Respondent's file.

- Agree upon findings
- Agree upon status of each alleged violation (upheld or not upheld) and record them on Hearing Summary Form.
- Decisions on each allegation are made by majority vote if consensus cannot be attained.

Following deliberations, recall all participants.

10. Presentation of Findings and Judgment

10. A. If the Committee upheld none of the allegations, the Chairperson reads:

This hearing is back in session. Will <OSC> please verify that the recording device is on. The time is <TIME>.

The Hearing Committee has dropped the allegation(s) that have been made against you. <RESPONDENT>, please sign this Hearing Results form. You will receive the white copy of the form as record of the hearing.

Once the Respondent signs the form, the Chairperson reads:

Thank you for attending the hearing. Please leave all documents for confidential disposal. This hearing is now adjourned. The time is <TIME>. <OSC>, please turn off the recorder.

10. B. If the Committee upheld at least one of the allegations or if the Respondent accepted responsibility in section 7 or 8C, the Chairperson reads:

This hearing is now back in session. Will <OSC> please verify that the recorder is on. The time is <TIME>. The Hearing Committee has upheld the following allegation(s):

1. _____
2. _____
3. _____
4. _____
5. _____

The Hearing Committee has dropped the following allegation(s)

1. _____
2. _____
3. _____
4. _____
5. _____

11. A. Additional Information for Consideration of Sanctioning

The Hearing Committee will now hear information to be considered when determining sanctions related to the findings and violations.

11. B. Comments from the Respondent

<RESPONDENT>, you may make a statement to the Committee about the incident, your previous conduct history, and your academic history at this time. Do you wish to make a statement?

11. C. Comments from the Student Conduct representative

Does <OSC> have information relevant to the Charged Student's previous academic and disciplinary history?

12. Retire to Deliberations

The Hearing Committee will now retire to deliberations to determine the sanctions. <OSC> may be summoned into deliberations to advise the Hearing Committee during certain parts of deliberations concerning policy, procedure, rules, or other relevant areas. We ask that all participants except the Hearing Committee members now leave the room.

The time is <TIME>. <OSC>, please turn off the recording device.

Following deliberations, recall all participants.

Assigning the Sanctions

During this phase of the hearing, the Committee retires once again to closed session to determine the sanctions.

13. Presentation of Sanctions and rationale

13. A. List of Sanction(s)

This hearing is back in session. <OSC>, please verify that the recording device is on. The time is <TIME>.

The Hearing Committee has determined that the following sanctions are appropriate in resolving this case. They are as follows:

1. _____
2. _____
3. _____

13. B. Committee members may make comments to the Respondent regarding rationale for sanctions.

At this time, committee members are welcome to provide comments regarding their rationale for the sanctions that have been outlined.

Closing

During this last phase of the hearing, the Chairperson explains the charged student's right to an appeal and provides the student with an opportunity to ask questions or make a final statement. The Chairperson also explains what happens next in the student conduct process.

14. Appeals Process

<RESPONDENT>, you have the right to appeal decisions reached at hearings.

The route of appeal is through the Office of the Vice President for Student Affairs.

The appeal must be filed within five business days from the date the hearing results are sent to you by email.

15. Adjourn Hearing

Your sanctions and the appeals procedure are noted on the Hearings Results form. Within five business days you will be mailed a formal letter outlining the results of this hearing. In the meantime, if you have any questions about this hearing or this case, please contact the Office of Student Conduct or the Vice President for Student Affairs.

<OSC> will now present the Hearing Results form for <RESPONDENT>'s signature. By signing this document, you acknowledge receipt of the hearing results. Your signature does not imply agreement with the hearing results.

The Student Conduct representative has the Respondent sign Hearings Results form, gives the Respondent white copy and keeps yellow copy for the file.

Thank you for your participation. This hearing is adjourned.

<OSC>, please turn off the recording device.

For the record, please submit the Committee's rationale statement here:

HEARING SUBCOMMITTEE

Chair _____
printed signed

Member _____
printed signed

Member _____
printed signed

Member _____
printed signed

Member _____
printed signed

The Fine Art of Questioning

The Art of Questioning

Questioning is the most important aspect of the hearing process. As you become more skillful at phrasing your questions, more useful information will be obtained from all participants. In depth questioning helps you ascertain the facts of the case and clarify vague issues.

