


### SENATE LEGISLATION APPROVAL

<b>Date:</b>	May 7, 2013
<b>To:</b>	Wallace D. Loh
<b>From:</b>	Vincent Novara Chair, University Senate 
<b>Subject:</b>	Code of Student Conduct Expansion of Jurisdiction
<b>Senate Document #:</b>	12-13-26

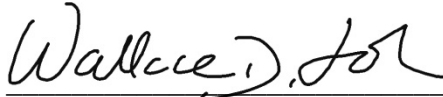
I am pleased to forward for your consideration the attached legislation entitled, "Code of Student Conduct Expansion of Jurisdiction." Jason Speck, Chair of the Student Conduct Committee (SCC), presented the proposal. The University Senate approved the proposal at its May 2, 2013 meeting.

We request that you inform the Senate Office of your decision as well as any subsequent action related to your conclusion.

Enclosure: Code of Student Conduct Expansion of Jurisdiction  
Senate Document # 12-13-26

VN/rm

Cc: Mary Ann Rankin, Senior Vice President & Provost  
Reka Montfort, Executive Secretary and Director, University Senate  
Juan Uriagereka, Associate Provost for Faculty Affairs  
Terry Roach, Executive Assistant to the President  
Janet Turnbull, President's Legal Office  
Elizabeth Beise, Associate Provost for Academic Planning & Programs  
Sylvia B. Andrews, Academic Affairs  
Andrea Goodwin, Director of the Office of Student Conduct  
David Mitchell, Director of Public Safety

Approved:  Date: 05-09-2013  
Wallace D. Loh  
President

**NOTE: Any financial resources requests go through a separate, non-Senate process.**



## University Senate TRANSMITTAL FORM

<b>Senate Document #:</b>	12-13-26
<b>PCC ID #:</b>	N/A
<b>Title:</b>	<i>Code of Student Conduct</i> Expansion of Jurisdiction
<b>Presenter:</b>	Jason Speck, Chair, Senate Student Conduct Committee (SCC)
<b>Date of SEC Review:</b>	April 19, 2013
<b>Date of Senate Review:</b>	May 2, 2013
<b>Voting (highlight one):</b>	On resolutions or recommendations one by one, or In a single vote To endorse entire report
<b>Statement of Issue:</b>	In Fall 2012 semester, the Director of the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) regarding consideration of expanding the jurisdiction of the University's <i>Code of Student Conduct (Code)</i> . The proposal explained that there is growing concern over the limitations of the <i>Code</i> to address certain types of misconduct off-campus, most specifically acts of hazing and violence. Furthermore, at the time of the proposal submission, the University of Maryland Department of Public Safety (UMDPS) was also working toward increasing student safety off-campus and reducing crime off-campus. UMDPS has outlined a plan that includes expanded jurisdiction off-campus to increase student safety and alleviate some of the College Park community's concerns regarding student behavior off-campus such as public intoxication, large parties, vandalism, and major noise complaints. The Director of the OSC requested that the Senate consider a recommendation to amend the <i>Code</i> to extend its jurisdiction, which would allow the University to respond to misconduct off-campus. The SEC discussed the proposal in November 2012 and voted to charge the Senate Student Conduct Committee (SCC) with reviewing the proposal.
<b>Relevant Policy # &amp; URL:</b>	<a href="http://www.president.umd.edu/policies/v100b.html">http://www.president.umd.edu/policies/v100b.html</a>
<b>Recommendation:</b>	The SCC recommends changes to University policy V-1.00(B) <i>Code of Student Conduct</i> to reflect expansion of jurisdiction, as noted in Appendix 1 of the attached report.

<p><b>Committee Work:</b></p>	<p>The SCC received the <i>Code of Student Conduct</i> Expansion of Jurisdiction charge from the SEC during the Fall 2012 semester. The committee met with the proposer to discuss the intention of the proposal. The SCC also met with representatives of the UMDPS on multiple occasions throughout the course of its review and reviewed annual off-campus crime statistics from 2011 and 2012.</p> <p>In accordance with its charge, members of the SCC consulted with the Senate Student Affairs Committee and gathered feedback about the issue. As a result of this meeting, the SCC developed a list of Frequently Asked Questions (FAQs), which it agreed to include with its final report as supplementary material for increased understanding and explanation of this complex issue. Members of the SCC also presented at a meeting of the Student Government Association (SGA), in order to gather additional student perspective of this important topic. The SCC consulted with the Office of Legal Affairs while drafting potential language for the <i>Code</i>.</p> <p>The SCC finds that expanding the jurisdiction of the <i>Code</i> to address off-campus misconduct is necessary and appropriate for the University. In conjunction with the OSC, the SCC drafted and unanimously approved the attached edits to the <i>Code</i>, which it recommends become official campus policy.</p> <p>The SCC voted to approve forwarding the recommended policy edits to the SEC at its committee meeting on March 29, 2013. After consulting with the SEC, the SCC voted to adopt additional changes to the language in the policy for Senate consideration.</p>
<p><b>Alternatives:</b></p>	<p>The Senate could choose not to approve the recommended changes to the University of Maryland <i>Code of Student Conduct</i>. The <i>Code</i> would remain as currently written and jurisdiction would not be expanded to cover off-campus misconduct.</p>
<p><b>Risks:</b></p>	<p>There are no associated risks.</p>
<p><b>Financial Implications:</b></p>	<p>The Office of Student Conduct (OSC) has requested additional resources in order to fund the hiring of a new full-time staff member, a graduate student assistant, and administrative costs related to expansion of jurisdiction for the <i>Code</i>.</p>
<p><b>Further Approvals Required:</b></p>	<p>Senate Approval, Presidential Approval.</p>

# Senate Student Conduct Committee

## Report – Senate Document 12-13-26

### *Code of Student Conduct* Expansion of Jurisdiction

April 2013

#### **BACKGROUND**

At the beginning of the Fall 2012 semester, the Director of the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) regarding consideration of expanding the jurisdiction of the University's *Code of Student Conduct (Code)* (Appendix 5). The proposal explained that there is growing concern over the limitations of the *Code* to address certain types of misconduct off-campus, most specifically acts of hazing and violence. Furthermore, at the time of the proposal submission, the University of Maryland Department of Public Safety (UMDPS) was also working toward increasing student safety off-campus and reducing crime off-campus. UMDPS has outlined a plan that includes increased jurisdiction off-campus to increase student safety and alleviate some of the College Park community's concerns regarding student behavior off-campus such as public intoxication, large parties, vandalism, and major noise complaints. The Director of the OSC requested that the University Senate consider a recommendation to amend the *Code* to extend jurisdiction, which would allow the University to respond to misconduct off-campus. The SEC discussed the proposal at its meeting on November 12, 2012 and voted to charge the Senate Student Conduct Committee (SCC) with reviewing the proposal (Appendix 4).

#### **CURRENT PRACTICE**

Currently, the *Code* does not extend to behavior off-campus unless the behavior is a criminal offense resulting in conviction, and if such an offense would constitute a violation of the *Code* had it occurred on University premises.

Additionally, the *Code* can also be applied off-campus if a student has engaged in behavior that is considered misconduct related to a University-sponsored activity, which is any activity on- or off-campus that is initiated, aided, authorized, or supervised by the University. Examples of such behavior include, but are not limited to, rioting, assault, theft, vandalism, and fire setting. Serious misconduct associated with a University-sponsored event, which could result in harm to persons or property or otherwise poses a threat to the stability of the campus or campus community, may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges related to the misconduct.

#### **COMMITTEE WORK**

The SCC received the expansion of jurisdiction for the *Code* charge from the SEC during the Fall 2012 semester and reviewed this topic throughout the course of the academic year. The committee first met with the proposer, who also serves as a non-voting ex-officio member of the SCC, at its meeting on November 20, 2012, to discuss the intention of the proposal. The committee also met with representatives of the UMDPS on multiple occasions throughout the course of its review. On February 20, 2013, the SCC met with representatives of UMDPS and reviewed annual off-campus crime statistics from 2011 and 2012.

In accordance with its charge, on February 28, 2013, members of the SCC consulted with the Senate Student Affairs Committee and gathered feedback about the issue. As a result of this meeting, the SCC developed a list of Frequently Asked Questions (FAQs), which it agreed to include with its final report as supplementary material for increased understanding and explanation of this complex issue (Appendix 2). In addition, on March 27, 2013, members of the SCC presented at a meeting of the Student Government Association (SGA) in order to gather additional student perspective of this important topic. The committee also consulted with the Office of Legal Affairs while drafting potential language for the *Code*.

During its review, the committee evaluated a number of codes of student conduct and related policies at other institutions of higher education, including the University of Iowa, Northwestern University, Pennsylvania State University, Rutgers University, the University of Michigan-Dearborn, Ohio State University, the University of Illinois at Urbana-Champaign, the University of Minnesota, and the University of Nebraska, among others (Appendix 3). The SCC also researched the off-campus misconduct policies at institutions within the University System of Maryland (USM), all of which have an established relationship with their surrounding communities. The committee found that establishing discretionary off-campus jurisdiction would be more aligned with current higher education practice than not allowing the University to apply the *Code* to off-campus misconduct. The committee also reviewed 'statements of expectations for off campus behavior' from other institutions (e.g. Rutgers University) for ideas on how the OSC and Off-Campus Housing Services could potentially publicize the expanded jurisdiction in the future, in order to help students become more aware of how their off-campus behavior can impact their student status on campus.

The SCC determined that there are a number of benefits associated with expansion of jurisdiction for the *Code*. For instance, one of the major benefits of expanding jurisdiction of the *Code* is that it will add another resource for students, particularly as an increasing number of undergraduate and graduate students choose to live off-campus. The OSC and the UMDPS would have more opportunity and flexibility of options for handling complaints when students come forward with concerns about their peers, or about circumstances that could potentially escalate into dangerous situations. In addition, if a student's family contact's the OSC with concerns about misconduct that has occurred off-campus, the Director of the OSC would be better equipped to explain the situation and the student's options. Currently, when students seek assistance from the OSC for situations that have occurred off-campus, the University usually does not have the ability to intervene.

The SCC expects that expansion of jurisdiction will improve the safety and security of students living off-campus. For instance, if a student is the victim of assault or hazing by another student off-campus, expansion of jurisdiction of the *Code* will allow for there to be a simultaneous on-campus recourse, which is particularly helpful if criminal charges are not filed, or are dismissed in a court of law. The OSC also has the ability to assign educational sanctions when a student is found responsible of misconduct, which may prove to have a positive impact on the student; since the mission of the institution is to educate students, this course of action fits well within the goals of the University. Furthermore, all members of the campus community are able to submit an incident referral to the OSC for investigation. Thus, if a student witnesses disorderly or disruptive behavior occurring off-campus, he or she can file a complaint with the OSC, even if the behavior has not been reported to the police.

The SCC hopes that with expansion of jurisdiction for the *Code*, students will be more cognizant of their behavior and actions off-campus, as a result of recognizing that the University has a vested interest in their off-campus conduct. Right now, there is often no accountability taken for

off-campus behavior, such as noise violations resulting from a large party. As a result, corrective action may not be taken for these types of off-campus violations; for instance, if a landlord pays a fine and the student renters are not charged with the related offense. With expansion of jurisdiction for the *Code*, students could be held accountable to the University for their off-campus conduct, which may have more of an impact on overall behavioral change. Even though a student might face a lesser sanction for their misconduct through the OSC than through the criminal justice system, knowledge that the student could be held accountable to the University often appears to have a large influence on student behavior. It is important to remember that students are representatives of the University wherever they go, and whether they live on- or off-campus.

The SCC believes that the *Code* should have jurisdiction over off-campus behavior if the offense would constitute a violation of the *Code* had it occurred on University premises, even if the behavior has not resulted in criminal conviction. The SCC also believes that the University should be able to pursue disciplinary action when off-campus misconduct poses a threat to the stability of the campus or campus community. Therefore, in conjunction with the OSC, the SCC has crafted new language for the *Code* (including the creation of Section 9 'University Jurisdiction,' along with edits to Section 10 'Prohibited Conduct') to reflect expansion of jurisdiction for the *Code*.

## **RECOMMENDATION**

The SCC recommends changes to University policy V-1.00(B) *University of Maryland Code of Student Conduct*, as noted in Appendix 1. These changes include the creation of a new section (Section 9 'University Jurisdiction'), along with edits to the existing Section 10 'Prohibited Conduct.' References to "University premises" have been removed throughout Section 10 to reflect extended jurisdiction off-campus. Beginning with Section 10, as well as all references to sections throughout the *Code*, the sections have been re-numbered due to the addition of the section on University Jurisdiction.

The SCC has unanimously approved the attached policy edits for the *Code of Student Conduct*, which the committee recommends become official campus policy at the University of Maryland.

## **APPENDICES**

Appendix 1 – Recommended Changes to Policy V-1.00(B) UMD *Code of Student Conduct*

Appendix 2 – Frequently Asked Questions (FAQs) as developed by the SCC

Appendix 3 – Related Research of Peer Institutions Pertaining to Off-Campus Jurisdiction

Appendix 4 – Charge from the Senate Executive Committee (November 16, 2012)

Appendix 5 – Proposal from Andrea Goodwin, Director of Student Conduct (October 23, 2012)

## Appendix 1

Recommended Changes are noted as follows:

New Text: Bold & Blue (**example**)

Removed Text: Strikethrough & Blue (~~example~~)

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### V-1.00(B) UNIVERSITY OF MARYLAND CODE OF STUDENT CONDUCT

Approved by the Board of Regents January 25, 1980; amended effective September 4, 1990; December 18, 2001; April 22, 2004; November 18, 2005; April 5, 2006; March 10, 2011; January 17, 2012; February 20, 2013

Note: Different procedures and penalties are applicable in cases involving allegations of academic dishonesty. Please refer to the *Code of Academic Integrity*, available from the Office of Student Conduct (301-314-8204).

Footnotes which appear throughout the *Code of Student Conduct* refer to the Annotations listed at the end of this appendix.

### **RATIONALE**

1. The primary purpose for the imposition of discipline in the University setting is to protect the campus community. Consistent with that purpose, reasonable efforts will also be made to foster the personal and social development of those students who are held accountable for violations of University regulations.<sup>1</sup>

### **DEFINITIONS**

2. When used in this *Code*:<sup>2</sup>
  - (a) The term “aggravated violation” means a violation which resulted or foreseeably could have resulted in significant damage to persons or property or which otherwise posed a substantial threat to the stability and continuance of normal University or University-sponsored activities.
  - (b) The term “distribution” means sale or exchange for personal profit.
  - (c) The term “group” means a number of persons who are associated with each other and who have not complied with University requirements for registration as an organization.
  - (d) The terms “institution” and “University” mean the University of Maryland, College Park.
  - (e) The term “organization” means a number of persons who have complied with University requirements for registration.
  - (f) The term “reckless conduct” means action which any member of the University community can be expected to know would create a clear risk of harm to persons or property, or would disrupt the lawful activities of others, including studying, teaching, research, and University administration.<sup>3</sup>

- (g) The term “student” means a person taking or auditing courses at the institution either on a full- or part-time basis.<sup>4</sup>
- (h) The term “University premises” means buildings or grounds owned, leased, operated, controlled or supervised by the University.
- (i) The term “weapon” means any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, knives with blades five or more inches in length.
- (j) The term “University-sponsored activity” means any activity on or off campus which is initiated, aided, authorized or supervised by the University.
- (k) The terms “will” or “shall” are used in the imperative sense.

### **INTERPRETATION OF REGULATIONS**

- 3. Disciplinary regulations at the University are set forth in writing in order to give students general notice of prohibited conduct. The regulations should be read broadly and are not designed to define misconduct in exhaustive terms.

### **INHERENT AUTHORITY**

- 4. The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community.<sup>5</sup>

### **STUDENT PARTICIPATION**

- 5. Students are asked to assume positions of responsibility in the University judicial system in order that they might contribute their skills and insights to the resolution of disciplinary cases. Final authority in disciplinary matters, however, is vested in the University administration and in the Board of Regents.

### **STANDARDS OF DUE PROCESS**

- 6. Students subject to expulsion, suspension<sup>6</sup> or disciplinary removal from University housing<sup>7</sup> will be accorded a conduct board hearing as specified in Part [3031](#) of this *Code*. Students subject to less severe sanctions will be entitled to an informal disciplinary conference,<sup>8</sup> as set forth in Parts [3334](#) and [3435](#).
- 7. The focus of inquiry in disciplinary proceedings shall be the guilt or innocence of those accused of violating disciplinary regulations. Formal rules of evidence shall not be applicable, nor shall deviations from prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to a student respondent or the University may result.<sup>9</sup>

### **VIOLATIONS OF LAW AND DISCIPLINARY REGULATIONS**



8. Students may be accountable to both civil authorities and to the University for acts which constitute violations of law and of this *Code*.<sup>10</sup> Disciplinary action at the University will normally proceed during the pendency of criminal proceedings and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.

## UNIVERSITY JURISDICTION

### 9. This *Code* covers conduct that occurs:

- (a) on University premises; or
- (b) at University-sponsored activities; or
- (c) not on University premises if the conduct would otherwise constitute a violation of this *Code* had it occurred on University premises and if in the judgment of the Director of Student Conduct the conduct affects the safety of the University community or the orderly operation of the University.

