

# FORUMS OF RESOLUTION AND PROCEDURES

The University is committed to the timely and fair resolution of disciplinary matters involving students and recognized student organizations. Generally, the more serious the possible deprivation, the greater due process protections owed. Although the Code of Conduct affords significant procedural protections within the principles of due process that do not undermine the integrity of the conduct process, this does not include the right to confront accusers in a manner inconsistent with this Code or to be represented by counsel.

## Guiding Principles

Minimally, students accused of engaging in prohibited conduct have the right to a fair resolution process before an impartial decision-making body, including the right to receive timely notice and a meaningful opportunity to respond to the allegations made against them.

**Notice.** Respondents are notified through their UNH-issued email. The notice may include a summary of the allegations and charges under consideration, proposed sanctions, and the resolution options available. The notice will also specify instructions on procedures for responding and deadlines, and the date, time, and location of the meeting. Requests to reschedule conduct meetings are typically only granted when there is an academic conflict.

**Decision.** Typically, the decision-maker will send the Respondent a written notice of the decision as to whether the charges have been substantiated or not, based upon preponderance as the standard of proof, the rationale for the determinations, and the assigned sanctions (if any) five (5) business days after the meeting or at the conclusion of the conduct process when such cases involve multiple respondents.

## Alternative Resolution Pathways

Where possible, the university-wide conduct system prioritizes education and the growth of students as responsible community members. For this reason, the Director may make reasonable alterations to any of these procedures to handle many reports in a flexible way in the spirit of a prompt conclusion depending on the context of the situation.

At any time, the Director may also recommend the involved parties explore alternative dispute or conflict resolution opportunities or to undertake voluntary or mandated assessments, in lieu of adjudication. The student need not accept responsibility for the prohibited conduct in order for such referrals to be made.

## Investigation and Threshold Determination

If the factual allegations of the report or complaint, if taken as true, do constitute prohibited conduct that does not involve harassment, sexual misconduct, and sexual exploitation, the Director may undertake an investigation if necessary.

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. The Director may facilitate an investigation or appoint an independent or external investigator for the matter at hand.

- If an investigation of prohibited non-academic conduct reveals other prohibited conduct under this Code, the Office of Community Standards will forward the issue to the office or university official responsible for investigating that possible misconduct.
- The procedures to investigate allegations of organizational misconduct will be moderately altered to meet the principles of fundamental fairness and determine if the investigation is best conducted jointly with or independently from any national or local organization granting affiliation status. Members of the organizations are called to participate in the investigation as witnesses, unless information surfaces that clearly establishes individual conduct.

Upon completion of the investigation, the investigator will make a threshold determination as to whether there is sufficient evidence to advance the matter to formal adjudication or recommend another method of resolution.

## Preliminary Interview and Investigation Timeline

Reasonable attempts will be made to interview relevant witnesses and additional information, documentation, and witnesses from other sources may be explored. The Director will consider information that is relevant, material, and temporally proximate to the conduct at issue.

An investigation will be completed promptly with a projected timeline for completion of sixty (60) days. As appropriate, the Director will provide both the parties with periodic status updates during the investigation; however, the actual duration of each investigation may vary commensurate with its complexity, the severity, and extent of the allegations, the number of witnesses, the need for language assistance or accommodation of disabilities, and the possibility of interruption by curtailed operations or break periods. If the duration of an investigation exceeds these estimates, the Director will notify the parties, in writing, of any such delay.

## Resolution Agreement

A Respondent may elect to participate in an expedited resolution by agreement upon timely response to the notice of allegations and in lieu of adjudication. A Resolution Agreement summarily resolves alleged violations by way of the Respondent accepting responsibility for all charges under consideration, admitting to the misconduct, and agreeing to specific sanctions and remedies without use of a hearing or opportunity to appeal. Resolution Agreements are final upon signatures of the Respondent and the decision-maker.

## Options for Adjudication

**Conduct#Conference** – The Respondent agrees to participate in a one-on-one fact-finding meeting with a Conduct Officer. This will allow for further exploration of other facts and circumstances of the alleged misconduct. The burden is on the respondent to prove that their position has merit. The Respondent will have an opportunity to share their perspective about the incident in question, clarify or correct any information submitted for review and answer questions specific to their alleged involvement.

**Administrative Hearing** – A Respondent can accept responsibility for all charges and request to petition for a specific sanction or lesser consequence. Typically, Administrative Hearings are facilitated by a single Hearing Officer who will not revisit the question of alleged prohibited conduct, but rather consider the Respondent's petition before rendering a final decision.

**Panel Hearing** – A Respondent can deny responsibility for one or more of the charges under consideration and contest the allegations brought against them before a body of trained community members comprised of faculty, staff, and students.###Nothing in this Code shall preclude the Director from modifying the composition of the Panel or from directing a single Hearing Officer to serve as the decision-maker.