Here are some areas to remember while you are preparing to ask questions.

Open-ended Questions

Carefully phrase your questions as open-ended (who, what, how) rather than closed-ended (did you, were you). Closed-ended questions often result in a yes/no response which do not offer much additional information. Open-ended questions allow the student to answer as long as they desire, possibly yielding more information than originally requested. In depth questioning helps the hearing committee to reveal the most information and clarify vague issues. For example:

Close-ended

Question: "Were you angry when you broke the window?"

Response: "Yes."

Open-Ended

Question: "What were your feelings when you broke the window?"

Response: "I guess I was pretty angry...I had just gotten into a fight with my girlfriend and I was just so mad and I guess it didn't help that I had drunk a few beers too."

Multiple Choice

Another pitfall hearing committee members fall into is asking multiple choice questions for the person to answer. The hearing committee member offers all of the choices they deem appropriate. Often this type of question also provides the respondent with the answer they think you want to hear.

For example:

Question: "What were your feelings when you broke the window: were you angry, elated, frustrated, or just letting off steam? This was just about mid-term time?"

Response: "I guess I was letting off steam...it seemed like everyone was stressed out. Not just me."

When you offer multiple choices, the student will respond with what they think is least incriminating. Simply ask your question and then stop.

Question: "What were your feelings when you broke the window?"

Response: "I was really mad and I wanted to take it out on something."

The Power of Silence

Do not be alarmed when a question is asked and the person does not respond immediately. It is natural to think about a response before responding. Allow the person ample time to think without undue pressure to respond quickly. If the person needs clarification, let them ask for it. Don't assume that they do not understand the question. Also, don't let your discomfort with the silence force you to rephrase your question several times.

Pursuing a Line of Questions

Pursuing a line of questions means that you ask a series of pre-arranged and related questions all in a row. You usually pursue a line of questions when you have a hunch about something from the case file or from the information you receive during the hearing. You won't announce to the hearing committee that you are doing this, but the hearing committee will know you are because of how you ask your questions. It is a good idea if you are a hearing committee member and you realize one of your colleagues is doing this that you refrain from asking questions until you are sure they are done.

The danger of pursuing a line of questions is that it can be very adversarial. This means that it might feel to the student that you are trying to corner them or attack them. So, while this method of questioning is useful, it should be used carefully and judiciously.

Deliberating

The process of rendering decisions in student conduct cases is difficult, especially when eviction, suspension or expulsion are possible outcomes. The decision-making process can go smoothly if hearing committee members follow these guidelines.

Information (statement)

Throughout the hearing, listen carefully to all of the evidence presented. Ask thoughtful questions which will help determine how much credence should be given to each individual's statement. Here is a list of suggested questions to consider while preparing to make a decision.

- How relevant is the statement of this witness to the central issues(s) of the case?
- How much does this person know about the action or incident in question?
- How did this person come to know this information?
- Which of the witnesses had the best opportunity to observe the action or incident in question?
- In how much detail can the witness recall the action or incident? Is this witness' recollection of details consistent with the recollections of other witnesses?
- Are there circumstances which might call the reliability of the witness into question?

It is your duty to question all witnesses, complainants, and charged students with these types of questions. Your goal is to uncover as many facts as possible.

Standard of Evidence

A standard is an acknowledged measure of comparison. When you make any decision related to what happened during an incident, you need a standard to guide you. The standard which you will use for student conduct hearings is called a ***preponderance of the evidence***. A preponderance of the evidence occurs when the information you have received during the hearing indicates that the student's behavior ***more likely than not*** violated *The Code of Student Responsibility*.

Credibility

If you find yourself having to make a decision concerning a person's credibility, you will need to consider several things. Some of the information you hear will be useless and have nothing to do with the incident in question. To help you separate relevant

from irrelevant information, here is a list of the kinds of information that are useful in a hearing:

Motive: is this information telling you whether the student had any motive to violate the policy? (For example, the student had been locked out of their room twelve times and didn't want to pay for any more room lock-outs could be a motive for climbing on the ledge to get into their room).