## PROHIBITED CONDUCT

### 910. The following misconduct is subject to disciplinary action:

- (a) Intentionally or recklessly causing physical harm to any person ~~on University premises or at University-sponsored activities~~, or intentionally or recklessly causing reasonable apprehension of such harm.
- (b) Unauthorized **on campus or illegal off campus** use, possession, or storage of any weapon ~~on University premises or at University-sponsored activities~~.
- (c) Intentionally initiating or causing to be initiated any false report, warning or threat of fire, explosion or other emergency ~~on University premises or at University-sponsored activities~~.
- (d) Off-campus ~~misconduct~~ which ~~is~~ **constitutes** a criminal offense ~~off campus as defined by state or federal law~~, resulting in conviction, ~~if such an offense would constitute a violation of this Code had it occurred on University premises~~. No student convicted of a misdemeanor **offense** under this section shall be subject to expulsion or full suspension unless the offense constitutes an “aggravated violation” as defined in Part 2(a) of this *Code*. The University shall not **normally** pursue disciplinary action when a non-aggravated misdemeanor does not pose a threat to the **stability safety or well-being** of the campus or campus community. ~~; provided, however,~~
- ~~ii-~~(e) ~~Rioting~~, assault, theft, vandalism, fire setting, or other serious misconduct related to a University-sponsored event, occurring on- or off-campus, that results in harm to persons or property or otherwise poses a threat to the

stability of the campus or campus community. **Such conduct** may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of law ~~related to misconduct associated with a University sponsored event.~~

- ~~(e)~~(f) Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code*.
- ~~(f)~~(g) Intentionally or recklessly misusing or damaging fire safety equipment.
- ~~(g)~~(h) Unauthorized distribution or possession for purposes of distribution of any controlled substance or illegal drug<sup>11</sup> ~~on University premises or at University sponsored activities.~~
- ~~(h)~~(i) Use or possession of any controlled substance or illegal drug ~~on University premises or at University sponsored activities.~~<sup>12</sup> \*\*\*
- ~~(i)~~(j) Intentionally furnishing false information to the University.
- ~~(j)~~(k) Making, possessing, or using any forged, altered, or falsified instrument of identification ~~on University premises, or at University sponsored activities~~; making, possessing, or using any forged, altered, or falsified University document, ~~on or off campus.~~
- ~~(k)~~(l) Intentionally and substantially interfering with the freedom of expression of others ~~on University premises or at University sponsored activities.~~<sup>13</sup>
- ~~(l)~~(m) Theft of property or of services ~~on University premises or at University sponsored activities~~; knowing possession of stolen property ~~on University premises or at University sponsored activities.~~
- ~~(m)~~(n) Intentionally or recklessly destroying or damaging the property of others ~~on University premises or at University sponsored activities.~~
- ~~(n)~~(o) Engaging in disorderly or disruptive conduct ~~on University premises or at University sponsored activities~~ which interferes with the activities of others, including studying, teaching, research, and University administration.\*
- ~~(o)~~(p) Failure to comply with the directions of University officials, including campus police officers, acting in performance of their duties.
- ~~(p)~~(q) Violation of published University regulations or policies, as approved and compiled by the Vice President for Student Affairs.<sup>14</sup> Such regulations or policies may include the residence hall contract, as well as those regulations relating to entry and use of University facilities, sale of alcoholic beverages, use of vehicles\*\* and amplifying equipment, campus demonstrations, and misuse of identification cards.
- ~~(q)~~(r) Use or possession of any alcoholic beverage under the age of 21 ~~on University premises or at University sponsored activities~~; knowingly providing alcoholic beverages to a person known to be under the age of 21 ~~on University premises or University sponsored activities.~~ \*\*\*
- ~~(r)~~(s) Unauthorized use or possession of fireworks ~~on University premises.~~

\* The response of fire, police, or emergency personnel to a non-frivolous call, or action taken by them on their own initiative pursuant or non-pursuant to policy is not considered a disruption or reckless action within the meaning of this section.

- \*\* Parking and traffic violations may be processed in accordance with procedures established by the Vice President for Student Affairs.
- \*\*\* This charge may be deferred under Part 2930 of this *Code* consistent with procedures outlined in the *Promoting Responsible Action in Medical Emergencies Policy*.

## SANCTIONS

1011. Sanctions for violations of disciplinary regulations consist of:

- (a) **EXPULSION:** permanent separation of the student from the University. Notification will appear on the student's transcript. The student will also be barred from the University premises (expulsion requires administrative review and approval by the President and may be altered, deferred or withheld).
  - (b) **SUSPENSION:** separation of the student from the University for a specified period of time. Permanent notification will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises. Suspended time will not count against any time limits of the Graduate School for completion of a degree. (Suspension requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred or withheld).
  - (c) **DISCIPLINARY PROBATION:** the student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.
  - (d) **DISCIPLINARY REPRIMAND:** the student is warned that further misconduct may result in more severe disciplinary action.
  - (e) **RESTITUTION:** the student is required to make payment to the University or to other persons, groups, or organizations for damages incurred as a result of a violation of this *Code*.
  - (f) **OTHER SANCTIONS:** other sanctions may be imposed instead of or in addition to those specified in sections (a) through (e) of this part. For example, students may be subject to dismissal from University housing for disciplinary violations which occur in the residence halls. Likewise, students may be subject to restrictions upon or denial of driving privileges for disciplinary violations involving the use or registration of motor vehicles. Work or research projects may also be assigned.
112. Violations of sections (a) through (g)(h) in Part 910 of this *Code* may result in expulsion from the University<sup>15</sup>, unless specific and significant mitigating factors are present. Factors to be considered in mitigation shall be the present demeanor

and past disciplinary record of the offender, as well as the nature of the offense and the severity of any damage, injury, or harm resulting from it.

- ~~12~~13. Violations of sections ~~(h)~~(i) through ~~(l)~~(m) in Part 910 of this *Code* may result in suspension from the University, unless specific and significant mitigating factors as specified in Part ~~11~~12 are present.
- ~~13~~14. Repeated or aggravated violations of any section of this *Code* may also result in expulsion or suspension or in the imposition of such lesser penalties as may be appropriate.
- ~~14~~15. Any decision to impose a sanction less than suspension or expulsion for University-sponsored event-related misconduct as defined in Part 910~~(d)~~(ii)(e) of this *Code* must be supported by written findings signed by the Vice President for Student Affairs. A student suspended under this section shall not be admitted to any other institution in the University of Maryland System during the term of the suspension. A student expelled under this section shall not be admitted to any other institution in the System for at least one year from the effective date of the expulsion.
- ~~15~~16. Attempts to commit acts prohibited by this *Code* shall be punished to the same extent as completed violations.<sup>16</sup>
- ~~16~~17. Penalties for off-campus misconduct shall not be more severe than for similar on-campus conduct.

#### **INTERIM SUSPENSION<sup>17</sup>**

- ~~17~~18. The Vice President for Student Affairs or a designee may suspend a student for an interim period pending disciplinary proceedings or medical evaluation, such interim suspension to become immediately effective without prior notice, whenever there is evidence that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or to the stability and continuance of normal University functions.
- ~~18~~19. A student suspended on an interim basis shall be given an opportunity to appear personally before the Vice President for Student Affairs or a designee within five business days from the effective date of the interim suspension in order to discuss the following issues only:
  - (a) the reliability of the information concerning the student's conduct, including the matter of his or her identity;
  - (b) whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or the stability and continuance of normal University functions.

## OFFICE OF STUDENT CONDUCT

**1920.** The Office of Student Conduct directs the efforts of students and staff members in matters involving student discipline. The responsibilities of the office include:

- (a) Determination of the disciplinary charges to be filed pursuant to this *Code*.
- (b) Interviewing and advising parties<sup>18</sup> involved in disciplinary proceedings.
- (c) Supervising, training, and advising all conduct boards.
- (d) Reviewing the decisions of all conduct boards.<sup>19</sup>
- (e) Maintenance of all student disciplinary records.
- (f) Development of procedures for conflict resolution.
- (g) Resolution of cases of student misconduct, as specified in Parts **3334** and **3435** of this *Code*.
- (h) Collection and dissemination of research and analysis concerning student conduct.
- (i) Submission of a statistical report each semester to the campus community, reporting the number of cases referred to the office, the number of cases resulting in disciplinary action, and the range of sanctions imposed.<sup>20</sup>

## CONDUCT PANELS

**2021.** Hearings or other proceedings as provided in the *Code* may be held before the following boards or committees:

- (a) **CONFERENCE BOARDS**, as appointed in accordance with Part **3435** of this *Code*.
- (b) **RESIDENCE BOARDS**, as established and approved by the Vice President for Student Affairs.<sup>21</sup> Students residing in group living units owned, leased, operated or supervised by the University may petition the Vice President for authority to establish conduct boards. Such boards may be empowered to hear cases involving violations of the *Code*, as prescribed by the Vice President for Student Affairs.
- (c) **THE CENTRAL BOARD** hears cases involving disciplinary violations which are not referred to Residence Boards or resolved in accordance with Parts **3334** and **3435** of this *Code*. The Central Board is composed of five students, including at least two graduate students when a graduate student case is being heard.
- (d) **THE APPELLATE BOARD** hears appeals from Residence Boards, the Central Board, and ad hoc boards, in accordance with Part **4344** of this *Code*. The Appellate Board is composed of five full-time students, including at least two graduate students.
- (e) **AD HOC BOARDS** may be appointed by the Director of Student Conduct when a Conference Board, a Residence Board, the Central Board, the Appellate Board or the Senate Adjunct Committee are unable to obtain

a quorum or are otherwise unable to hear a case.<sup>22</sup> Each ad hoc board shall be composed of three members, including at least one student.

- (f) **THE SENATE COMMITTEE ON STUDENT CONDUCT** hears appeals as specified in Part 4243 of this *Code*. The committee also approves the initial selection of all conduct board members, except members of conference and ad hoc boards.<sup>23</sup>

- ~~2122~~. The presiding officer of each conduct board and of the Senate Adjunct Committee on Student Conduct may develop bylaws which are not inconsistent with any provision in this *Code*. Bylaws must be approved by the Director of Student Conduct.<sup>24</sup>

## **SELECTION AND REMOVAL OF BOARD MEMBERS**

- ~~2223~~. Members of the various conduct boards are selected in accordance with procedures developed by the Director of Student Conduct.
- ~~2324~~. Members of conference and ad hoc boards are selected in accordance with Parts 3435 and 2021(e), respectively.
- ~~2425~~. Prospective members of the Central Board and the Appellate Board are subject to confirmation by the Senate Committee on Student Conduct.
- ~~2526~~. Members of the Senate Committee on Student Conduct are selected in accordance with the bylaws of the University Senate.
- ~~2627~~. Prior to participating in board or committee deliberations, new members of the Senate Committee on Student Conduct and all conduct boards, except conference and ad hoc boards, will participate in one orientation session by the Office of Student Conduct.
- ~~2728~~. Student members of any conduct board or committee who are charged with any violation of this *Code* or with a criminal offense<sup>25</sup> may be suspended from their judicial positions by the Director of Student Conduct during the pendency of the charges against them. Students convicted for any such violation or offense may be disqualified from any further participation in the University judicial system by the Director of Student Conduct. Additional grounds and procedures for removal may also be set forth in the bylaws of the various conduct panels.

## **CASE REFERRALS**

- ~~2829~~. Any person<sup>26</sup> may refer a student or a student group or organization suspected of violating this *Code* to the Office of Student Conduct. Allegations of off-campus event-related misconduct must be supported by a report, statement, or accusation from a law enforcement agency in whose jurisdiction the misconduct is alleged to have occurred. Persons making such referrals are required to provide information

pertinent to the case and will normally be expected to appear before a conduct board as the complainant.<sup>27</sup>

## **DEFERRAL OF PROCEEDINGS**

**2930.** The Director of Student Conduct may defer disciplinary proceedings for alleged violations of this *Code* for a period not to exceed 90 days. Pending charges may be withdrawn thereafter, dependent upon the good behavior of the respondent. Students subject to conditional relief from disciplinary charges under the *Promoting Responsible Action in Medical Emergencies Policy* may also be required to successfully complete an approved alcohol and/or drug intervention program prior to the withdrawal of charges.

## **HEARING REFERRALS**

**3031.** Staff members in the Office of Student Conduct will review referrals to determine whether the alleged misconduct might result in expulsion, suspension, or disciplinary removal from University housing.<sup>28</sup> Students subject to those sanctions shall be accorded a hearing before the appropriate conduct board. All other cases shall be resolved in the Office of Student Conduct after an informal disciplinary conference, as set forth in Part **3334** and **3435** of this *Code*.

**3132.** Students referred to a conduct board hearing may elect instead to have their case resolved in accordance with Parts **3334** and **3435**. The full range of sanctions authorized by this *Code* may be imposed, although the right of appeal shall not be applicable.

## **BURDEN OF PROOF**<sup>29</sup>

**3233.** Except as provided below, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence<sup>30</sup>. In disciplinary conferences and hearings under section **910(p)(q)** of this *Code* which allege violation of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by a preponderance of the evidence<sup>31</sup>.

## **DISCIPLINARY CONFERENCES**<sup>32</sup>

**3334.** Students subject to or electing to participate in a disciplinary conference in the Office of Student Conduct are accorded the following procedural protections:

- (a) Written notice of charges at least three days prior to the scheduled conference.
- (b) Reasonable access to the case file<sup>33</sup> prior to and during the conference.

- (c) An opportunity to respond to the evidence against them and to call appropriate witnesses on their behalf.
- (d) The option to be accompanied and assisted by a representative, who may be an attorney. Representatives have the right to make opening and closing statements, to advise their clients during the course of the proceedings, and to petition for recesses. All representatives are subject to the restrictions of Parts 3637 and 3738 of this *Code*.

3435. Disciplinary conferences shall be conducted by the Director of Student Conduct or a designee.<sup>34</sup> Complex or contested cases may be referred by the Director to a conference board, consisting of one member of the Central Board, one member of the Appellate Board, and a staff member in the Division of Student Affairs. Conference Board members shall be selected on a rotating basis by the Director of Student Conduct.

## HEARING PROCEDURES

3536. The following procedural guidelines shall be applicable in disciplinary hearings:

- (a) Respondents shall be given notice of the hearing date and the specific charges against them at least five days in advance and shall be accorded reasonable access to the case file, which will be retained in the Office of Student Conduct.
- (b) The presiding officer of any board may subpoena witnesses upon the motion of any board member or of either party and shall subpoena witnesses upon request of the board advisor. Subpoenas must be approved by the Director of Student Conduct and shall be personally delivered or sent by certified mail, return receipt requested. University students and employees are expected to comply with subpoenas issued pursuant to this procedure, unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities.<sup>35</sup>  
If the Director of Student Conduct or his or her designee determines that a fair hearing cannot be held without the testimony of a particular witness, and, after good faith attempts are made, the witness either fails to or refuses to appear, the disciplinary hearing will be postponed until the witness agrees to appear or the charges will be dismissed.
- (c) Respondents who fail to appear after proper notice will be deemed to have pleaded guilty to the charges pending against them.
- (d) Hearings will be closed to the public, except for the immediate members of the parties' families and their representatives, if applicable. An open hearing may be held, at the discretion of the presiding officer, if requested by both parties.
- (e) The presiding officer of each board shall exercise control over the proceedings to avoid needless consumption of time and to achieve the orderly completion of the hearing. Except as provided in section (o) of this



- Part, any person, including the respondent, who disrupts a hearing may be excluded by the presiding officer or by the board advisor.
- (f) Hearings may be tape recorded or transcribed. If a recording or transcription is not made, the decision of the board must include a summary of the testimony and shall be sufficiently detailed to permit review by appellate bodies and by staff members in the Office of Student Conduct.
  - (g) Any party or the board advisor may challenge a board member on the grounds of personal bias. Board members may be disqualified upon majority vote of the remaining members of the board, conducted by secret ballot,<sup>36</sup> or by the Director of Student Conduct.
  - (h) Witnesses shall be asked to affirm that their testimony is truthful and may be subject to charges of perjury, pursuant to Part ~~910~~(j) of this *Code*.
  - (i) Prospective witnesses, other than the complainant and the respondent, may be excluded from the hearing during the testimony of other witnesses. All parties, the witnesses, and the public shall be excluded during board deliberations.
  - (j) Formal rules of evidence shall not be applicable in disciplinary proceedings conducted pursuant to this *Code*.<sup>37</sup> The presiding officer of each board shall give effect to the rules of confidentiality and privilege, but shall otherwise admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.<sup>38</sup>
  - (k) Both parties shall be accorded an opportunity to question those witnesses who testify at the hearing.
  - (l) Affidavits shall not be admitted into evidence unless signed by the affiant and witnessed by a University employee, or by a person designated by the Director of Student Conduct.
  - (m) Board members may take judicial notice of matters which would be within the general experience of University students.<sup>39</sup>
  - (n) Board advisors may comment on questions of procedure and admissibility of evidence and will otherwise assist in the conduct of the hearing. Advisors will be accorded all the privileges of board members, and the additional responsibilities set forth in this *Code*, but shall not vote. All advisors are responsible to the Director of Student Conduct and shall not be excluded from hearings or board deliberations by any board or by the presiding officer of any board.
  - (o) The Director of Student Conduct may appoint a special presiding officer to any board in complex cases or in any case in which the respondent is represented by an attorney. Special presiding officers may participate in board deliberations, but shall not vote.<sup>40</sup>
  - (p) A determination of guilt shall be followed by a supplemental proceeding in which either party and the board advisor may submit evidence or make statements concerning the appropriate sanction to be imposed. The past disciplinary record<sup>41</sup> of the respondent shall not be supplied to the board by the advisor prior to the supplementary proceeding.