## University Hearing and Expanded Protections

The following procedures apply to resolve alleged prohibited conduct that could reasonably result in University Housing Suspension, University Housing Removal, University Suspension, or University Expulsion:

### Preliminary Meeting

The preliminary meeting is likely to be the first time for the Respondent to review all relevant information that will be used to support the charges brought forth against them and to have the procedures to be followed at the hearing explained. If the date, time, and location of the hearing have been confirmed and the names of the decision-making body is known, this information will also be shared at that time. Additionally, the Respondent should be prepared to identify the advisor (if any) that will support them for the duration of the conduct process, to discuss alternative resolutions of the matter without a hearing, and to resolve special considerations, answer other questions, and share information prior to the hearing. Requests to reschedule preliminary meetings are typically only granted when there is an academic conflict.

### Pre-Hearing Submissions

Community Standards reserves the right to verify the accuracy and authenticity of germane information shared prior to and during the hearing process, including witnesses, authors of letters or documentation submitted, and inspect documents in an effort to corroborate the account provided by the student. The Director, in consultation with the Chair, will establish a reasonable deadline for these submissions, typically no longer than five (5) business days.

Formal rules of evidence do not apply, and the Chair shall make all determinations regarding the admissibility, probative value, prejudicial effect, repetitiveness, redundancy, relevancy, etc., of evidence presented. Evidence that was excluded or redacted from the record as impermissible will not be admissible at the hearing. Hearsay is admissible if the Chair finds that it is generally reliable, but any party may present reasons that admitted hearsay evidence is or is not sufficiently reliable to be the basis for a finding of responsibility.

The parties may request extensions that may be granted, if reasonable, at the discretion of the Director. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will generally result in forfeiture of a party's ability to participate in that aspect of the process. Subject to a demonstration of compelling circumstances, a party who declines or fails to participate in a meeting or interview, provide evidence, or suggests witnesses, waives their right to do so upon the issuance of the final report and/or record.

### Identifying Witnesses

Witnesses presented on behalf of the parties must have factual first-hand knowledge of the incident in question. In cases requiring special expertise, the University may appoint individuals with similar expertise to

serve as consultants to the hearing body. The consultant may be present and provide information as called upon during the hearing.

Expert Witness testimony is admissible only when the Director determines that such testimony is potentially relevant to the investigation and where the investigator determines that the expert witness is qualified to provide such testimony. In order for expert witness testimony to be considered for purposes of adjudication, they must be available to attend the live hearing and must testify at the live hearing if called by the Panel. The expert witness must also submit to cross-examination. If an expert witness is not available to testify at the live hearing and/or does not testify when called at the live hearing, any prior statement, testimony, or written report submitted may not be considered to determine responsibility.

### Notice of Hearing

Hearings are scheduled as timely as possible. All efforts will be made to provide notice of hearing no less than three (3) days or no more than ten (10) days after a notice of allegations has been issued. The Respondent may waive the three-day notice. Time limits for scheduling meetings and hearings may be extended at the discretion of the Director. If the notice does not include the names of the decision-maker(s) slated for adjudication, the parties will be notified, in writing, at a later time, prior to the hearing. Hearings may take place in person or via video conference or other remote technology.

In matters where there is more than one Respondent arising from the same incident, the Chair in consultation with the Director and the parties may order a consolidated or severed hearing. Respondents may request that hearings be conducted separately. In the case of a consolidated hearing, the Chair may reasonably adjust timelines and procedures if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to the parties involved or confusion for the fact finders. When a hearing occurs at the end of an academic semester, including, but not limited to reading days and final exams, and during the summer and winter breaks, the Director may assign cases to a single Hearing Officer.

### Request to Delay

The Respondent may request a postponement of no more than three (3) business days for reasonable cause. The Director will determine the validity of the request. Absent extenuating circumstances, a request for a postponement must be made in writing, include supporting rationale, and be received by the person sending the hearing notification at least two (2) business days before the scheduled hearing. The University reserves the right to reschedule a hearing for the first appropriate available date. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Chair may postpone and reschedule a hearing, without a request by the parties, when the cause to do so arises.

### Challenge for Impartiality

The Respondent has the right to a hearing by an unbiased decision-making body, and the right to challenge the body that is serving in such capacity and the Chair, on the grounds of bias or conflict of interest. The Director will determine the validity of the objection but shall not impair the independence of designated hearing body, though they may provide procedural advice at all times and exercise best judgment to avoid acting in dual roles in the same conduct case.

The provisions about bias and conflict of interests shall not be construed so widely as to eliminate broad categories of panelists and no panel member will be excused solely on the basis of a protected characteristic in accordance with the University's Statement of Nondiscrimination. Mere knowledge of the events at issue shall not disqualify a panel member. Where actual bias or conflict of interest is established, the Respondent may request that a panel member be excused because of a proven conflict of interest as provided in the foregoing provisions assuming they have not already recused themselves, to ensure that the process is managed by individuals that eliminates the identified bias or conflict.