Ability to commit the violation: if someone can verify that the student had a broken leg at the time they said to have been out on the ledge, it makes it less believable that this student was the one out on the ledge, if anyone was out there at all.

Malice: this can work both ways. If the person documenting the incident feels animosity toward the charged student, first it must be proven to you, but second, it has nothing to do with whether the incident actually occurred. The harboring of malice must have some effect on the facts of the incident to be relevant. It may be very relevant to you as you try to decide whom to believe if you discover that the charged student really dislikes the person whom they allegedly harassed.

Threats, expressions, or earlier similar acts implying or denoting intent. For example, if a student threatens another student by saying, "I'd be careful about my car if I were you. Nasty things happen in the parking lot." And later that week the other student's car is vandalized in the parking lot, that earlier threat is relevant to determining whether this student did the vandalism.

Other behavior that tends to shake your belief in a person's statement: concealing one's identity, fabricating or destroying evidence, resisting arrest, running away (although scared, innocent people sometimes do this).

In the end, you will have to use your best judgment. The types of evidence, as well as the information people give you, will vary as well. Following are some types:

Direct evidence: based on personal observation or experience. You either believe the person saw or did what they said they saw or did, or you don't believe it.

Circumstantial evidence: information which, although it does not include an eyewitness to the actual event, does include enough information to lead a reasonable person to the conclusion that the student did what they are alleged to have done. For example, if you are in a hallway and you see a water balloon being thrown out of a room into the hallway (but you didn't see who threw it), and you immediately walk to that room, no one leaves the room as you approach it, and when you get to the room

there is only one student in that room (and no one under the beds or in the closets), it may be reasonable to conclude that the student threw the balloon.

Documentary evidence: any supportive writings or documents including statements, reports, etcetera, that support or deny a fact at issue. Documents whose existence and contents are known generally or are known by any unbiased witness need not be physically produced during a hearing.

Second hand “hearsay” evidence: While it may be acceptable for the hearing committee to hear second hand information, for example, from a proxy for a witness unable to attend a hearing due to illness or academic conflict, it is not intended that evidence given by unknown or unidentified persons be accepted, nor that evidence with no traceable origin be considered when weighing the facts of a case. Opinions, unless inferred from fact, or unless they come from an expert (for instance, the Resident Director for the charged student) have little place within a student conduct hearing.

Weighing the Information Presented

All statements and evidence is not equal in value. In fact, most, if not all, statements have some degree of bias or tend to lead the listener toward a single interpretation of a fact or situation. The following are some general guidelines:

When a person says “yes, I did it.”

If a student takes responsibility for the violations there is no need for the hearing committee to ask questions about the facts unless the committee needs clarification on what happened. The committee should instead address the student’s perception of the seriousness of the violation.

When you have to weigh one person’s word against another’s

Barring other forms of evidence, the statement of the unbiased person is given more weight. For example, more weight should be given to the statement of an uninvolved bystander, for instance a police officer, than to the girlfriend of the charged student. Similarly, more weight is generally given to people not motivated to lie. For instance, an RA who has documented an incident probably has little motivation to lie about the incident while the charged student may have motivation to lie about the incident. It is up to you, the hearing committee, to discover if a person actually does have motivation to lie.

When the student claims to have not known they were breaking a rule

This is frequently an attempt to distract the listener so that the listener will accept the student’s failure to assume accountability for their role in the alleged violation. Only in exceptionally rare cases should this type of statement be given any value (for instance,

an act that occurred before it was prohibited, or a rule or regulation that was not given reasonable distribution).

Presenting evidence requiring investigation outside of the hearing

This evidence may be in the form of damages or new witnesses. The Chairperson may recess the hearing and determine an additional meeting time so that the hearing may be reconvened. Or the Chairperson may take the hearing committee members to the damaged site, if that is possible. Any new evidence must be presented at the reconvened hearing so that both parties have the opportunity to respond.

Multiple witnesses corroborating the same set of facts

The number of such witnesses may be limited by the Chairperson in the interest of expediting the hearing. The statement of a single, unbiased, and disinterested witness is worth a number of biased testimonies. Only in a very rare situation should the number of witnesses be considered as a factor in settling on a fact.