- (q) Final decisions of all conduct panels shall be by majority vote of the members present and voting. A tie vote will result in a recommended acquittal in an original proceeding. A tie vote in an appellate proceeding will result in an affirmation of the original decision.
- (r) Final decisions of all boards, except conference boards, shall be accompanied by a brief written opinion.

## ATTORNEYS AND REPRESENTATIVES

**3637.** Representatives of both complainants and respondents in hearings pursuant to this *Code* have the right to call witnesses to testify, to question in person all witnesses who appear at the hearing, to voice timely objections, to make opening and closing statements, to petition for recesses in the proceedings and to zealously and lawfully assert their client's position under the *Code of Student Conduct*.<sup>42</sup> All presenters and representatives who participate in disciplinary hearings and disciplinary conferences shall not:

- (a) Intentionally engage in conduct to disrupt a hearing;
- (b) Intentionally attempt to improperly influence an officer of the Office of Student Conduct, a hearing advisor or member of a conduct board;
- (c) Intentionally fail to obey a reasonably definite and specific order by a presiding officer;
- (d) Knowingly make a false statement of material fact, law or representation of the *Code* to other participants in a hearing;
- (e) Knowingly fail to disclose a material fact in a hearing when disclosure is necessary to avoid assisting a future criminal or fraudulent act;
- (f) Knowingly offer false evidence, falsify evidence, counsel or induce witnesses to testify falsely, or offer improper inducements to testify;
- (g) Recklessly and unlawfully obstruct another party's access to evidence, or alter, destroy or conceal material not protected by privilege having potential evidentiary value;
- (h) If the representative is an attorney, otherwise fail to follow any obligations under relevant standards of professional responsibility in matters pertaining to the representation.

**3738.** (a) Any participant in a hearing may refer complaints about suspected violations of the provisions of Part **3637** of this *Code* to the Senate Committee on Student Conduct.

(b) Within a reasonable time after such referral, the chairperson of the Senate Committee on Student Conduct will review the complaint. After review the chairperson shall dismiss complaints which are anonymous, manifestly frivolous, which cannot be reasonably construed to allege a violation of Part **3637**, or are based on hearsay alone. Those which are not dismissed will be referred to the full Committee which will convene a hearing no sooner than 10 business days after sending a copy of the evidence presented to the representative named in the complaint. The hearing shall

- be held under the relevant rules and procedures governing disciplinary hearings outlined in Parts ~~35-37~~**36-38** of this *Code*.
- (c) A client shall not be compelled either directly or through their representative to waive the attorney-client privilege.
  - (d) Representatives found responsible for violations of the provisions of Part **3637** may be suspended from the privilege of representation for such time as the Committee may deem appropriate. In addition, the Committee may refer their findings to the Attorney Grievance Commission, or other appropriate disciplinary body.
  - (e) Appeals from decisions of the Senate Committee on Student Conduct regarding violations under Part **3637** may be made by parties found responsible. Appeals should be made in writing to the Senate Campus Affairs Committee within 10 business days of receipt of the letter notifying the party of the decision. Appeals will be conducted in accordance with the standards for the hearing of student disciplinary appeals. Decisions of the Campus Affairs Committee regarding these appeals shall be final.

## **STUDENT GROUPS AND ORGANIZATIONS**

- 3839.** Student groups and organizations may be charged with violations of this *Code*.
- 3940.** A student group or organization and its officers may be held collectively<sup>43</sup> or individually responsible when violations of this *Code* by those associated with<sup>44</sup> the group or organization have received the tacit or overt consent or encouragement of the group or organization or of the group's or organization's leaders, officers, or spokespersons.
- 4041.** The officers or leaders or any identifiable spokespersons<sup>45</sup> for a student group or organization may be directed by the Vice President for Student Affairs or a designee to take appropriate action designed to prevent or end violations of this *Code* by the group or organization or by any persons associated with the group or organization who can reasonably be said to be acting in the group's or organization's behalf. Failure to make reasonable efforts to comply with the Vice President's directive shall be considered a violation of Part **910(e)(p)** of this *Code*, both by the officers, leaders or spokespersons for the group or organization and by the group or organization itself.
- 4142.** Sanctions for group or organization misconduct may include revocation or denial of recognition or registration, as well as other appropriate sanctions, pursuant to Part **4011(f)** of this *Code*.

## **APPEALS**

- 4243.** Except as provided below, any determination made pursuant to this *Code* resulting in expulsion or suspension<sup>46</sup> may be appealed by the respondent to the

Senate Committee on Student Conduct. Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.<sup>47</sup> The Senate Committee shall also hear appeals from denials of petitions to void disciplinary records, pursuant to Part 5253 of this *Code*.

- 4344.** Except as provided below, final decisions of residence boards, the Central Board and ad hoc boards, not involving the sanctions specified in Part 4243, may be appealed by the respondent to the Appellate Board.<sup>48</sup> Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.<sup>49</sup>
- 4445.** Requests for appeals must be submitted in writing to the Office of Student Conduct within seven business days from the date of the letter providing notice of the original decision. Failure to appeal within the allotted time will render the original decision final and conclusive.<sup>50</sup>
- 4546.** A written brief in support of the appeal must be submitted to the Office of Student Conduct within 10 business days from the date of the letter providing notice of the original decision. Failure to submit a written brief within the allotted time will render the decision of the lower board final and conclusive.<sup>51</sup>
- 4647.** Appeals shall be decided upon the record of the original proceeding and upon written briefs submitted by the parties. De novo hearings shall not be conducted.
- 4748.** Appellate bodies may:
- (a) Affirm the finding and the sanction imposed by the original board.
  - (b) Affirm the finding and reduce, but not eliminate, the sanction, in accordance with Parts 4849 and 4849(a).
  - (c) Remand the case to the original board, in accordance with Parts 4849 and 4849(b).
  - (d) Dismiss the case, in accordance with Parts 4849 and 4849(c).
- 4849.** Deference shall be given to the determinations of lower boards.<sup>52</sup>
- (a) Sanctions may only be reduced if found to be grossly disproportionate to the offense.
  - (b) Cases may be remanded to the original board if specified procedural errors or errors in interpretation of University regulations were so substantial as to effectively deny the respondent a fair hearing, or if new and significant evidence became available which could not have been discovered by a properly diligent respondent before or during the original hearing.<sup>53</sup> On remand, no indication or record of the previous conduct hearing will be introduced or provided to members of the new conduct panel, except to

impeach contradictory testimony at the discretion of the presiding officer. The board will be directed by the committee not to repeat the specified errors that caused the remand.

- (c) Cases may be dismissed only if the finding is held to be arbitrary and capricious.<sup>54</sup>
- (d) Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct.<sup>55</sup> Decisions of the Senate Committee on Student Conduct shall be recommendations to the Vice President for Student Affairs. Decisions altering the determinations of all hearing boards and the Senate Committee on Student Conduct shall be accompanied by a brief written opinion.

**4950.** The imposition of sanctions will normally be deferred during the pendency of appellate proceedings, at the discretion of the Director of Student Conduct.

## **DISCIPLINARY FILES AND RECORDS**

**5051.** Case referrals may result in the development of a disciplinary file in the name of the respondent, which shall be voided if the respondent is found innocent of the charges.<sup>56</sup> The files of respondents found guilty of any of the charges against them will be retained as a disciplinary record for three years from the date of the letter providing notice of final disciplinary action.<sup>57</sup> Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.

**5152.** Disciplinary records may be voided<sup>58</sup> by the Director of Student Conduct for good cause, upon written petition of respondents. Factors to be considered in review of such petitions shall include:

- (a) the present demeanor of the respondent.
- (b) the conduct of the respondent subsequent to the violation.
- (c) the nature of the violation and the severity of any damage, injury, or harm resulting from it.

**5253.** Denials of petitions to void disciplinary records shall be appealable to the Senate Committee on Student Conduct, which will apply the standard of review specified in Part **4849** and **4849(c)**. The requirements for appeals as set forth in Part **4445** and **4546** shall be applicable.<sup>59</sup>

**5354.** Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.<sup>60</sup>

## **ANNOTATIONS**

1. The University is not designed or equipped to rehabilitate or incapacitate persons who pose a substantial threat to themselves or to others. It may be necessary, therefore, to remove those individuals from the campus and to sever the

institutional relationship with them, as provided in this *Code of Student Conduct* and by other University regulations.\*

Any punishment imposed in accordance with the *Code* may have the value of discouraging the offender and others from engaging in future misbehavior. In cases of minor disciplinary violations, the particular form of punishment may also be designed to draw upon the educational resources of the University in order to bring about a lasting and reasoned change in behavior. The underlying rationale for punishment need not rest on deterrence or “reform” alone, however. A just punishment may also be imposed because it is “deserved” and because punishment for willful offenses affirms the autonomy and integrity of the offender. The latter concept was expressed by D.J.B. Hawkins in his essay “Punishment and Moral Responsibility” in *7 Modern Law Review* 205:

*The vice of regarding punishment entirely from the points of view of reformation and deterrence lies precisely in forgetting that a just punishment is deserved. The punishment of men then ceases to be essentially different from the training of animals, and the way is open for the totalitarian state to undertake the forcible improvement of its citizens without regard to whether their conduct has made them morally liable to social coercion or not. But merit and demerit, reward and punishment, have a different significance as applied to men and as applied to animals. A dog may be called a good dog or a bad dog, but his goodness or badness can be finally explained in terms of heredity and environment. A man, however, is a person, and we instinctively recognize that he has a certain ultimate personal responsibility for at least some of his actions. Hence merit and demerit, reward and punishment, have an irreducible individual significance as applied to men. This is the dignity and the tragedy of the human person.*

A similar view was expressed by Justice Powell, dissenting in *Goss v. Lopez* (42 L. Ed. 2d 725, 745):

*Education in any meaningful sense includes the inculcation of an understanding in each pupil of the necessity of rules and obedience thereto. This understanding is no less important than learning to read and write. One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied.*

2. An effort is made in the *Code* to use a simplified numbering and lettering system, without use of Roman numerals or subsets of letters and numbers. Any part of the

*Code* can be found by reference to one number and one letter [e.g., Part ~~10~~11(a) explains the meaning of expulsion].

3. Culpable conduct should include conscious acts posing a substantial risk or harm to others (e.g. throwing a heavy object out a tenth floor window above a sidewalk). If the act itself, however, is unintended (e.g. one is distracted by a noise while climbing a flight of stairs and drops a heavy object) the individual may have failed to use reasonable care, but is not normally deserving of the moral stigma associated with a “conviction” for a disciplinary offense.
4. Former students may be charged for violations which allegedly occurred during their enrollment at the University.
5. Colleges and universities are not expected to develop disciplinary regulations which are written with the scope of precision of a criminal ~~Code~~ Code. Rare occasions may arise when conduct is so inherently and patently dangerous to the individual or to others that extraordinary action not specifically authorized in the rules must be taken.
6. The terms “suspension” and “interim suspension” are to be distinguished throughout the *Code* and are not interchangeable.
7. Disciplinary removal from University housing should be distinguished from administrative removal for violations of the residence contract. The latter does not leave students with a disciplinary record and does not come under the purview of this *Code*.
8. The standard set forth here represents the minimal procedural protection to be accorded to students charged with most disciplinary violations. Students who are subject to lengthy suspensions or to expulsion may be entitled to more formal procedures, including a hearing with a right to cross-examine the witnesses against them. *Goss v. Lopez*, 419 U.S. 565 (1975).
9. The Supreme Court has recently rejected the theory that state schools are bound by principles of federal administrative law requiring agencies to follow their own regulations. *Board of Curators, University of Missouri v. Horowitz* 55 L.Ed 2d 124, 136. See, generally, “Violation by Agencies of Their Own Regulations” 87 *Harvard Law Review* 629 (1974).
10. Respondents in disciplinary proceedings may be directed to answer questions concerning their conduct. Students who refuse to answer on grounds of the Fifth Amendment privilege may be informed that the hearing panel could draw negative inferences from their refusal which might result in their suspension or dismissal. If the student then elects to answer, his/her statements could not be used against him/her in either state or federal court. *Garrity v. New Jersey*, 385

U.S 493 (1967). See also *Furutani v. Ewigleben*, 297 F. Supp. 1163 (N.D.Cal. 1969).

11. The “controlled substances” or “illegal drugs” prohibited in this section are set forth in Schedules I through V in the Maryland Criminal Law Article 5-401 through 5-406 and 5-708 (Inhalants).
12. See Annotation 11.
13. Colleges and universities should be a forum for the free expression of ideas. In the recent past, however, unpopular speakers have been prevented from addressing campus audiences by students who effectively “shouted them down.” Both Yale and Stanford Universities have treated such actions (which are to be distinguished from minor and occasional heckling) as serious disciplinary violations. See the “Report from the Committee on Freedom of Expression at Yale University” which is available in the Office of Student Conduct.

The following language from the Yale report may be used to elaborate upon the intent and scope of Part ~~910(k)(1)~~ of this *Code*.

- A. “There is no right to protest within a University building in such a way that any University activity is disrupted. The administration, however, may wish to permit some symbolic dissent within a building but outside the meeting room, for example, a single picket or a distributor of handbills.”
  - B. “[A] member of the audience may protest in silent, symbolic fashion, for example, by wearing a black arm band. More active forms of protest may be tolerated such as briefly booing, clapping hands or heckling. But any disruptive activity must stop [and not be repeated] when the chair or an appropriate University official requests silence.
  - C. “Nor are racial insults or any other ‘fighting words’ a valid ground for disruption or physical attack... The banning or obstruction of lawful speech can never be justified on such grounds as that the speech or the speaker is deemed irresponsible, offensive, unscholarly, or untrue.”
14. A compilation of published regulations which have been reviewed and approved by the Vice President shall be available for public inspection during normal business hours in the Office of Student Conduct.
  15. This Part and Parts ~~1213~~ and ~~1314~~ represent an attempt to give needed guidance to those who are assessing penalties. Moreover the direction of the guidance is toward imposition of more severe disciplinary sanctions in serious cases. Nonetheless, the language concerning “mitigating factors” is broad enough to give decision-makers considerable leeway to “do justice,” depending upon the facts in each case. The burden of establishing facts in mitigation should, of course, be upon the respondent.



16. There does not seem to be any rational basis for imposing less severe penalties for attempts than for completed violations. The authors of the *Model Penal Code*, for example, have written that:

*To the extent that sentencing depends upon the antisocial disposition of the actor and the demonstrated need for a corrective action, there is likely to be little difference in the gravity of the required measures depending on the consummation or the failure of the plan.*

See LaFave, *Criminal Law Treatise* p. 453.

17. These procedures are analogous to those found in the “emergency” disciplinary rules adopted by the Board of Regents in 1971 and are consistent with the formal opinion of the Maryland Attorney General on this subject, dated January 23, 1969. See also *Goss v. Lopez*, 419 U.S. 565 (1975).

Nothing in this provision would prohibit the Vice President from modifying the terms of an interim suspension, so long as the hearing requirement specified in Part 4819 was met. For example, a suspended student might be allowed to enter University premises solely for the purpose of attending classes.

18. Staff members in the Office of Student Conduct should endeavor to arrange a balanced presentation before the various conduct boards and may assist both complainants and respondents.
19. This language does not ~~effect~~ **affect** any change in previous policy concerning the powers of conduct boards. All board decisions, including those rendered by Conference Boards, shall be treated as recommendations.
20. See Annotation 1, *supra*. The deterrent effect of punishment is diminished if the community is unaware of the number and general nature of sanctions imposed. The Director of Student Conduct may, for example, arrange for publication of the statistical report in the campus press each semester.
21. Boards established pursuant to this section might include modified versions of the present “Greek” or residence hall boards.
22. It is intended that a quorum will consist of three members (out of five). The authority to appoint ad hoc boards should be broadly construed and might be especially useful, for example, when a conduct board or the Senate Committee is charged with hearing a case involving one of its own members. The final determination as to whether a panel is “unable to hear a case” should be within the discretion of the Director of Student Conduct.
23. The power of confirmation represents a significant grant of authority to the Senate Committee. Moreover, confirmation procedures will give committee members

direct contact with board members and will also allow the committee to exercise more control over the quality of Conduct Board decisions.

24. Proposed bylaws must be submitted to the Attorney General for review.
25. It could be a public embarrassment for the University to have a student charged with or convicted of a serious crime sit in judgment over other students in disciplinary proceedings. The various state criminal ~~Codes~~ **Codes** are usually so broad and archaic, however, that automatic suspension or removal should not result from any violation of any law (e.g., New York makes it a criminal misdemeanor for anyone “to dance continuously in a dance contest for 12 or more hours without respite”).
26. Case referrals should not be limited to members of the “campus community.” A student who assaults another person on campus should not escape University judicial action merely because the person assaulted was a visitor (or, as in a recent case, a former student who had just withdrawn from the University).
27. The Director of Student Conduct may appoint a trained volunteer from the campus community to serve as the complainant. It would be preferable, however, to employ a “community advocate” to present all disciplinary cases.