Actual bias is an articulated prejudice in favor of or against one party or position; it is not a generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the decision-makers in the process. Panel members should be alert to potential personal, economic, or legal conflicts of interest between themselves and the persons bringing matters to the Panel or the student against whom a matter has been brought.

Panel members having past or present ties of kinship, marriage, or other very close personal relationship to any of the parties involved in the matter should notify the Chair that a conflict of interest exists and be automatically excused from participation; the nature of the relationship need not be disclosed to the Chair. Panel members having some form of close professional relationship with one or more of the parties involved in the matter (e.g., collaboration or cooperation in research, writing, or teaching with a colleague or service as an ongoing academic adviser, athletic coach, employed in the same department or unit or instructor to the student in class that is smaller in size) should notify the Chair that a potential conflict of interest exists.

A Panel member should inform the Chair that the nature of the matter creates an occasion for a conflict of interest and may request to be excused from participation. Similarly, all issues relating to conflict of interest should be raised by the student and settled before the Panel begins consideration of the matter. Questions relating to conflict of interest may not be raised after the Panel has reached decisions, nor may they be grounds for appeal of the hearing results.

The foregoing provisions are intended not to be inclusive of all possible situations of conflict of interest, but rather to provide guidance. It is the intention of these provisions to enable the Panel to avoid both the appearance and the reality of conflict of interest so that the community will have confidence in the fairness of the proceedings. In case of doubt, the Chair and Panel Officer should assume that a potential conflict of interest exists.

## Advisor Assistance

As an alternative or in addition to utilizing a university-trained advisor, the Respondent has the right to be assisted by an advisor of their choosing during the conduct process and at the hearing. The role of the advisor is to provide support and assistance in understanding and navigating this process. To protect the privacy of those involved, all advisors not trained by Community Standards are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the University's process.

The University's duty is to the student, not the advisor. All communication is made directly with the student. The process will not be unreasonably delayed to accommodate the schedule of the advisor. An advisor must familiarize themselves with university policy and may

be provided with written expectations in advance of participation in university proceedings. The advisor may not testify in or obstruct an interview, author-written submissions, create a recording or transcription of the meeting, bring electronic devices into the meeting, or disrupt the process. The Director has the right to determine what constitutes appropriate behavior of an advisor and take reasonable steps to ensure compliance with this policy.

## Reasonable Accommodation

A qualifying individual has the right to reasonable accommodations to ensure the opportunity to participate fully in the conduct process. Student Accessibility Services (SAS) and Community Standards are committed to and responsible for assuring students with disabilities receive equitable, effective, and meaningful access to all campus programs, resources, and services. The student who wishes to request accommodation should adhere to the procedures and documentation guidelines established by Student Accessibility Services (SAS). Students should advise Community Standards, in writing, of their intention to request accommodation no later than two (2) days prior to the scheduled hearing in order to permit sufficient time to make any necessary arrangements.

## Standard of Proof

The University's prescribed standard of proof used to determine responsibility for policy violations is the preponderance of the evidence standard, when the information suggests that it is more likely than not that a violation occurred.

## Presumption of Non-Responsibility

Decision-making bodies shall make no assumptions or presumptions (including about the credibility or culpability of the parties to the proceeding or witnesses) and reach decisions as to whether the Respondent has violated university policy solely on the basis of the evidence and testimony presented to them.

The Respondent will be presumed not responsible until the appropriate disciplinary authority, using the preponderance of evidence standard, determines that a policy violation has occurred. When participating in any of the University's conduct processes, the Respondent bears the burden of responsibility to prove or disprove allegations. It is the University's role to gather information and apply an unbiased and transparent process so that the appropriate decision-maker can determine the outcome.

## Notice of Decision

Following the conclusion of the hearing, the Respondent will be notified in writing of the hearing results outlining the findings of fact, rationale, any determination whether the student is responsible for violating the Code of Conduct and the sanctions, if any. If sanctions are imposed, they will be issued in consideration of the specific circumstances of the case, institutional precedent, disciplinary history, aggravating and mitigating circumstances, and community impact. If the hearing results involve outcomes of Disciplinary Probation, University Housing Removal, University Suspension, or University Expulsion, a summary of the appeal procedures will be included.

## Disciplinary Proceedings Held in Absentia

Students have a duty to cooperate with the university's conduct system and an obligation to provide truthful information. Because the most accurate and fair review and understanding of the facts of the incident at

issue can best be accomplished when all parties are present, refusal to respond or participate will be considered a forfeiture of the party's right to address the allegations and denies the decision-making body from learning important information that could influence the outcome of the proceeding.

Although no inference or adverse action may be drawn against a student for failing to participate in a proceeding, the University reserves the right to continue with the conduct process to its conclusion in the student's absence except when there are exigent circumstances. Any findings of responsibility or non-responsibility will be based on the information available, sanctions issued, and related deadlines will be documented in an outcome letter and sent to the applicable parties.