When a person is attempting to identify the student responsible

The statement regarding the identification of a student is one of the least reliable and most difficult pieces of information to work with. Conflicting witness observations as to who actually engaged in the violation often occur in a hearing. It is your responsibility to follow the usual criteria for weighing statements and decide who is the more believable. Identification need not be absolute to be considered by the hearing committee. A witness may be able to testify as to belief, opinion, and judgment of identity, and this type of statement is greatly reinforced if the witness has been able to pick out this individual from among others without any help. A statement of the identity is strongest when the witness has been acquainted with or has had the opportunity to observe the student on prior occasions.

When the student introduces character witnesses

The statement of character witnesses is of no value in determining a student's responsibility relative to the charges, unless this witness has information which suggests that the student was physically unable to engage in the prohibited form of conduct. The value of a character witness' statement is minimized if they know the student only through a limited setting. Character witnesses **are** particularly worthwhile for purposes of sanctioning.

Settling on the Facts

Probably the most difficult task of deliberating is settling on the facts. When you settle on the facts, you as a group use the evidence to agree on a list of actions which more likely than not, occurred during the incident in question. In the process of settling on the facts, you will want to keep the following in mind:

- Examine each piece of evidence using the standard of proof as your guide. In our case, that means the evidence must amount to a preponderance on one side or the other to establish something as a fact. Witnesses must be credible and convincing. They must be able to provide reasonably detailed accounts of the events in question.
- The facts of the case are those events, circumstances, incidents, or actions which you believe to be true based upon the evidence and statement you have heard.
- Facts are **not** those incidents or circumstances which might or might not have occurred. Conjecture has no place in fact finding.
- The principal question in your mind at this point would not be “is this individual responsible for the alleged violations?” The principal question should be “what happened.”

By settling on the facts, you provide a chronological account of the incident in question. Members of the hearing committee must have a clear command of the facts in order to make a decision as to whether a violation occurred.

Determination

Once you have settled on the facts of the case, you can determine whether or not the charged student’s actions violated *The Code of Student Responsibility*. This leads directly to a decision as to whether to uphold or drop any or all of the allegations. If the hearing committee has settled on the facts systematically, this decision should be relatively easy.

First, the hearing committee restates the facts. From the facts, the hearing committee will render a decision regarding each allegation using either consensus or majority vote.

Sanctioning

Assigning sanctions is probably the most important educational tool at your disposal within the Student Conduct Program. Sanctions give you the opportunity to match a student's educational needs (as shown by their behavior) with a particular action or activity. Following are some questions to ask the student and to consider when deciding on appropriate sanctions.

What was the intent of the student?

- What was the student's motivation for engaging in the prohibited behavior?
- Did the student intentionally violate a policy?
- Was the student aware of the possible consequences or was there some plausible explanation?

What were the actual consequences of the behavior?

- Was there physical damage or personal harm?
- What were the potential consequences of the behavior?
- If not caught, would physical damage or personal harm have occurred?
- What potential harm might the charged student have suffered?

Were alcohol or drugs a part of the behavior?

- Is the charged student under the legal drinking age?
- Does the student show a pattern of abusing alcohol?
- Did the use of alcohol or other drugs affect the student's judgment?

What is the attitude of the student?

- Is the student willing to accept responsibility for the behavior?
- Does the student refuse to cooperate?
- Does the charged student show any signs of empathy for those hurt by their behavior?
- What is the student's past conduct and academic record?

Here are some questions you should consider when deciding what type of sanction is appropriate.

- What significant aggravating or mitigating factors would warrant a lesser or more severe sanction?
- What action by the hearing committee would help the student learn from this experience?
- What action would help the student take the process seriously and think about their behavior?
- What action would serve to deter others from similar behavior and to maintain community standards?
- Is the sanction in any way humiliating or demeaning? Is the sanction realistic for the student to carry out?
- Does the sanction fit the behavior?