Several measures in the *Code* are designed to restore balance in disciplinary proceedings, even in those cases in which the complainant is inexperienced with administrative adjudication:

- (a) A hearing officer may be appointed in complex or serious cases. See Part **3536**(o).
  - (b) The role of attorneys or advisors may be restricted. See Parts **3637** and **3738**, and Annotation 42.
  - (c) The “disciplinary conference” procedure is designed to eliminate adversary proceedings in minor cases. See Parts **33-3434-35** and Annotation 32.
28. Staff members may consider the mitigating factors specified in Part **4412** to determine the permissible sanction to be imposed if the respondent is found guilty of charges. For example, a student involved in a minor altercation might be charged pursuant to Part **910**(a), but referred to a disciplinary conference, thereby precluding the possibility of expulsion or suspension for the alleged misconduct.
  29. On April 4, 2011, the United States Department of Education, Office of Civil Rights issued a “significant guidance document” to provide universities with information to assist them in meeting their obligations under Title IX of the Education Amendments of 1972 (“Title IX”). This document is known as the “OCR Dear Colleague Letter”. According to the OCR Dear Colleague Letter, Title IX requires that the burden of proof in sexual harassment cases, including

sexual assault, be “preponderance of the evidence.” Prior to the issuance of the OCR Dear Colleague Letter, the burden of proof under the *Code Code* was “clear and convincing evidence”. According to the OCR Dear Colleague Letter, Title IX also requires that both parties in disciplinary hearings in sexual harassment cases, including sexual assault, be provided the same appeal rights, if any.

30. "Clear and convincing" means "the evidence should be 'clear' in the sense that it is certain, plain to the understanding and unambiguous, and 'convincing' in the sense that it is so reasonable and persuasive as to cause [one] to believe it." *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting Maryland Civil Practice Jury Instruction Section 1:8b (1984). It does not call for "unanswerable" or "conclusive" evidence. *Attorney Grievance Commission v. Harris*, 366 Md. 376, 389 (2001). To be clear and convincing means that it is substantially more likely than not that the allegations are in fact true but that it "need not be established with absolute certainty". *Vogel v. State*, 315 Md. 458, 473 (1989). The burden is "more than a mere preponderance of the evidence [the burden of proof in ordinary civil cases] but not beyond a reasonable doubt [the standard in criminal cases]". *Berkey v. Delia*, 287 Md. 302, 319-20 (1980).
31. "Preponderance of the evidence" means it is "more likely than not" that the violation occurred as alleged. To meet a burden of proof by a preponderance of the evidence, means that "the scales tipped in the direction" of one of the parties. "When the scales are 'in a state of even balance,' the party with the burden of proving its case by a preponderance of the evidence loses. *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting *Potts v. Armour & Co.*, 183 Md 483, 490 (1944). See Maryland Civil Pattern Jury Instructions Section 1:8a (1984).
32. The hearing procedures specified at Part ~~3536~~ need not be followed in disciplinary conferences. Instead a disciplinary conference would normally consist of an informal, nonadversarial meeting between the respondent and a staff member in the Office of Student Conduct. Complainants would not be required to participate, unless their personal testimony was essential to the resolution of a dispositive factual issue in the case. Documentary evidence and written statements could be relied upon, so long as respondents are given access to them in advance and allowed to respond to them at the conference. Respondents would also be allowed to bring appropriate witnesses with them and might be accompanied by a representative, who may participate in discussions, although not in lieu of participation by the respondent.

The conference procedure is designed to reduce the steady growth of unnecessary legalism in disciplinary proceedings. The worst features of the adversary system (including the concept that judicial proceedings are a “contest” to be “won by clever manipulation of procedural rules) undermine respect for the rule of law. Colleges and universities can and should be a testing ground for development of carefully reasoned alternatives to current procedural excesses in the larger society.\*\*

Procedures comparable to the disciplinary conference (referred to as “structured conversations”) are suggested by David L. Kirp in his 1976 article “Proceduralism and Bureaucracy: Due Process in the School Setting” 38 *Stanford Law Review* 841.

*The benefits of such conversations in the school setting may better be appreciated by contrasting them with the typical due process hearing. Hearings are designed to determine the facts of a particular controversy, and apply predetermined rules to the facts thus found. At that point, the function of the hearing is at an end. The wisdom of the underlying substantive rules has no relevance, nor is broader discussion of grievances generally encouraged, unless it is somehow pertinent to the dispute at hand.*

*Conversation knows no such limits. It too serves as a vehicle for resolving what are likely to be factually uncomplicated disputes, but it does more than that. It enables students to feel that they are being listened to and may encourage them to raise underlying grievances. It provides administrators with a relatively inexpensive vehicle for monitoring, and hence a basis for reshaping institutional relationships. The outcome of these ‘orderly thoughtful conversations’ may well be decisions different in their particulars from what might otherwise have been anticipated; repeated conversations which touch upon similar student grievances may ultimately lead disciplinarians to reassess whether control is so vital, and collaboration so improbable, as a means of assuring institutional order.*

The conference procedure would not be used in any case which might result in any form of separation from the University. Accordingly, the procedure appears to meet or exceed the due process requirements set forth by the United States Supreme Court for cases involving suspensions of ten days or less. In *Goss v. Lopez* the Court held:

*[W]e stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.*

*On the other hand, requiring effective notice and an informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced (42 L. Ed. 725, 740).*

33. The case file consists of materials which would be considered “education records,” pursuant to the Family Educational Rights and Privacy Act. Personal notes of University staff members or complainants are not included.
34. Determinations made in accordance with Parts ~~3334~~ and ~~3435~~ are not appealable.
35. Internal subpoenas may be desirable, since cases have arisen in which complainants or respondents were unable to present an effective case due to the indifference and lethargy of potential witnesses. A student who refused to respond to a subpoena may be charged with a violation of Part ~~910(e)(p)~~ of the *Code*. The Director of Student Conduct should not approve a subpoena unless the expected testimony would be clearly relevant. Likewise, a subpoena designed to embarrass or harass a potential witness should not be authorized. The subpoena power specified here is not designed to reach documents or other materials.
36. Board members should be disqualified on a case basis only; permanent removal should be accomplished in accordance with Part ~~2728~~. Board members should not be readily disqualified. The term “personal bias” involves animosity toward a party or favoritism toward the opposite party. See, generally, Davis, *Administrative Law Treatise* “Bias” Section 12.03.
37. The exclusionary rule generally does not apply to civil administrative proceedings. Furthermore, the University of Maryland is exempted by statute from the applicable portions of the Administrative Procedure Act. The Maryland Court of Appeals, however, has barred evidence from administrative proceedings where a respondent establishes that officials were improperly motivated to illegally seize the evidence. See *Sheetz v. City of Baltimore*, 315 Md. 208 (1989).
38. Testimony containing hearsay may be heard, if relevant. A final determination should not be based on hearsay alone.
39. Every statement or assertion need not be proven. For example, board members may take notice that many students commute to the University.
40. Student presiding officers are often at a disadvantage when the respondent is represented by an attorney. The proceedings might progress more rapidly and

efficiently if a special presiding officer were appointed. Generally, a staff member in the Office of Student Conduct would be selected for such a responsibility, although other University employees with legal training might also be called upon.

41. Information pertaining to prior findings of disciplinary and residence hall violations might be reported, as well as relevant criminal convictions. Prior allegations of misconduct should not be disclosed.
42. The dynamics of a judicial hearing in a University setting are not the same as those of a courtroom. Strict adherence to the conventions of courtroom advocacy may not be in the best interest of clients in University judicial proceedings.

The presiding officer and the board advisor are authorized to take reasonable measures to maintain control over the proceedings in order to elicit relevant facts, to prevent the harassment of participants, to insure that proceedings are not disrupted and the interests of fairness are served. This may include regulating the timing, length and manner of presentations and objections, declaring recesses in the proceedings, and other appropriate actions. Presiding officers should have training and experience appropriate to the demands of the office.

Before hearings, presenters for both complainants and respondents shall be presented with a written statement approved by the Senate Committee on Student Conduct regarding their rights and obligations during hearings and the powers of the presiding officer to control behavior in hearings.

43. Punishment of one or several individuals for the acts of others should be avoided if the identities of the specific offenders can be readily ascertained.
44. Association does not require formal membership. Individuals who might reasonably be regarded as regular participants in group or organization activities may be held to be associated with the group or organization.
45. Leaders or spokespersons need not be officially designated or elected. For example, if a group or organization accepted or acquiesced in the act or statement of an individual associated with it, that individual might reasonably be regarded as a leader or a spokesman for the group or organization.
46. "Suspension" includes deferred suspension but not interim suspension or suspension which is withheld. See Annotation 6.
47. See Annotation 29.
48. Students left with a disciplinary record after a disciplinary conference may request that their record be voided, in accordance with Part [5049](#). Denials may be appealed, pursuant to Part [5253](#).

49. See Annotation 29.
50. The decision will be “final and conclusive” on the part of the conduct board, but will remain a recommendation to the Director of Student Conduct.
51. This Part is intended to discourage frivolous appeals. Respondents who are genuinely interested in pursuing an appeal can reasonably be expected to prepare a written brief.
52. Appellate bodies which do not give deference (i.e., a presumption of validity) to lower board decisions will distort the entire disciplinary system. Respondents would be encouraged to “test their strategy” and “perfect their technique” before lower boards, since the matter would simply be heard again before a “real” board with final authority.

Lower board members usually have the best access to the evidence, including an opportunity to observe the witnesses and to judge their demeanor. Members of appellate bodies should be especially careful not to modify a sanction or to remand or dismiss a case simply because they may personally disagree with the lower board’s decision.

The opportunity to appeal adverse decisions has not been determined to be a requirement of constitutional “due process” in student disciplinary cases.\*\*\* There is presently no legal obstacle to adopting an amendment to the [Code Code](#) which would eliminate the appellate system altogether.

53. Respondents who obtain information at the hearing which might lead to new evidence are required to request an adjournment rather than wait to raise the matter for the first time on appeal.
54. An arbitrary and capricious decision would be a decision “unsupported by any evidence.” The cited language has been adopted by the Federal Courts as the proper standard of judicial review, under the due process clause, of disciplinary determinations made by the state boards or agencies. *See McDonald v. Board of Trustees of the University of Illinois*, 375 F. Supp. 95, 108 (N.D. Ill., 1974).
55. See Annotation 19.
56. Voided files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record.
57. Disciplinary records may be reported to third parties, in accordance with University regulations and applicable state and federal law.
58. Void records shall be treated in the manner set forth in Annotation 56.

59. The scope of review shall be limited to the factors specified at Part ~~51~~52. An inquiry into the initial determination of guilt or innocence is not permitted. For example, when considering the “nature” of the violation, pursuant to Part ~~51~~52(c), it is to be assumed that the violation occurred and that the respondent was responsible for it.
60. Some discretion must be retained to void even “permanent” disciplinary records. It may be unnecessary, for example, to burden a graduating senior with a lifelong stigma for an act committed as a freshman. Social norms also change rapidly. “Unacceptable” conduct in one generation may become permissible and commonplace in the next.
- \* See the procedures for mandatory medical withdrawal developed by the Vice President for Student Affairs
- \*\* See Macklin Fleming, *The Price of Perfect Justice*: “in our pursuit of . . . perfectibility, we necessarily neglect other elements of an effective procedure, notably the resolution of controversies within a reasonable time at a reasonable cost, with reasonable uniformity . . . we impair the capacity of the legal order to achieve the basic values for which it is created, that is, to settle disputes promptly and peaceably, to restrain the strong, to protect the weak, and to conform the conduct of all the settled rules of law.”
- \*\*\* See the due process standard set forth in *Dixon v. Alabama*, 294 F.2nd 150, 158-159 (Fifth Cir., 1961), Cert. den 368 U.S. 930.



## Frequently Asked Questions (FAQs)

### Regarding the Student Conduct Committee's Recommendation for the *Code of Student Conduct* Expansion of Jurisdiction [Senate Doc #12-13-26](#)

**Q – What jurisdiction do the Office of Student Conduct (OSC) and the *Code of Student Conduct* (Code) currently have at the University of Maryland (UMD)?**

**A –** Currently, the *Code* does not extend to behavior off-campus unless the behavior is a criminal offense resulting in conviction, and if such an offense would constitute a violation of the *Code* had it occurred on UMD premises. Additionally, the *Code* can also be applied off-campus if a student has engaged in behavior that is considered misconduct related to a University-sponsored activity.

**Q – What's wrong with the current jurisdiction of the OSC and the *Code*?**

**A –** There is growing concern over the limitations of the current *Code* to address certain types of misconduct off-campus, most specifically acts of hazing and violence. Additionally, residents of the City of College Park have raised concern about off-campus misconduct as it relates to UMD students in the community. The University has received numerous complaints of misconduct off-campus that directly affects UMD, to which the University would like to respond but cannot due to limitations in the *Code*. The UMD Department of Public Safety (UMDPS) is currently in the process of expanding its jurisdiction within College Park, and the OSC believes that expansion of the *Code* is also warranted at this time.

**Q – What does “expansion of jurisdiction for the *Code of Student Conduct*” mean?**

**A –** The Senate Student Conduct Committee (SCC) is recommending expanded jurisdiction for the *Code*, so that it can be applicable to off-campus misconduct. With expanded jurisdiction, the *Code* will continue to cover conduct and behavior that occurs on University premises or at University-sponsored activities. However, it would also apply to conduct not on University premises if the conduct would otherwise constitute a violation of the *Code* had it occurred on University premises, and if in the judgment of the Director of Student Conduct the conduct affects the health, safety, or well-being of the University community, the orderly operation of the University, or other distinct University interests.

**Q – What are the geographic boundaries associated with the proposed expansion of jurisdiction for the *Code*?**

**A –** There will not be geographic boundaries associated with expansion of jurisdiction for the *Code*. The Director of the OSC will consider whether the behavior meets certain criteria, as described in the answer above. The misconduct will be considered on a case-by-case basis, which is how peer institutions handle discretionary off-campus jurisdiction, as well.

**Q – Is it considered “double jeopardy” if a student is referred to the OSC and is also charged by the police for a crime committed?**

**A –** No. Students can be simultaneously processed by a civil or criminal court and the OSC, because they are separate processes. Students may be accountable to both civil authorities and to the University for acts which constitute violations of law and of the *Code*. Disciplinary action at the University will normally proceed during the pendency of criminal proceedings, and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced. This is the process that is followed for violations of misconduct occurring on-campus, and it will not change if the jurisdiction of the *Code* is expanded.

**Q – What are the benefits of referring a student to the OSC?**

**A –** The OSC and the UMDPS would have more opportunity and flexibility for handling complaints when students come forward with concerns about their peers, or about circumstances that could potentially escalate into dangerous situations. In addition, if a student’s family contacts the OSC with concerns about misconduct that has occurred off-campus, the Director of the OSC would be better equipped to explain the situation and the student’s options. Right now, when students seek assistance from the OSC for situations that have occurred off-campus, the University usually does not have the ability to intervene. With expanded jurisdiction, the UMDPS would have more flexibility in how to handle a situation with students, since they would have the option of referring the students to the OSC rather than only having the option to file criminal charges or not. The SCC hopes that with expansion of jurisdiction for the *Code*, students will be more cognizant of their behavior off-campus, as a result of recognizing that the University has a vested interest in their off-campus conduct. Right now, there is often no accountability taken for off-campus behavior, such as noise violations resulting from a large party. As a result, corrective action may not be taken for these types of off-campus violations; for instance, if a landlord pays a fine and the student renters are not charged with the related offense. With expansion of jurisdiction for the *Code*, students could be held accountable to the University for their off-campus conduct, which may have more of an impact on overall behavioral change. Even though a student might face a lesser or more educational sanction for their misconduct through the OSC than through the criminal justice system, knowledge that the student could be held accountable to the University often appears to have a large influence on student behavior. The SCC also expects that expansion of jurisdiction will improve the safety and security of students living off-campus. For instance, if a student is the victim of assault or hazing by another student off-campus, expansion of jurisdiction of the *Code* will allow for there to be a simultaneous on-campus recourse, which is particularly helpful if criminal charges are not filed, or are dismissed in a court of law.

**Q – Will expansion of jurisdiction for the *Code* have any effect on graduate students?**

**A –** The *Code* applies to all students. The term “student” is defined in the *Code* as a person taking or auditing courses at the institution either on a full- or part-time basis.

**Q – With expansion of jurisdiction for the *Code*, is there any guarantee that a student would only be referred to the OSC for misconduct committed off-campus, instead of being charged by the police?**

**A –** No. They could go through both processes (e.g., criminal proceedings, as well as referral to the OSC for potential sanctioning). It would be up to the police’s discretion whether they decide to file criminal charges, as well as refer the student to the OSC.

**Q – What types of off-campus offenses will be referred to the OSC with expansion of jurisdiction for the *Code*?**

**A –** Examples of serious misconduct that could be referred to the OSC with expanded jurisdiction of the *Code* include, but are not limited to, rioting, hazing, theft of property, public intoxication, sexual assault, illegal drug use, stalking, cyber-bullying, large parties with excessive noise, distribution of alcohol to minors, and repeated offenses. The OSC will not be able to manage every violation that occurs off-campus (e.g., trash/garbage violations that break city ordinances). The OSC would like to be able to handle cases of off-campus misconduct that are significantly tied to the University and are serious in nature.

