

an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

Article II. Supporting Policies

A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement

The following basic policies will apply in situations where misconduct violates both a University conduct regulation and the public law:

1. The following kinds of offenses are adjudicated in the public courts: all felonies, controlled substance offenses, motor vehicle moving violations, assaults upon a peace officer or resisting arrest, refusals by persons to identify themselves, as well as cases in which the complainant wishes to proceed in the courts and cases involving accused persons who are not members of the University community. Nonetheless, the Judicial Administrator has discretion to pursue even serious breaches of the law under the Campus Code of Conduct, ~~although he or she should consider, withholding the exercise of University jurisdiction until public officials have disposed of the case by conviction or otherwise.~~

2. When the Judicial Administrator determines that misconduct does not constitute a serious breach of the law and that the interests of justice would be served by handling such misconduct within the University jurisdiction, he or she shall:

- a. attempt to exercise jurisdiction in a manner to avoid dual punishment for the same act;
- b. cooperate with public officials so that the exercise of University jurisdiction ordinarily will not be followed by public prosecution of the individual's misconduct; and
- c. withhold the exercise of University jurisdiction, when prompt public prosecution is anticipated or is under way, until public officials have disposed of the case by conviction or otherwise.

3. Policies covering conduct that violates both a University conduct regulation and the public law, where feasible, should be based on jurisdictional understandings and procedures jointly developed and periodically reviewed by University and local officials. To the maximum extent feasible, jurisdictional understandings shall be made known to the University community.

B. Other Policies on the University's Role in Public Law Enforcement

1. When public officials apprehend an individual for a violation of the public law, whether or not the misconduct is also a violation of a University conduct regulation, the University shall neither request nor agree to specially advantageous disposition of an

① Timely dealing with alleged misconduct is vital. The University cannot cede or defer to external proceedings when its own principles are at stake. Nevertheless, the Judicial Administrator

petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant a postponement upon the request of the accused, to a date not later than 21 calendar days after the petition is received. If that board determines that the Temporary Protection Directive was not violated or the suspension was improper or is no longer necessary, it shall lift the suspension immediately.

e. The Judicial Administrator may, in his or her discretion, rescind a Temporary Protection Directive or lift such a suspension if he or she determines that the circumstances no longer require such action.

3. Temporary Suspension Pending Resolution

a. Suspension of an Individual

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or designee.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion.

b. Suspension of a University-Registered Organization

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate.

c. When the President or his or her designee exercises this power to suspend temporarily, these procedures shall be followed:

(1) In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the suspension. That board shall meet to consider the petition as soon as possible, but no later than five business days after it receives the petition. However, that board may grant a postponement upon the request of the accused, to a date not later than 21 calendar days after the petition is received.

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or avoiding serious disruption of the
University's educational environment

(2) If the University Hearing Board determines that (1) good cause has not been shown for the exercise of the President's suspension power or (2) that circumstances have changed so that suspension is no longer necessary, the suspension shall be lifted immediately.

(3) If the suspension remains in effect after the University Hearing Board's initial meeting, that board may decide to reconvene, upon motion by any member or the chair of the panel or upon the request of the suspended person or University-registered organization, to determine whether circumstances no longer require suspension.

C. Summary Decision

1. The Judicial Administrator and the accused may agree, in writing, to a summary decision before formal charges are filed. If a Summary Decision Agreement is reached, the Judicial Administrator shall:

a. send a notice of formal accusation and of the provisions of the summary decision to the accused; and

b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

2. In the event that this summary procedure is employed:

a. ~~All penalties and remedies listed in Article IV may be assessed via summary decision.~~ In the case of suspension or dismissal, however, the Judicial Administrator must obtain the approval of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the negotiations; the Judicial Administrator must do so prior to reaching agreement, but may address the Hearing Board Chair without the participation of the accused.

b. A summary decision shall not become final until two business days after reaching agreement.

3. The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.

4. The Judicial Administrator shall notify the complainant no more than two business days after the summary decision becomes final or after he or she otherwise decides not to file charges.

5. If the complainant is dissatisfied with the summary decision or with the decision of the Judicial Administrator not to file charges, he or she may petition the Judicial Administrator in writing to show cause for the decision before the University Hearing Board. This petition

restitution to the complainant or order to the offender, as opposed to a penalty) by the Hearing Panel.

(5) The failure of the accused to appear at the time and place designated for the accused's appearance before the Hearing Panel empowers the Hearing Panel to:

(a) impose a temporary suspension, pending the accused's appearance;

(b) find the accused to have violated this Code and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the Judicial Administrator shows that the accused received notice of the hearing, or that the procedures for notifying the accused were followed, and submits information sufficient to establish the allegations in the charges; or

(c) excuse the failure to appear for good cause shown, in which case the accused shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

(6) The Hearing Panel shall endeavor to evaluate all relevant facts of a given case at the hearing. It shall receive relevant information that is reasonably reliable, but need not accept as evidence accounts of the accused's statements by the Judicial Administrator. Strict rules of evidence shall not apply, and the Hearing Panel shall have the power to establish its own rules of evidence, subject to the following exceptions:

(a) Confidential relationships currently protected under state or federal law shall be protected.

(b) Evidence of a victim's sexual conduct shall not be admissible unless fairness to the accused requires consideration of such evidence, consistent with practice under section 60.42 of the New York Penal Law.

(c) Members of the Hearing Panel may question witnesses and adduce evidence, but this shall not preclude parties to the hearing from questioning witnesses or introducing evidence. No accused person shall be denied the opportunity to question witnesses or to confront his or her accusers. If an individual complainant does not testify, the Hearing Panel may proceed to decision only if it finds that the complainant's interests in not testifying outweigh the accused's interests in confronting his or her accuser. In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement.

(d) No accused person shall be denied the right to present evidence and witnesses in his or her own behalf.

(e) No accused person shall be compelled to testify against himself or herself.

The hearing can proceed if he or she chooses to remain silent.

(c) The Review Panel shall not increase a penalty. If the Review Panel calls for new evidence, it shall remand the case to the Hearing Panel from which it originated for a new hearing.

2. No final decision of this judicial system shall be reviewed by any other authority within the University.

G. General Procedures

1. Deadlines

a. In computing any time period specified in this Code, the day of the event, act, or default that initiates the period shall be excluded.

b. The Judicial Administrator and other parties to the hearings must make good faith efforts to meet the deadlines for conducting hearings outlined by this Code. If the deadlines cannot be met, however, the hearings must be held as soon as practicable.

2. Legal Advisor

The Hearing Panel or the Review Panel may appoint an independent legal advisor who shall advise that board on all legal matters relating to the performance of its responsibilities, and who may be present during any hearings and, upon the invitation of that board, during deliberations.

3. Witness Immunity

The Judicial Administrator, the Hearing Panel, or the Review Panel may grant to witnesses transactional immunity from proceedings within the judicial system.

4. Confidentiality

a. All who are involved in the complaint, investigation, hearing, appeal, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all judicial records, except those records specifically referred to in Article II.B. Copies of judicial records shall not be released to outside sources without written consent of the subject of such record, except as may be required by law.

b. The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. The University may disclose otherwise confidential information when ~~required~~ by law, when necessary to protect the safety or well-being of the University community, or to preserve the integrity of proceedings under this Code.

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