The Art of Sanctioning

Assigning a sanction or sanctions requires more than simply deciding on the activity or the penalty. You must decide upon whether you will consider punitive or educational sanctions. You must decide upon the timeline for the sanctions to be complete. You must consider where the student will need to go, the people the student will need to meet, and the resources they will need to successfully complete the sanction. Some guidelines for creating sanctions follow:

Disciplinary -v- Educational

Though the student conduct process is educational in its nature, disciplinary sanctions have their place. In fact, as a part of any set of sanctions, **there must be at least one disciplinary** sanction from the following list:

1. Written warning
2. Residence Halls Probation
3. Deferred removal
4. Removal from residence hall room or building
5. Disciplinary Probation
6. Deferred Suspension
7. Suspension
8. Deferred Expulsion
9. Expulsion
10. Negative notation on the transcript

You, the hearing committee, assign educational sanctions in addition to one (or more) of these disciplinary sanctions. You can also decide to assign only disciplinary sanctions, if the situation merits such an action. For instance, if you are faced with a student who has continuously violated University policy, you may want to consider a severe

punishment as your only action to send a clear message to the student and to the community that such behavior has no place in the academic community. You need not wait for recurring behavior to consider severe disciplinary action. Any violation that the hearing committee deems heinous enough merits a severe punishment. Indeed, faced with dealing with certain behavior, including educational sanctions would actually be considered inappropriate.

Avoiding Zero-Sum Thinking

The process of sanctioning should help all parties feel they have gained something. The community may feel it has gained a more peaceful environment; the residence hall staff may feel they have helped a student develop and have gained a positive contributor to their building; and the student may feel that they were understood and encouraged to develop behavior more congruent with the values of the community. When the sanctions are designed to help everyone feel like they have come away with something positive, students are more likely to become valuable members of the community.

Paying Attention to Development

It is important that the educational sanctions are related to a developmental stage or skills that the student needs to master. When you consider the behavior, also consider the circumstances. Is the student struggling with a particular developmental issue? Can you, the hearing committee, help them over this hurdle?

Choices

It sometimes is a good idea to give the student reasonable choices in the sanctions. Students who feel at least a small sense of ownership in their fate are usually more likely to succeed in completion of the sanctions. For example, if the student says they cannot afford to pay for the damages, the hearing committee may offer the opportunity to work the amount off. Choices may also take the form of choosing between completing all sanctions or being removed from school for a period of time (choosing education over punishment).

Sanctions fit the circumstances and the behavior

Any sanction you assign must fit both the student's individual circumstances and the student's behavior.

Timelines

Nearly every sanction you assign will need some form of timeline for completion. The deadlines must offer adequate time for the student to complete the task while considering academic demands, job expectations, etcetera. At the same time, deadlines

should serve as a motivation for a student to complete the task in a timeframe that is educationally useful.

Explaining “Why”

In order for the student to understand the purpose of sanctioning, an explanation of why certain sanctions are being assigned is necessary. During hearing committee session when the committee lists to the student the assigned sanctions is the time to explain to the student the rationale behind the sanctions: why the exhibited behavior was damaging, how the behavior affected others, and what skills are being encouraged in the student are very helpful.

Appeals

Basis for an Appeal

The Guide to Residential Living OR The Code of Student Responsibility allows one appeal for a student found in violation of policy. The point of an appeal is *not* to provide the student with a new hearing, although sometimes that does happen. An appeal must be made based on one or more of the following:

1. To determine whether the original hearing was conducted in conformity with the procedures described in *The Guide to Residential Living OR The Code of Student Responsibility*.
2. To determine whether the decision reached regarding the charged student was based on a preponderance of the evidence; that is, whether the facts presented were sufficient to establish that a violation of *The Guide to Residential Living OR The Code of Student Responsibility* occurred.
3. To determine whether the sanction(s) imposed were appropriate to the charged student's previous conduct history and to the present violation(s) of *The Guide to Residential Living OR The Code of Student Responsibility*.
4. To consider new evidence, sufficient to alter a decision or the relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

The Residential Conduct Board or the Dean of Students can hear appeals of decisions made by the Housing Professional Staff.

The Dean of Students will hear appeals of the Residential Conduct Board.

The Vice President for Student Affairs will hear appeals of decisions made by the Student Conduct Committee, Dean of Students and Coordinator for Conduct and Community Standards.

In hearings involving a Survivor of alleged sexual harassment or sexual misconduct, the Survivor may appeal decisions reached at a hearing to the Vice President for Student Affairs if the Survivor believes the decision is not in compliance with University standards.