**Q – Right now, if a student receives a citation for underage drinking off-campus, does the OSC have any jurisdiction to sanction the student under the *Code of Student Conduct*?**

**A –** No, unless the student is convicted of a crime.

**Q – With expansion of jurisdiction for the Code, will students be referred to the OSC for underage drinking in an apartment building or at a house party in College Park?**

**A –** Typically, no. Again, misconduct that affects the health, safety, or well-being of the University community, the orderly operation of the University, or other distinct University interests is what would usually be referred to the OSC with expanded jurisdiction of the Code.

**Q – Could students who are studying abroad be referred to the OSC for misconduct under expanded jurisdiction of the Code?**

**A –** Students who study abroad are currently responsible for their actions under the Code, because UMD-approved study abroad programs are considered University-sponsored activities; this would not change under expanded jurisdiction of the Code. A “University-sponsored activity” is defined as any activity on or off-campus which is initiated, aided, authorized, or supervised by UMD. Prohibited conduct listed in the Code applies to University-sponsored activities. For example, one of the paragraphs that a student must sign-off on in the Student Contract for Study Abroad is:

*“I understand that conduct considered unacceptable to the University of Maryland includes, but is not limited to, excessive use of alcohol, loud and/or abusive behavior toward others, sexual harassment, criminal conduct of any kind, unwillingness to cooperate with hosts and overseas program staff, attendance at protests or political rallies of any kind, and failure to comply with the UMD Student Contract for Study Abroad, the University of Maryland Code of Academic Integrity, and the University of Maryland Code of Student Conduct. Such conduct, as well as any conduct that may damage the program, other participants, working relations with governments, and the University of Maryland’s educational partners may lead to my immediate dismissal from the program.”*

**Q – What is the current jurisdiction for police officers within the UMDPS?**

**A –** The UMDPS’s current jurisdiction is for any property owned, leased, or operated by UMD. The UMDPS has entered into a concurrent jurisdiction agreement with PG County Police, in order to be able to patrol areas within the county (off of University property), and to be able to take enforcement action if they observe a violation of law. However, the UMDPS does not respond to report calls; for instance, if someone in College Park calls to report that their car has been stolen, PG County Police has first response authority. The UMDPS is made aware of reports within the areas of their concurrent jurisdiction. The UMDPS is currently endeavoring to expand its concurrent jurisdiction to areas where more student-housing exists, so that they can patrol these areas. Under expanded jurisdiction of the Code, police officers who find a student in violation of the law off-campus would then have the option of referring the student to OSC rather than solely making a criminal arrest.

**Q – With expansion of jurisdiction for the Code, would the “Responsible Action Policy” (V-1.00(J) Policy on Promoting Responsible Action in Medical Emergencies) be able to be applied off-campus, as well?**

**A –** Yes, because the “Responsible Action Policy” is a part of the Code. Under the Code, the following activities are prohibited: use or possession of any alcoholic beverage under the age of 21 on University premises or at University-sponsored activities; knowingly providing alcoholic beverages to a person known to be under the age of 21 on University premises or University-sponsored activities; and, use or possession of any controlled substance or illegal drug on University premises or at University-sponsored activities. However, these charges may be deferred under Part 29 of the Code consistent with procedures outlined in the *Promoting Responsible Action in Medical Emergencies Policy*.

**Q – How does the University’s jurisdiction compare to other institutions in the University System of Maryland (USM) and amongst peers in the Big Ten Conference?**

**A –** UMD is one of the only institutions that does not have some kind of established discretionary jurisdiction for misconduct occurring off-campus. The University is behind its peers in this capacity. Students are University Citizens, and the University should have the ability to be able to apply the Code off-campus, in order to protect the interests of the University and provide for the safety and well-being of its students wherever they may be located.

Appendix 3

University System of Maryland Off Campus Misconduct Policies		
Salisbury	Yes	Salisbury University has a responsibility to students, faculty and staff on-campus as well as to the surrounding community that our students will behave in a civil and non-disruptive manner. Salisbury University may impose sanctions against a student or student organization or athletic team for the violation of any student regulations that occur on campus. Sanctions also may be imposed against a student or student organization or athletic team for the violation of any regulations that occur off campus as well as violations of the local, state and federal law.
Bowie State	Yes	Students accused of serious criminal offenses on or off campus shall be subject to University disciplinary action. The University reserves the right to take action through its judicial system prior to or simultaneously during the disposition of any action that may result from criminal proceedings. Also any student misconduct that is a direct result of a University sponsored event shall be deemed a violation of the Student Code of Conduct and will be subject to University judicial proceedings
Towson	Yes	Any Student conduct that is a result of a University sponsored event is considered a violation of the code of conduct and disciplinary action may be taken. A student charged with a violation of federal, state, or local laws for off-campus behavior may be disciplined by the university without a university hearing or informal investigation when: the student is found guilty by a court of law; the student pleads guilty or nolo contendere to the charges; the student is given probation before judgment; or, the student chooses to accept an alternative to prosecution, i.e. community service. Additionally, interim or final disciplinary action may be taken before any court action is completed. Examples of charges that may result in action include acts of violence, drug- and alcohol-related violations, and a citation for a disorderly house. Such action will be taken only after a limited investigation by the Office of Student Conduct & Civility Education.
UMBC	Yes	<p>Misconduct that takes place off the campus and is deemed detrimental to the interests of the University is also subject to a Student Conduct Review. For example</p> <ul style="list-style-type: none"> <li>• a student would not be charged with a violation of the Code for a minor alcohol violation taking place over spring break in Florida</li> <li>• a student likely would be charged for driving under the influence on a roadway leading onto campus</li> <li>• a student likely would be charged for a barroom brawl that was captured on the front page of The Baltimore Sun where they were wearing their UMBC sweatshirt</li> </ul> <p>To give actual examples:</p> <ul style="list-style-type: none"> <li>• we do charge students for loud house parties that result in police calls for service in the communities that surround the campus</li> <li>• we do charge students who are arrested for drug distribution</li> <li>• we do charge students who are caught purchasing alcohol for underage students at local liquor stores</li> </ul>

		He also mentions that if he found out one of his students was causing trouble in our residence halls he would not hesitate to charge them under their code.
Saint Mary's	Yes	<p>Our code does allow for us to address off campus behavior if it directly relates to/affects the campus. That said, as a practice we typically deal only with on campus behavior. Some exceptions to that practice have occurred if, for example, a sports team or organization was involved in an incident during a sponsored trip. The two schools I was at before SMCM (one public, one private) both regularly addressed off campus misconduct. Some situations that would warrant University action may be:</p> <ul style="list-style-type: none"> <li>- A student organization/team that commits a violation off campus during a school sanctioned/sponsored trip</li> <li>- When the behavior of a student/organization off campus "disrupts or endangers the College community, the College's responsibilities, or its pursuit of its objectives, or which poses a threat to the safety and well-being or any individual." <ul style="list-style-type: none"> <li>o Perhaps if a student committed a felony off campus</li> <li>o If one student threatened another off campus that might be reason to pursue the case</li> <li>o If there was other information that the off campus incident could or would result in harm to the campus community</li> </ul> </li> </ul>
Morgan State	Yes	Charges of violating a local ordinance, state or federal law may subject the student to disciplinary action by the University when said violations occur on campus on University owned property, during an activity sanctioned by the University, when behavior on or off campus adversely affects the University's educational mission, and/or constitutes a substantial and/or continuing danger to the safety or property of the University or members of the University community. Students may be accountable to both civil authorities and to the University for acts that constitute violations of federal, state, or local laws. Disciplinary action at the University will normally proceed even if criminal proceedings are pending. The outcome of a disciplinary action will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.
UMUC	No	The code reads on UMUC or USM premises or at UMUC or USM sponsored activities.
Frostburg State	Yes	Our policies do allow us to address behavior off-campus. We have been actively doing so since 2006, mostly through citations issued to students by local police. The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community through enforcement of the Code of Student Conduct both on and off the University premise. Students are expected to conduct themselves in a manner that demonstrates their respect for the rights of others. Also, individuals engaging in activities off campus have a responsibility to conduct such activities within the laws and ordinances of the community. Students accused of serious criminal offenses on or off campus shall be subject to university action through the Student Code of

		Conduct, including interim suspension, pending a prompt hearing. Serious criminal offenses shall include behavior which (a) is defined as a felony under Maryland law, and (b) indicates that the student constitutes a substantial danger to the safety or property of the University or members of the campus community. The University reserves the right to take action through its Student Conduct System prior to the disposition of any action that may result from criminal proceedings.
Coppin State	Yes	Typically, the University's jurisdiction is limited to incidents which occurs on-campus or conduct that adversely affects the University community and/or the pursuit of its objectives. However, there are specific times when our code of conduct allows us to adjudicate off-campus misconduct. Particularly, we have a policy for on/off-campus even related misconduct. This incorporates incidents of misconduct that are directly or indirectly related to a University sponsored event or activity, including but not limited to athletic events. Additionally it incorporates rioting, assault, theft, vandalism, arson, breach of the peace, or destruction of property that is directly or indirectly related to a University sponsored event. This can be adjudicated concurrently or independent of criminal charges pending. We also may take disciplinary action if a student is charged <u>only</u> with an off-campus violation of federal, state, or local laws which demonstrates "flagrant disregard for the University community". We will not take action though unless the student has been found guilty in a court of law or pleads "nolo contend ere" (no contest). That is of course only if we are aware of the violation.
University of Baltimore	No	The code of conduct applies to acts of misconduct by students engaged in University-organized activities, whether committed on- or off-campus. A "University-organized activity" is any activity conducted under the sponsorship or supervision of the University or of registered student groups. Acts of misconduct off campus can only be reviewed if it was an off campus university sponsored event.
UMES	Yes	Disciplinary action may be taken against a student for off-campus conduct that seriously threatens the safety and wellbeing of other UMES students, faculty, or staff, or property, as determined by University officials (President, Vice Presidents, administrators, Office of Public Safety, faculty or staff), when the conduct impairs, interferes with, or obstructs any activity or the mission, processes, and functions of the University. In addition, disciplinary action may be taken on the basis of any conduct on/or off campus that poses a threat to persons or property within the University Community. Students are responsible to both civil and criminal authorities and to the University for conduct that constitutes violations of local, State, and federal law and of the Student Code of Conduct/University regulations. A violation of the Code of Conduct may result in criminal or civil charges as well as a University conduct (disciplinary) action. Unless otherwise provided by law, University conduct proceedings may occur simultaneously with, or following criminal and or civil proceedings. Conduct outcomes including finding of guilt and sanctions shall not be subject to change because of criminal or civil outcomes. Students are subject to disciplinary action, up to and including expulsion for violations of the Student Code of Conduct.

## Off Campus Jurisdiction Policies among Big 10 Institutions

### Highlights of Policies

- Most institutions adjudicate misconduct incidents occurring off campus if they “substantially” or “adversely” affect university communities, institutional missions, or other individuals.
- Many institutions provide further definitions of types of misconduct. The types of misconduct include violations of law (federal, state, or local); harm or threats to self or other individuals.
- Off-campus include university-sponsored activities (most institutions), residences (University of Minnesota), neighboring streets (Northwestern University); and academic activities (Indiana University, Michigan State University)

Institution	Does Language about Off – campus Jurisdiction Exist?	Description	Additional Information
University of Illinois	Yes	Discipline system accepts jurisdiction in those instances (related to violations of local, state, and federal law) where the University community's interest is substantially affected, regardless of whether the conduct in question occurs on or off campus	
Indiana University	Yes	The university may discipline a student for acts of personal misconduct or criminal acts that are not committed on university property if the acts arise from university activities that are being conducted off the university campus, or if the misconduct undermines the security of the university community or the integrity of the educational process or poses a serious threat to self or others.	Off-campus activity includes, but not limited to university-sponsored events, as an integral part of a student's academic, personal, and professional growth; adversely impacts the university's mission (e.g., altering transcripts, harassment); presents clear danger to personal safety (e.g., rape, hazing, arson, drugs); violates policies of an academic program and related facilities (e.g., off-campus clinical, internship, study abroad)

University of Iowa	Yes	Code covers acts occurring off campus, including online behavior, which affects a clear and distinct interest of the University as determined by the Dean of Students	Examples include University-sponsored activity/sporting event; acting in an official capacity for the University; violations of federal, state, or local law; violates University policy; threat to campus safety and security
University of Michigan	Yes	Behavior which occurs in the city of Ann Arbor, on University controlled property, or at University sponsored events/programs may violate the <i>Statement</i> . Behavior which occurs outside the city of Ann Arbor or outside University controlled property may violate the <i>Statement</i> only if the behavior poses an obvious and serious threat or harm to any member(s) of the University community.	
Michigan State University	Yes	University regulations apply to University-sponsored activities or student group-sponsored activities off campus or when the conduct of a student poses a clear and present danger to the health or safety of a person or property. Regulations pertaining to scholarship and grades, University functions and services, and University property apply without reference to where the activity occurs.	Because technology is constantly changing teaching, learning, and administrative processes, it is understood that the general principles which govern these regulations should be extended to apply to new and unanticipated situations.
University of Minnesota	Yes	Code applies to off-campus conduct when the conduct adversely affects a substantial University interest and either: a) constitutes a criminal offense; or b) indicates that the student may present a danger or threat to the student or others	Applied at the discretion of the President or delegate
Northwestern University	Yes	Code applies to off-campus residences of any University students or on any street or area contiguous thereto; on premises subject to the jurisdiction of the University police whether on or off University property	



Ohio State University	Yes	Code applies to off-campus conduct of students and registered student organizations in direct connection with academic course requirements; activity supporting pursuit of a degree; university activities; activity that causes substantial destruction of property belonging to the university or members of the university community; causes or threatens serious harm to university community; and any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.	
Penn State University	Yes	Student conduct committed off campus which affects a substantial university interest violates the Code of Conduct and is subject to disciplinary action	Substantial university interest is conduct related to violations of law; students presenting danger or threat to the health and safety of others; significantly impinges upon the rights, property or achievements of self or others or breaches the peace and/or causes social disorder; is detrimental to the educational interests of the university

Purdue University	Yes	Depends upon regulation	Physical abuse of any person or conduct that threatens or endangers the health or safety of any other person; theft or attempted theft of, or the unauthorized use or possession of, or the unauthorized exertion of control over, or causing damage to property of any kind belonging to the university, a member of the university community, a campus visitor, or a person or agency participating in a university activity; lewd, indecent, or obscene conduct in connection with a university activity; weapons connected to a university activity
University of Wisconsin	Yes	Code applies off campus when the conduct adversely affects a substantial university interest	Serious criminal offenses; student is a danger to self or others; conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions
Rutgers	Yes	University reserves the right to take disciplinary action against students whose behavior off university premises indicates that they pose a substantial danger to others in the University community.	The university will not routinely invoke the disciplinary process for student misconduct occurring off campus unless it occurs at a university sponsored activity; "substantial danger" indicated as pending criminal charge, usually relating to a crime of violence, burglary, sexual assault, substantial theft or fraud, drug

			distribution or possession of substantial quantities of illegal drugs.
University of Nebraska	Yes	University discipline may also be initiated in instances of off campus student misconduct which adversely affects the university's pursuit of its recognized educational purposes	
University of Maryland	Yes	Code applies to off campus criminal behavior resulting in a conviction, if such an offense would constitute a violation of the Code had it occurred on University premises; no disciplinary action for non-aggravated misdemeanors that do not pose a threat to the campus community	Exceptions include rioting, assault, theft, vandalism, fire setting, or other serious misconduct related to a university sponsored event, occurring on or off campus that results in harm to a person or property or otherwise poses a threat to the stability of the campus or campus community

## NORTHWESTERN UNIVERSITY

**Student Code of Conduct:** <http://www.northwestern.edu/student-conduct/conduct/code/jurisdiction.html>

### Jurisdiction of the Student Conduct System

The University shall have jurisdiction over all cases, other than those arising because of unsatisfactory academic work, that may call for discipline of a current or former student, group of students, or student organization of any school (undergraduate or graduate) arising out of conduct that occurred

1. on University premises;
2. at a University activity, program, function, or sponsored event;
3. in the off-campus residence of any University student or on any street or area contiguous thereto;
4. on premises subject to the jurisdiction of University Police, whether on or off University property; or
5. when the conduct has a real and substantial connection to the legitimate interests of the University or members of the University community.

In addition, the conduct complained about must have occurred from the time of a student's application for admission through the actual awarding of a degree, including during the academic year, before classes begin or after classes end, during time pursuing credit away from campus (study abroad, internships, co-ops, etc.), and during times between terms of actual enrollment and even if the conduct is not discovered until after a degree is awarded.

### University Police Jurisdiction

The Northwestern University Police Department (NUPD) has legal jurisdiction both on the Evanston and Chicago campuses and in areas surrounding the campuses.

In Evanston, NUPD has jurisdiction from Lake Street to the south all the way to the northern border of Evanston, and from the city's eastern edge at Lake Michigan to Asbury Ave./Green Bay Rd. to the west.

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## OHIO STATE UNIVERSITY

**Code of student conduct (effective June 18, 2012):** <http://studentaffairs.osu.edu/csc/>

### 3335-23-02 Jurisdiction

The code applies to the on-campus conduct of all students and registered student organizations, including conduct using university computing or network resources. The code also applies to the off-campus conduct of students and registered student organizations in direct connection with:

- A. Academic course requirements or any credit-bearing experiences, such as internships, field trips, study abroad, or student teaching;
- B. Any activity supporting pursuit of a degree, such as research at another institution or a professional practice assignment;
- C. Any activity sponsored, conducted, or authorized by the university or by registered student organizations;
- D. Any activity that causes substantial destruction of property belonging to the university or members of the university community, or causes or threatens serious harm to the safety or security of members of the university community; or
- E. Any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.

The code governs all campuses of the university. However, students attending at regional campuses, centers, or institutes are advised to consult their local resources for additional information or rules pertaining to those locations, which may create hearing boards or processes for the locations, consistent with these rules.

The university reserves the right to administer the code and proceed with the hearing process even if the student withdraws from the university, is no longer enrolled in classes, or subsequently fails to meet the definition of a student while a disciplinary matter is pending.

Students continue to be subject to city, state, and federal laws while at the university, and violations of those laws may also constitute violations of the code. In such instances, the university may proceed with university disciplinary action under the code independently of any criminal proceeding involving the same conduct and may impose sanctions for violation of the code even if such criminal proceeding is not yet resolved or is resolved in the student's favor.

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## PENN STATE UNIVERSITY

**Student Code of Conduct:** <http://studentaffairs.psu.edu/conduct/policies/offcampus.shtml>

The Code of Conduct, while informed by the Penn State Principles, specifies behaviors that students should avoid as they are inconsistent with the essential values of the university. A student will be held accountable through the University Discipline Process if he/she makes the decision to engage in these behaviors. In addition, intentionally attempting or assisting in these behaviors may be considered as serious as engaging in the behavior. A person commits an attempt when he/she performs any act that constitutes a substantial step toward the commission of a behavior specified in the Code of Conduct.

### Off-Campus Misconduct Policy

While the University has a primary duty to supervise behavior on its premises, there are many circumstances where the off-campus behavior of students affects a Substantial University Interest and warrants disciplinary action.

The Pennsylvania State University expects students to conduct themselves in accordance with the law. Student behavior off the premises of the campus that may have violated any local, state, or federal law, or yields a complaint from others alleging law violations or student misconduct will be reviewed by the University. Upon receipt of a complaint alleging off-campus student misconduct, the Senior Director of the Office of Student Conduct or his/her designee will review the allegations and if necessary consult with a Senior Student Affairs Administrator to determine the appropriate course of action by the University.

In cases in which criminal or civil action is involved, such action and the review of the Off-Campus Misconduct Policy and administration of the University's conduct process will occur simultaneously. However, the University may defer action until the proceedings of the criminal or civil action have been completed. A deferment will be considered by the Office of Student Conduct following an initial review of the circumstances. Students may also delay action by the Office of Student Conduct by seeking a Disciplinary Withdrawal, whereby they would withdraw from the University until the criminal matter has been resolved.

In addition, where there is a compelling reason (such as concern for the safety of other students), the Office of Student Conduct may, after an initial review of the evidence, impose the sanction of Interim Suspension, requiring that the student leave the campus pending disciplinary proceedings or medical evaluation (See Interim Suspension, reference location).

Student conduct committed off the campus which affects a Substantial University Interest is conduct which:

- Constitutes a violation of local, state or federal law, including repeat violations of any local, state or federal law committed in the municipality where the University is located;

- Indicates that the student may present a danger or threat to the health or safety of him/herself or others;
- Significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; or
- Is detrimental to the educational interests of the University.

Any off-campus student behavior that affects a Substantial University Interest (as previously defined) violates the Code of Conduct and is subject to disciplinary action following standard University Discipline Procedures.

In accordance with University disciplinary procedures, students are entitled to contest any allegations and/or sanctions and may request a hearing or review before an Administrative Hearing Officer or the University Hearing Board. The hearing body will review the referred incidents for off-campus misconduct in the same manner they do for violations that have occurred on University premises. The hearing body may also consider whether or not the referred off-campus misconduct affects Substantial University Interest and whether the behavior should be subject to University disciplinary action.

When students are found responsible for behavior off-campus that both meets the definition of affecting Substantial University Interest, and violates the Code of Conduct, sanctions will be applied. The University has established sanctioning guidelines for University Code of Conduct violations. Specific sanctions established for off-campus misconduct will vary just as sanctions do for on-campus violations depending upon the individual nature of each situation including the student's prior misconduct record.

The sanctions for off-campus misconduct range from a Disciplinary Warning to Expulsion.

The following is a sample list of misconduct behaviors and/or law violations in each of the University's sanctioning categories of Minor, Moderate and Major. This listing does not take into consideration a student's prior disciplinary record or account for varying degrees of severity of similar types of violations. Therefore, those students with a history of prior misconduct or who are involved with a particularly serious violation may receive firmer sanctions than those listed below for any particular act of misconduct. Also, this list is not designed to be comprehensive and the University reserves the right to respond to any off-campus misconduct that affects a Substantial University Interest as defined above.

#### MANDATORY PARTICIPATION IN THE ALCOHOL EDUCATION/INTERVENTION PROGRAM AT UNIVERSITY PARK

All students who engage in behavior on or off the premises of the campus involving the Prohibited Underage Possession or Use of Alcoholic Beverages, Public Drunkenness or Driving Under the Influence will be required to complete a University alcohol education/intervention program. Students assigned to the mandatory alcohol education/intervention program will be responsible for paying all fees and costs associated with the program.

#### MAJOR STUDENT MISCONDUCT BEHAVIORS / LAW VIOLATIONS:

The University Student Code of Conduct violations committed off the campus that typically would fall into the MAJOR category and yield a sanction range of Suspension to Expulsion are:

Homicide; Manslaughter; Kidnapping; Assault and Abuse of a Person; Sexual Assault; Rape; Incest; Ethnic Intimidation; Crimes Motivated by Intolerance; Child Pornography; Confining Others; Domestic Violence; Burglary; Robbery; Major Thefts; Arson; Resisting Arrest or Detainment; Creating or Contributing to a Dangerous Condition; Engaging in acts which encourage, prolong or contribute to a public disturbance (e.g. riot, failure to disperse); Distribution of Illegal Drugs; and Serious cases of: Hazing, Harassment and Stalking; Direct Threat of Harm; Unlawful Use or Possessions of Weapons.

#### MODERATE STUDENT MISCONDUCT BEHAVIORS / LAW VIOLATIONS:

The University Student Code of Conduct violations committed off the campus that typically would fall into the MODERATE category and yield a sanction range of Probation\* to Suspension are:

Simple Assaults; Fights with Injury; Driving While Impaired\*\*, Driving Under the Influence\*\*; Furnishing Alcohol to Minors; Endangering Self or Others; Unlawful Entry; Theft; False Swearing, Reports, Witness and Identification; Impersonating a Public Servant; Obstructing an Official in their Duties; Aiding or Abetting in a Crime; Public Lewdness; Firearms Violations; Obstructing a Public Thoroughway; Possession of Illegal Drugs; Excessive Consumption of Alcohol\*\*, Public Drunkenness\*\*; Disrupting Meetings or Operations of Others and Processions; and Corruption of Minors.

\*Probation may include a notation on the student's transcript

\*\*Requires participation in a University Alcohol Education/Intervention Program

MINOR STUDENT MISCONDUCT BEHAVIORS/LAW VIOLATIONS AT UNIVERSITY PARK AND OTHER LOCATIONS AS DESIGNATED BY UNIVERSITY PARK, ALTOONA AND BERKS.

The University Student Code of Conduct violations committed off the campus that typically would fall into the MINOR category and yield a sanction range of Disciplinary Warning to One Semester of Probation\* are:

Disorderly Conduct; Retail Theft; Criminal Mischief; Loitering; Public Nuisances; Underage Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages\*\*; Possession of Illegal Drugs and Public Damage.

\*Probation may include a notation on the student's transcript

\*\*Requires participation in a University Alcohol Education/Intervention Program

The University will review all subsequent student misconduct behaviors stated above in the Minor category. Although the continuum of sanctioning for behaviors under the Minor category range from Disciplinary Warning to University Probation, because these are repeat acts of misconduct, sanctions would typically include sanctions greater than probation.

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## RUTGERS UNIVERSITY

**10.2.11 UNIVERSITY CODE OF STUDENT CONDUCT:** [http://catalogs.rutgers.edu/generated/nb-ug\\_0507/pg21725.html](http://catalogs.rutgers.edu/generated/nb-ug_0507/pg21725.html)

**Section:** 10.2.11

**Section Title:** Student Academic Regulations & Policies

**Policy Name:** Code of Student Conduct

**Approval Authority:** Board of Governors

**Responsible Executive:** Executive Vice President for Academic Affairs

**Responsible Office:** Office of Student Affairs

**Originally Issued:** 7/7/1972

**Revisions:** Effective 7/1/2007; 5/28/2009 – Section 13b; 10/13/2009 – Section 67 & other administrative title changes; 4/15/2010 administrative title changes; unauthorized or undisclosed recording-added 10.(u) and 10.(aa) under Prohibited Conduct; and incorporated Academic Integrity policy (see Appendix I). 9/1/11-changes regarding Academic Integrity process, addition of new violations 10 (d), 10(h), 10(p), change in standard of evidence to preponderance of information.

### PREAMBLE

A university in a free society must be devoted to the pursuit of truth and knowledge through reason and open communication among its members. Its rules should be conceived for the purpose of furthering and protecting the rights of all members of the University community in achieving these ends. All members of the Rutgers University community are expected to behave in an ethical and moral fashion, respecting the human dignity of

all members of the community and resisting behavior that may cause danger or harm to others through violence, theft, or bigotry. All members of the Rutgers University community are expected to adhere to the civil and criminal laws of the local community, state, and nation, and to regulations promulgated by the University. All members of the Rutgers University community are expected to observe established standards of scholarship and academic freedom by respecting the intellectual property of others and by honoring the right of all students to pursue their education in an environment free from harassment and intimidation. This document describes the University's Code of Student Conduct. It specifies prohibited types of behavior, the sanctions that can be applied, and the jurisdiction, structure, and operation of the University system for adjudicating student disciplinary cases. It supersedes those documents pertaining to student disciplinary hearing procedures, in conflict herewith, currently in force in any division of the University. It is the responsibility of all University students to familiarize themselves with these regulations.

### **AUTHORITY FOR STUDENT DISCIPLINE**

1. Ultimate authority for student discipline is vested in the Board of Governors of Rutgers, The State University of New Jersey. Disciplinary authority may be delegated to University administrators, faculty members, students, committees, and organizations, as set forth in this Code, or in other appropriate policies, rules, or regulations adopted by the Board.

### **RATIONALE**

2. The primary purpose for the imposition of discipline in the University setting should be to foster the personal, educational, and social development of those students who are held accountable for violations of University regulations, to ensure the orderly functioning of the University, and to protect the University community and its integrity.

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### **INHERENT AUTHORITY**

5. The University reserves the right to take necessary and appropriate action to protect the safety and well being of the campus community. Such action may include taking disciplinary action against those students whose behavior off University premises indicates that they pose a substantial danger to others in the University community. The University will not routinely invoke the disciplinary process for student misconduct that occurs off University premises unless it occurs at a University sponsored activity. Nonetheless, it will be necessary to endeavor to protect the campus community when there are reasonable grounds to believe that a student may pose a substantial danger to others. Normally, such "substantial danger" will be manifested by a pending criminal charge, usually relating to a crime of violence, burglary, sexual assault, substantial theft or fraud, the distribution of illegal drugs, or the possession of substantial quantities of illegal drugs.

### **VIOLATIONS OF LAW AND DISCIPLINARY REGULATIONS**

6. Students may be accountable to both external authorities and to the University for acts which constitute violations of law and this Code. Action at the University will normally proceed during the pendency of administrative, civil or criminal proceedings arising out of the same or other events, and shall not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced, or are pending. A member of the University community initiating a complaint under this Code is not precluded from filing civil or criminal charges outside the University.

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## **UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN**

**Student Rights and Responsibilities:** [http://admin.illinois.edu/policy/code/article1\\_part3\\_1-301.html](http://admin.illinois.edu/policy/code/article1_part3_1-301.html)

### **PART 3. STUDENT DISCIPLINE**

#### **§ 1-301 Basis for Discipline—Source and Jurisdiction**



(a) By authority of the Board of Trustees, the Urbana-Champaign Senate Committee on Student Discipline is responsible for the administration of student discipline for acts involving the violation of campus or University regulations. These regulations are formulated by a variety of sources, including, but not limited to, the Conference on Conduct Governance, the Senate, the Chancellor, the President, and the Board of Trustees.

(b) It is in the best interest of the University and all those who are students or who may desire to become students at the Urbana-Champaign campus that the basis for discipline at this campus be clearly defined. The University discipline system recognizes that not all violations of law affect the interests of the University community, and the discipline system accepts jurisdiction only in those instances in which the University community's interest is substantially affected. On the other hand, the University may take disciplinary action for incidents that violate the University's rules of conduct even though such conduct is not prosecuted in the courts. All members of the University community are expected to observe high standards of integrity and ethical behavior. The University discipline system may take action only upon the following basis:

(1) all actions that are violations of law or Board of Trustees' action or any University rule of conduct and that occur on University premises or property

(2) all actions that violate any of the laws or regulations cited in section (a) above and that substantially affect the University community's interest, even though such actions do not occur on University premises or property (for further information about the criteria used by the Senate Committee on Student Discipline in determining the kinds of conduct covered by this jurisdiction, see [www.conflictresolution.illinois.edu](http://www.conflictresolution.illinois.edu) or contact the Office for Student Conflict Resolution)

(3) all cases referred to the discipline system following interim suspension by the Chancellor

(4) academic violations

(5) appeals and referrals from student judiciaries arising from violations of regulations

(6) violations of University vehicle or bicycle regulations

(c) Individuals subject to student discipline include but is not limited to all persons:

(1) taking courses at the University;

(2) who cancel, withdraw, or graduate after committing behavior which may violate the code;

(3) who are not officially enrolled for a particular term but have a continuing relationship with the University;  
and

(4) who have been notified of and accepted their admission.

This definition includes but is not limited to individuals between academic terms and persons who consent to participating in the student discipline process.

(d) The actions of a student organization in University-approved activities or University-sponsored activities that are in violation of University regulations for organizations may result in disciplinary action against that organization.

(e) The University reserves the right to deny admission to any person because of previous misconduct that may substantially affect the interest of the University, or to admit such a person on an appropriate disciplinary status. The admission of such a person will not be approved or denied until the case has been heard by the appropriate disciplinary committee. (This applies to a person not now enrolled in the University who might apply for admission, or to a person who has pre-enrolled whether or not the applicant has paid a deposit.) A favorable action of the appropriate disciplinary committee does not abrogate the right of any dean or director to deny admission on the basis of scholarship. (See § 1-303.)

(f) The University reserves the right to withhold authority to register to any student or former student because of previous misconduct that may substantially affect the interests of the University or to assign appropriate disciplinary status to the student or former student. Permission to register will not be approved or denied until the case has been heard by the appropriate disciplinary committee. A favorable action by the appropriate disciplinary committee does not abrogate the right of any dean or director to deny the authority to register on the basis of scholarship. (See § 1-303.)

(g) Students admitted to or enrolled in the Graduate College or any of the professional schools or colleges are subject to any additional conduct regulations of those units. Regulations will be available in printed form to those students.

(h) The University will take disciplinary action for conduct violating §§ 1-302 to 1-311 below. Disciplinary action also may be taken for violations of other sections. Examples include but are not limited to: (1) § 1-102(d) (Orderly Conduct of Classes); (2) § 2-402 (Library Regulations); (3) § 2-404 (Picketing); (4) § 2-405 (Solicitation and Commercial Activity in University Residence Halls); (5) § 2-406 (Posting and Distribution of Handout Materials); and (6) § 2-606 (Use of In-line Skates, Roller Skates, and Skateboards).

(i) Alleged violations of the *Student Code* noted in (h) above are resolved through procedures developed and approved by the Senate Committee on Student Discipline, its Subcommittees on Student Conduct, and Disciplinary Officers approved by the Senate Committee on Student Discipline. These procedures include: Disciplinary Officer Procedures (informal resolution); Procedures for Appeal from the Action of Disciplinary Officers; Procedures for the Subcommittee on Undergraduate Student Conduct; and Procedures for Appeal to the Senate Committee on Student Discipline. These procedures may be found at [www.conflictresolution.illinois.edu](http://www.conflictresolution.illinois.edu) or by contacting the Office for Student Conflict Resolution. Other procedures available at the Office for Student Conflict Resolution include procedures for the subcommittees for graduate students, law students, and veterinary medicine students. Among other rights delineated in these procedures, the right to written notice of charges and an opportunity to respond to those charges are guaranteed.

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## UNIVERSITY OF IOWA

**Code of Student Life (2012-2013 academic year):** <http://dos.uiowa.edu/policy-list/current/student-responsibilities-6/code-of-student-life-2012-2013-academic-year/>

### Section A: Introduction

As expressed in the [IOWA Challenge](#), University of Iowa students are called to excel academically, stretch to embrace diversity, engage in positive student life and leadership, choose a healthy lifestyle, and serve the community.

In order to maintain a safe campus where students can meet the IOWA Challenge, the University of Iowa has adopted the Code of Student Life. The Code of Student Life sets forth standards of student behavior and conduct necessary for the maintenance of a campus where ideas are freely exchanged, University property and processes are safeguarded, and conflicts are peacefully resolved. Each University of Iowa student has an obligation to know and adhere to the Code of Student Life, and each University of Iowa student shall be conclusively presumed to have knowledge of the contents of the Code of Student Life from the date of the student's initial registration at the University.

Pursuant to the Iowa Administrative Code, the President is the Chief Administrative Officer for the University of Iowa. The President has nominated, and the Board of Regents has appointed, a Vice President for Student Life with overall responsibility for student-related matters, including but not limited to student conduct and discipline. The Vice President for Student Life has, in turn, delegated considerable authority for the establishment of rules and handling of violations to the Dean of Students. The Dean of Students has also granted some discretion for establishing rules and handling certain rule violations to the professional staff of University Housing & Dining.

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## Section C: Scope

The Code of Student Life covers acts of University students occurring on campus, as well as on property owned, leased, or controlled by a fraternity, sorority, or student organization. The Code of Student Life also covers conduct and behavior occurring off campus, including online behavior, which affects a clear and distinct interest of the University as determined by the Dean of Students. In exercising this jurisdictional discretion, the Dean will establish if the behavior negatively impacts the achievement of the University's academic goals, the safety and freedom of individuals, or the orderly operation of the University. Without attempting to be exhaustive, the following are examples of situations that could affect a clear and distinct interest of the University: (1) conduct occurring at a University-sponsored activity or sporting event; (2) conduct occurring while the accused or complainant was acting in an official capacity for the University; (3) conduct which constitutes a violation of federal, state, or local law or ordinance; (4) conduct which violates University rule or policy; and (5) conduct which demonstrates a threat to campus safety and security. Violations of this policy involving violent conduct, alcohol, or drugs occurring in Johnson County, Iowa are presumed to affect a clear and distinct interest of the University.

The Code of Student Life applies whether or not the University is in session. The Code of Student Life is applicable to a student from the time of application for admission through the actual awarding of a degree, even though the conduct which violates the policy may not be discovered until after a degree is awarded. Withdrawal of an accused student while a disciplinary matter is pending shall not defeat jurisdiction under this section. In addition, conduct which violates the Code of Student Life and engaged in prior to admission or after withdrawal from the University may be taken into account in decisions on admission or readmission, and may also be grounds for filing disciplinary charges after admission or acceptance into a program.

In those cases where a complaint for misconduct in violation of the Code of Student Life is filed against an individual not currently registered as a student, the complaint may proceed to adjudication or the Dean of Students may elect to restrict the individual's registration and resolve the complaint later when the individual seeks to re-enroll. In the event that an individual named in a complaint has satisfied the academic requirements for a graduate or undergraduate degree, the individual may not receive his or her degree until the complaint is resolved.

Proceedings under the Code of Student Life may be initiated against students charged with a violation of a federal, state, or local law or ordinance. Proceedings under the Code of Student Life may be carried out prior to, simultaneously with or following civil or criminal proceedings. Decisions about the timing of University proceedings will be within the sole discretion of the Dean of Students.

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## UNIVERSITY OF MICHIGAN-DEARBORN

**Student Rights & Code of Conduct:** [http://www.umd.umich.edu/policies\\_st-rights/](http://www.umd.umich.edu/policies_st-rights/)

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## SECTION 2. JURISDICTION

Judicial System adjudication shall be limited to alleged violations of the Code. Jurisdiction over Student Rights shall be limited to students, to student organizations and teams, and to employees of the University of Michigan-Dearborn. Jurisdiction over Student Conduct shall be limited to students and to student organizations and teams of the University of Michigan-Dearborn. Within the following limitations, the Judicial System shall have jurisdiction over all Code violations committed on University property or at University sponsored activities, such as class, organization, or team trips or meetings; or against University property, wherever situated.

A. Jurisdiction over individual students charged with violating the Code shall be limited to persons admitted to, or enrolled or registered at the University on a full or part-time basis at the time of the alleged violation. The discontinuance of enrollment of a student does not negate the jurisdiction of this Code and System which shall remain applicable with respect to matters that arose when the person was a student.

B. Jurisdiction over student organizations and teams charged with violating the Code shall be limited to organizations and teams comprised entirely or substantially of students.

1. A student organization or team and its officers or leaders may be held collectively or individually responsible when violations of the Code of those associated with the organization or team have received the tacit or overt consent or encouragement of the organization or team or of the organization's or team's leaders, officers, or spokespersons.
2. The officers or leaders or any identifiable spokespersons for a student organization or team may be directed by the Vice Chancellor for Enrollment Management and Student Life or a designee to take appropriate action designed to prevent or end violations of the Code by the organization or team or by any persons associated with the organization or team who can reasonably be said to be acting in the organization's or team's behalf. Failure to make reasonable efforts to comply with the Vice Chancellor for Enrollment Management and Student Life' or the designee's directive shall be considered a violation of the Code, both by the officers, leaders, or spokespersons for the organization or team and by the organization or team itself. Sanctions for misconduct by an organization or team (jointly and severally) may include revocation or denial of recognition or funding for a designated period of time.
3. Jurisdiction over University employees charged with violating student rights shall be limited to facilitating informal resolution and to facilitating the utilization of appropriate University procedures for addressing allegations of misconduct by an employee of the University.

C. Jurisdiction over University employees charged with violating student rights shall be limited to facilitating informal resolution and to facilitating the utilization of appropriate University procedures for addressing allegations of misconduct by an employee of the University.

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## UNIVERSITY OF MINNESOTA

**Student Conduct Code:** [http://www1.umn.edu/regents/policies/academic/Student\\_Conduct\\_Code.html](http://www1.umn.edu/regents/policies/academic/Student_Conduct_Code.html)

**Adopted:** July 10, 1970

**Amended:** December 13, 1974; March 11, 1994; June 13, 2003; December 8, 2006

**Supersedes:** (see end of policy)

### SECTION I. SCOPE.

This policy applies to all students and student organizations at the University of Minnesota (University).

### SECTION II. JURISDICTION.

The Student Conduct Code (Code) shall apply to student conduct that occurs on University premises or at University-sponsored activities. At the discretion of the president or delegate, the Code also shall apply to off-campus student conduct when the conduct, as alleged, adversely affects a substantial University interest and either:

(a) constitutes a criminal offense as defined by state or federal law, regardless of the existence or outcome of any criminal proceeding; or

(b) indicates that the student may present a danger or threat to the health or safety of the student or others.

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# UNIVERSITY OF NEBRASKA

**Student Code of Conduct and Disciplinary Procedures:** <http://stuafs.unl.edu/ja/code/one.shtml>

## Introduction\*

University students are both citizens and members of the academic community. As members of the academic community, students are subject to the obligations which accrue to them by virtue of this membership. As members of the larger community of which the University is part, students are entitled to all the rights and protections enjoyed by other members of that community. By the same token, students are also subject to all civil laws, the enforcement of which is the responsibility of duly constituted civil authorities. When a student violates a University regulation, he/she is subject to disciplinary action by the University whether or not his/her conduct violates civil law. If a person's behavior simultaneously violates both a University regulation and the civil law, the University may take disciplinary action independent of that taken by civil authorities. When a student violates civil law off campus, he/she may incur penalties prescribed by civil authorities. University discipline may also be initiated in instances of off campus student misconduct which adversely affects the University's pursuit of its recognized educational purposes.

## 1. General

Students at the University of Nebraska-Lincoln are members of both the University community and the larger community of which the University is a part. Students are entitled to all of the rights and protections enjoyed by members of the larger community. At the same time, as members of the University community, students have the responsibility to conduct themselves in a lawful manner and in compliance with the University's standards for student conduct. The purpose of this Code is to specify acts of student misconduct for which an offending individual or student organization will be subject to disciplinary sanctions under the University Disciplinary Procedures.

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## 3. University Disciplinary Jurisdiction

- **3.1 Applicability of Code and Disciplinary Procedures** - The provisions of this Student Code of Conduct and the University Disciplinary Procedures shall apply to individual students and to student organizations.
- **3.2 On-Campus Jurisdiction** - University disciplinary jurisdiction shall extend to any case of alleged misconduct by any student or organization occurring on the campus.
- **3.3 Student Housing Unit Jurisdiction** - University disciplinary jurisdiction shall extend to any case of alleged misconduct by any student or organization occurring on the premises of any student housing unit.
- **3.4 Off-Campus Jurisdiction** - University disciplinary jurisdiction shall extend to any case of alleged misconduct by any student or organization occurring at an off-campus activity or event of or sponsored by the University or an organization. Other alleged misconduct by any student or organization occurring off-campus shall not be subject to University disciplinary jurisdiction unless the misconduct adversely affects the educational interests of the University. Off-campus misconduct in violation of a criminal law or involving falsification, alteration or fraudulent use of any University document, record or instrument of identification may, depending upon the nature and gravity of the circumstances, constitute misconduct adversely affecting the educational interests of the University for which an offending student or organization will be subject to disciplinary proceedings and sanctions under the University Disciplinary Procedures. Any misconduct associated with the use of a University vehicle shall be subject to

disciplinary proceedings and sanctions. The Vice Chancellor for Student Affairs and the Judicial Officer shall be the University officials having authority to determine on a case-by-case basis whether University disciplinary proceedings shall be instituted for off-campus misconduct adversely affecting the educational interests of the University.

- **3.5 University Disciplinary Proceedings Independent of Civil or Criminal Proceedings.** - University disciplinary proceedings may be instituted against a student or organization charged with violation of a law which is also misconduct under this Code without regard to the pendency of civil litigation or criminal prosecution. University disciplinary proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

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## INDIANA UNIVERSITY

**Code of Student Rights, Responsibilities, and Conduct:** <http://www.iu.edu/~code/code/index.shtml>

### Part II: Student Responsibilities

***H. Be responsible for their behavior, and respect the rights and dignity of others both within and outside of the university community.***

The university may discipline a student for the following **acts of personal misconduct that occur on university property**, including but not limited to academic and administration buildings, residence halls, athletic and recreational facilities, and other university-serviced property, such as sororities and fraternities:

1. Dishonest conduct including, but not limited to, false accusation of misconduct, forgery, alteration, or misuse of any university document, record, or identification; and giving to a university official information known to be false.
2. Assuming another person's identity or role through deception or without proper authorization. Communicating or acting under the guise, name, identification, e-mail address, signature, or other indications of another person or group without proper authorization or authority.
3. Knowingly initiating, transmitting, filing, or circulating a false report or warning concerning an impending bombing, fire, or other emergency or catastrophe; or transmitting such a report to an official or an official agency.
4. Unauthorized release or use of any university access codes for computer systems, duplicating systems, and other university equipment.
5. Conduct that is lewd, indecent, or obscene.
6. Disorderly conduct, including obstructive and disruptive behavior that interferes with teaching, research, administration, or other university or university-authorized activity. (See Guidelines for Dealing with Disruptive Students in Academic Settings, University Faculty Council, April 12, 2005.)
7. Actions that endanger one's self, others in the university community, or the academic process.
8. Failure to comply with the directions of authorized university officials in the performance of their duties, including failure to identify oneself when requested to do so; failure to comply with the terms of a disciplinary sanction; or refusal to vacate a university facility when directed to do so.
9. Unauthorized entry, use, or occupancy of university facilities.
10. Unauthorized taking, possession, or use of university property or services or the property or services of others.
11. Damage to or destruction of university property or the property belonging to others.
12. Unauthorized setting of fires on university property; unauthorized use of or interference with fire equipment and emergency personnel.
13. Unauthorized possession, use, manufacture, distribution, or sale of illegal fireworks, incendiary devices, or other dangerous explosives.
14. Possession of any weapon or potential weapon on any university property contrary to law or university policy; possession or display of any firearm on university property, except in the course of an authorized activity.

15. Sale of any firearms from university property or using university facilities, including through computer and telephone accounts; intentional possession of a dangerous article or substance as a potential weapon.
16. Acting with violence.
17. Aiding, encouraging, or participating in a riot.
18. Harassment, defined in Part I ( c ) of the Code.
19. Stalking or hazing of any kind whether the behavior is carried out verbally, physically, electronically, or in written form.
  - a. Stalking is defined as repeated, unwanted contact in the forms of, including but not limited to, phone calls, e-mail, physical presence, and regular mail.
  - b. Hazing is defined as any conduct that subjects another person, whether physically, mentally, emotionally, or psychologically, to anything that may endanger, abuse, degrade, or intimidate the person as a condition of association with a group or organization, regardless of the person's consent or lack of consent.
20. Physical abuse of any person, including the following:
  - a. The use of physical force or violence to restrict the freedom of action or movement of another person or to endanger the health or safety of another person;
  - b. Physical behavior that involves an express or implied threat to interfere with an individual's personal safety, academic efforts, employment, or participation in university-sponsored extracurricular activities or causes the person to have a reasonable apprehension that such harm is about to occur; or
  - c. Physical behavior that has the purpose or reasonably foreseeable effect of interfering with an individual's personal safety, academic efforts, employment, or participation in university-sponsored extracurricular activities or causes the person to have a reasonable apprehension that such harm is about to occur;
  - d. Sexual assault, including while any party involved is in an impaired state;
  - e. Sexual contact with another person without consent, including while any party involved is in an impaired state.
21. Verbal abuse of another person, including the following:
  - a. An express or implied threat to:
    1. Interfere with an individual's personal safety, academic efforts, employment, or participation in university-sponsored activities and that under the circumstances causes the person to have a reasonable apprehension that such harm is about to occur; or
    2. Injure that person, or damage his or her property; or
  - b. "Fighting words" that are spoken face-to-face as a personal insult to the listener or listeners in personally abusive language inherently likely to provoke a violent reaction by the listener or listeners to the speaker.
22. Unauthorized possession, use, or supplying alcoholic beverages to others contrary to law or university policy.
  - a. Indiana University prohibits:
    1. Public intoxication, use, or possession of alcoholic beverages on university property (including any undergraduate residence supervised by the university, including fraternity and sorority houses) except as otherwise noted in Part II, Section H (22) b and Part II, Section H (22) c.
    2. Providing alcohol contrary to law.
  - b. The dean of students of each campus has discretion to allow exceptions to Part II, Section H (22) a, allowing use or possession of alcohol by persons, including students, who meet the minimum drinking age standards of the State of Indiana, under the following circumstances:
    1. Use or possession of alcoholic beverages by persons who are of lawful drinking age may be generally permitted in residences supervised by the university, including

fraternity and sorority houses, when specifically approved by the campus dean of students. Such use or possession may be allowed in residence rooms, apartments, and certain common areas as specifically approved by the dean of students. However, use or possession under this section shall be permitted only in residences supervised by a live-in employee specifically charged with policy enforcement.

2. Use or possession of alcoholic beverages may be permitted on an event-by-event basis in designated undergraduate residences (including fraternity and sorority houses) supervised by a live-in employee specifically charged with policy enforcement, when temporary permission is granted by the dean of students for events at which persons of lawful drinking age may lawfully possess and use alcoholic beverages.
  - c. The chancellor of each campus has discretion to allow exceptions to Part II, Section H (22) a, allowing use or possession of alcohol by persons, including students, who meet the minimum drinking age standards of the State of Indiana, under the following circumstances:
    1. Use or possession of alcoholic beverages may be permitted in facilities such as student unions or on-campus hotels, including guest rooms and other areas, specifically approved by the campus chancellor.
    2. Use or possession of alcoholic beverages may be permitted in other areas, such as private offices and faculty lounges, not accessible to the public.
    3. Use or possession of alcoholic beverages may be permitted in areas accessible to the public, if specifically approved by the campus chancellor.
  - d. Indiana University also permits the nonconspicuous possession of alcoholic beverages on university property when in transit to areas where they may be possessed or used under the provisions above.
  - e. Student organizations that serve or permit possession of alcoholic beverages at student organization functions, on or off campus, may be disciplined if violations of alcoholic beverage laws or of university regulations occur. Individual students who plan, sponsor, or direct such functions also may be subject to discipline.
  - f. The chancellor or dean of students may make rules covering these uses. Those rules shall be enforceable as provisions of this Code.
23. Unauthorized possession, manufacture, sale, distribution, or use of illegal drugs, any controlled substance, or drug paraphernalia. Being under the influence of illegal drugs or unauthorized controlled substances.
  24. Intentionally obstructing or blocking access to university facilities, property, or programs.
  25. Violation of other disseminated university regulations, policies, or rules. Examples of such regulations include but are not limited to university computing policies, residence hall policies, and recreational sports facility policies.
  26. A violation of any Indiana or federal criminal law.
  27. Engaging in or encouraging any behavior or activity that threatens or intimidates any potential participant in a judicial process.

## **Part II: Student Responsibilities**

### ***I. Personal Misconduct Not on University Property.***

The university may discipline a student for **acts of personal misconduct or criminal acts that are not committed on university property** if the acts arise from university activities that are being conducted off the university campus, or if the misconduct undermines the security of the university community or the integrity of the educational process or poses a serious threat to self or others.

1. Indiana University is committed to the promotion of a civil community both on campus and off campus.
2. Indiana University regards off-campus activity, including but not limited to university-sponsored events, as an integral part of a student's academic, personal, and professional growth. Thus, the university recognizes the right of all students to expect that the university will subject individuals to the same responsibilities and disciplinary procedures when conduct:



- a. Adversely impacts the university's mission, or the tenets of this Code, such as altering academic transcripts, harassment of any kind, trafficking in term papers, use of a computer or other electronic device to obtain unauthorized access to information;
  - b. Presents a clear danger to the personal safety of any person or the protection of any person's property, such as alcohol and drug offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault, stalking, or theft;
  - c. Violates policies of an academic program and related facilities, including but not limited to an off-campus clinical, field, internship, or in-service experience, or an overseas study program.
- 

## UNIVERSITY OF WISCONSIN

**Non-Academic Disciplinary Procedures:** <http://students.wisc.edu/doso/nonacadmisconduct-statement.html>

UWS 17.08 Nonacademic misconduct occurring on or outside of university lands.

### (1) MISCONDUCT ON UNIVERSITY LANDS.

Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in s. UWS 17.09 that occurs on university lands or at university-sponsored events.

### (2) MISCONDUCT OUTSIDE OF UNIVERSITY LANDS.

The provisions contained in this chapter may apply to the student conduct described in s. UWS 17.09 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:


- (a) The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
- (b) The conduct indicates that the student presented or may present a danger or threat to the health or safety of himself, herself or others.
- (c) The conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

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## University Senate CHARGE

<b>Date:</b>	November 16, 2012
<b>To:</b>	Jason Speck Chair, Student Conduct Committee
<b>From:</b>	Martha Nell Smith  Chair, University Senate
<b>Subject:</b>	Code of Student Conduct Expansion of Jurisdiction
<b>Senate Document #:</b>	12-13-26
<b>Deadline:</b>	March 29, 2013

The Senate Executive Committee (SEC) requests that the Student Conduct Committee review the attached proposal entitled, “Code of Student Conduct Expansion of Jurisdiction.”

The University of Maryland Code of Student Conduct (V-1.00(B)) sets forth disciplinary regulations to give students notice of prohibited conduct at the University. The Code of Student Conduct does not extend to student behavior off-campus unless it is a criminal offense resulting in conviction. However, the Department of Public Safety (DPS) has plans to expand its jurisdiction off-campus in order to increase student safety. The SEC requests that the Student Conduct Committee review whether the Code of Student Conduct should be amended to cover incidents within the expanded off-campus jurisdiction planned by the Department of Public Safety.

Specifically, we ask that you:

1. Review the University of Maryland Code of Student Conduct V-1.00(B).
2. Consult with a representative from the University’s Office of Student Conduct.
3. Consult with a representative of the Department of Public Safety regarding its plans for expanded jurisdiction.
4. Consult with the Senate Student Affairs Committee regarding the potential impact that any changes to the code would have on students at the University.
5. Review data regarding the number of off-campus incidents that were not considered to be criminal offenses over the past five years.

6. Review the jurisdiction of codes of student conduct at our peer institutions.
7. Consult with the University's Office of Legal Affairs.
8. If appropriate, recommend whether the University of Maryland Code of Student Conduct V-1.00(B) should be revised to expand its jurisdiction. Any recommendation for changes should include specific definitions of what is meant by the term "off-campus" and the types of offenses and sanctions that would be affected by an expansion in jurisdiction.

We ask that you submit your report and recommendations to the Senate Office no later than March 29, 2013. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



## University Senate PROPOSAL FORM

<b>Name:</b>	Andrea Goodwin
<b>Date:</b>	10/23/12
<b>Title of Proposal:</b>	Code of Student Conduct Expansion of Jurisdiction
<b>Phone Number:</b>	301-314-8209
<b>Email Address:</b>	agoodwin@umd.edu
<b>Campus Address:</b>	2118 Mitchell Building
<b>Unit/Department/College:</b>	Director, Office of Student Conduct
<b>Constituency (faculty, staff, undergraduate, graduate):</b>	Staff
<b>Description of issue/concern/policy in question:</b>	<p>There is growing concern over the limitations of the University's current <i>Code of Student Conduct</i> to address certain types of misconduct off-campus, most specifically acts of hazing and violence.</p> <p>Furthermore the Department of Public Safety (DPS) is working toward increasing UM student safety off-campus and reducing crime off-campus. The DPS have outlined a three-phase plan that includes increased jurisdiction off-campus to increase student safety and alleviate some of the community's concerns regarding student behavior off-campus such as public intoxication, large parties, vandalism, &amp; major noise complaints.</p> <p>Currently the University's <i>Code of Student Conduct</i> does not extend to behavior off-campus unless the behavior is a criminal offense off campus, resulting in conviction, if such an offense would constitute a violation of this <i>Code</i> had it occurred on University premises or if the behavior constitutes rioting, assault, theft, vandalism, fire setting, or other serious misconduct related to a University-sponsored event, occurring on –or off-campus, that results in harm to persons or property or otherwise poses a threat to the stability of the campus or campus community may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of law related to misconduct associated with a University-sponsored event (<i>Code of Student Conduct</i>, part 9(d)).</p>

<b>Description of action/changes you would like to see implemented and why:</b>	On behalf of the Office of Student Conduct, I request that the University amend the <i>Code of Student Conduct</i> to extend jurisdiction to allow the University to respond to misconduct off-campus.
<b>Suggestions for how your proposal could be put into practice:</b>	Attached is a copy of the <i>Code of Student Conduct</i> with suggested amendments.
<b>Additional Information:</b>	

***Please send your completed form and any supporting documents to [senate-admin@umd.edu](mailto:senate-admin@umd.edu) or University of Maryland Senate Office, 1100 Marie Mount Hall, College Park, MD 20742-7541. Thank you!***

V-1.00(B) UNIVERSITY OF MARYLAND CODE OF STUDENT CONDUCT

Approved by the Board of Regents January 25, 1980; amended effective September 4, 1990; December 18, 2001; April 22, 2004; November 18, 2005; April 5, 2006; March 10, 2011; January 17, 2012

Note: Different procedures and penalties are applicable in cases involving allegations of academic dishonesty. Please refer to the *Code of Academic Integrity*, available from the Office of Student Conduct (301-314-8204).

Footnotes which appear throughout the *Code of Student Conduct* refer to the Annotations listed at the end of this appendix.

**RATIONALE**

1. The primary purpose for the imposition of discipline in the University setting is to protect the campus community. Consistent with that purpose, reasonable efforts will also be made to foster the personal and social development of those students who are held accountable for violations of University regulations.<sup>1</sup>

**DEFINITIONS**

2. When used in this *Code*:<sup>2</sup>
  - (a) The term “aggravated violation” means a violation which resulted or foreseeably could have resulted in significant damage to persons or property or which otherwise posed a substantial threat to the stability and continuance of normal University or University-sponsored activities.
  - (b) The term “distribution” means sale or exchange for personal profit.
  - (c) The term “group” means a number of persons who are associated with each other and who have not complied with University requirements for registration as an organization.
  - (d) The terms “institution” and “University” mean the University of Maryland, College Park.
  - (e) The term “organization” means a number of persons who have complied with University requirements for registration.
  - (f) The term “reckless conduct” means action which any member of the University community can be expected to know would create a clear risk of harm to persons or property, or would disrupt the lawful activities of others, including studying, teaching, research, and University administration.<sup>3</sup>
  - (g) The term “student” means a person taking or auditing courses at the institution either on a full- or part-time basis.<sup>4</sup>
  - (h) The term “University premises” means buildings or grounds owned, leased, operated, controlled or supervised by the University.

- (i) The term “weapon” means any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, knives with blades five or more inches in length.
- (j) The term “University-sponsored activity” means any activity on or off campus which is initiated, aided, authorized or supervised by the University.
- (k) The terms “will” or “shall” are used in the imperative sense.

#### **INTERPRETATION OF REGULATIONS**

- 3. Disciplinary regulations at the University are set forth in writing in order to give students general notice of prohibited conduct. The regulations should be read broadly and are not designed to define misconduct in exhaustive terms.

#### **INHERENT AUTHORITY**

- 4. The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community.<sup>5</sup>

#### **STUDENT PARTICIPATION**

- 5. Students are asked to assume positions of responsibility in the University judicial system in order that they might contribute their skills and insights to the resolution of disciplinary cases. Final authority in disciplinary matters, however, is vested in the University administration and in the Board of Regents.

#### **STANDARDS OF DUE PROCESS**

- 6. Students subject to expulsion, suspension<sup>6</sup> or disciplinary removal from University housing<sup>7</sup> will be accorded a conduct board hearing as specified in Part 31 of this *Code*. Students subject to less severe sanctions will be entitled to an informal disciplinary conference,<sup>8</sup> as set forth in Parts 34 and 35.
- 7. The focus of inquiry in disciplinary proceedings shall be the guilt or innocence of those accused of violating disciplinary regulations. Formal rules of evidence shall not be applicable, nor shall deviations from prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to a student respondent or the University may result.<sup>9</sup>

#### **VIOLATIONS OF LAW AND DISCIPLINARY REGULATIONS**

- 8. Students may be accountable to both civil authorities and to the University for acts which constitute violations of law and of this *Code*.<sup>10</sup> Disciplinary action at the University will normally proceed during the pendency of criminal proceedings

and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.

## UNIVERSITY JURISDICTION

9. This Code shall apply to allegations of misconduct that occurs on University premises or at University-sponsored activities. Students may also be subject to disciplinary action for allegations of misconduct that occur off-campus and normally within the University Department of Public Safety concurrent jurisdiction that

- (a) poses a threat to the safety or health of any member of the University community; or,
- (b) is substantially disruptive and significantly affects a clear and distinct interest of the University as determined by the Director.

Among factors to be considered in determining off-campus jurisdiction shall include the seriousness of the misconduct, the substantive interest of the University affected, and availability of evidence or witnesses.

## PROHIBITED CONDUCT

10. The following misconduct is subject to disciplinary action:

- (a) Intentionally or recklessly causing physical harm to any person on, or intentionally or recklessly causing reasonable apprehension of such harm.
- (b) Unauthorized use, possession or storage of any weapon.
- (c) Intentionally initiating or causing to be initiated any false report, warning or threat of fire, explosion or other emergency.
- (d) Off-campus misconduct which:
  - i. is deemed a criminal offense, as defined by state or federal law, if such an offense would constitute a violation of this Code had it occurred on University premises. No student involved in a misdemeanor offense under this section shall be subject to expulsion or full suspension unless the offense constitutes an “aggravated violation” as defined in Part 2(a) of this Code. The University shall not pursue disciplinary action when a non-aggravated misdemeanor does not pose a threat to the stability of the campus or campus community;
  - ii. rioting, assault, theft, vandalism, fire setting, or other serious misconduct related to a University-sponsored event, occurring on – or off-campus, that results in harm to persons or property or otherwise poses a threat to the stability of the campus or campus community may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of

Andrea Goodwin 10/23/12 10:54 AM

**Comment [1]:** This entire section was added.

Andrea Goodwin 10/23/12 10:52 AM

**Comment [2]:** References to University premises were removed throughout this section to reflect extended jurisdiction off-campus.

Andrea Goodwin 10/23/12 10:55 AM

**Comment [3]:** Beginning in this section the Code (and we as all references to sections throughout the document) was renumbered to address the necessary changes due to the addition of the section on Jurisdiction added above.

Andrea Goodwin 10/23/12 10:53 AM

**Comment [4]:** The conviction requirement was removed.



law related to misconduct associated with a University-sponsored event.

- (e) Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code*.
- (f) Intentionally or recklessly misusing or damaging fire safety equipment.
- (g) Unauthorized distribution or possession for purposes of distribution of any controlled substance or illegal drug<sup>11</sup>.
- (h) Use or possession of any controlled substance or illegal drug.<sup>12</sup>
- (i) Intentionally furnishing false information to the University.
- (j) Making, possessing, or using any forged, altered, or falsified instrument of identification or University document.
- (k) Intentionally and substantially interfering with the freedom of expression of others.<sup>13</sup>
- (l) Theft of property or of services; knowing possession of stolen property.
- (m) Intentionally or recklessly destroying or damaging the property of others.
- (n) Engaging in disorderly or disruptive conduct which interferes with the activities of others, including studying, teaching, research, and University administration.\*
- (o) Failure to comply with the directions of University officials, including campus police officers, acting in performance of their duties.
- (p) Violation of published University regulations or policies, as approved and compiled by the Vice President for Student Affairs.<sup>14</sup> Such regulations or policies may include the residence hall contract, as well as those regulations relating to entry and use of University facilities, sale of alcoholic beverages, use of vehicles\*\* and amplifying equipment, campus demonstrations, and misuse of identification cards.
- (q) Use or possession of any alcoholic beverage under the age of 21; knowingly providing alcoholic beverages to a person known to be under the age of 21. \*\*\*
- (r) Unauthorized use or possession of fireworks.

\* The response of fire, police, or emergency personnel to a non-frivolous call, or action taken by them on their own initiative pursuant or non-pursuant to policy is not considered a disruption or reckless action within the meaning of this section.

\*\* Parking and traffic violations may be processed in accordance with procedures established by the Vice President for Student Affairs.

\*\*\* This charge may be deferred under Part 30 of this *Code* consistent with procedures outlined in the *Promoting Responsible Action in Medical Emergencies Policy*.

## **SANCTIONS**

11. Sanctions for violations of disciplinary regulations consist of:

- (a) **EXPULSION:** permanent separation of the student from the University. Notification will appear on the student's transcript. The student will also be barred from the University premises (expulsion requires administrative review and approval by the President and may be altered, deferred or withheld).
  - (b) **SUSPENSION:** separation of the student from the University for a specified period of time. Permanent notification will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises. Suspended time will not count against any time limits of the Graduate School for completion of a degree. (Suspension requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred or withheld).
  - (c) **DISCIPLINARY PROBATION:** the student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.
  - (d) **DISCIPLINARY REPRIMAND:** the student is warned that further misconduct may result in more severe disciplinary action.
  - (e) **RESTITUTION:** the student is required to make payment to the University or to other persons, groups, or organizations for damages incurred as a result of a violation of this *Code*.
  - (f) **OTHER SANCTIONS:** other sanctions may be imposed instead of or in addition to those specified in sections (a) through (e) of this part. For example, students may be subject to dismissal from University housing for disciplinary violations which occur in the residence halls. Likewise, students may be subject to restrictions upon or denial of driving privileges for disciplinary violations involving the use or registration of motor vehicles. Work or research projects may also be assigned.
12. Violations of sections (a) through (g) in Part 10 of this *Code* may result in expulsion from the University<sup>15</sup>, unless specific and significant mitigating factors are present. Factors to be considered in mitigation shall be the present demeanor and past disciplinary record of the offender, as well as the nature of the offense and the severity of any damage, injury, or harm resulting from it.
13. Violations of sections (h) through (l) in Part 10 of this *Code* may result in suspension from the University, unless specific and significant mitigating factors as specified in Part 12 are present.
14. Repeated or aggravated violations of any section of this *Code* may also result in expulsion or suspension or in the imposition of such lesser penalties as may be appropriate.

15. Any decision to impose a sanction less than suspension or expulsion for University-sponsored event-related misconduct as defined in Part 10(d)(ii) of this *Code* must be supported by written findings signed by the Vice President for Student Affairs. A student suspended under this section shall not be admitted to any other institution in the University of Maryland System during the term of the suspension. A student expelled under this section shall not be admitted to any other institution in the System for at least one year from the effective date of the expulsion.
16. Attempts to commit acts prohibited by this *Code* shall be punished to the same extent as completed violations.<sup>16</sup>
17. Penalties for off-campus misconduct shall not be more severe than for similar on-campus conduct.

#### **INTERIM SUSPENSION<sup>17</sup>**

18. The Vice President for Student Affairs or a designee may suspend a student for an interim period pending disciplinary proceedings or medical evaluation, such interim suspension to become immediately effective without prior notice, whenever there is evidence that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or to the stability and continuance of normal University functions.
19. A student suspended on an interim basis shall be given an opportunity to appear personally before the Vice President for Student Affairs or a designee within five business days from the effective date of the interim suspension in order to discuss the following issues only:
  - (a) the reliability of the information concerning the student's conduct, including the matter of his or her identity;
  - (b) whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or the stability and continuance of normal University functions.

#### **OFFICE OF STUDENT CONDUCT**

20. The Office of Student Conduct directs the efforts of students and staff members in matters involving student discipline. The responsibilities of the office include:
  - (a) Determination of the disciplinary charges to be filed pursuant to this *Code*.
  - (b) Interviewing and advising parties<sup>18</sup> involved in disciplinary proceedings.
  - (c) Supervising, training, and advising all conduct boards.
  - (d) Reviewing the decisions of all conduct boards.<sup>19</sup>
  - (e) Maintenance of all student disciplinary records.

- (f) Development of procedures for conflict resolution.
- (g) Resolution of cases of student misconduct, as specified in Parts 34 and 35 of this *Code*.
- (h) Collection and dissemination of research and analysis concerning student conduct.
- (i) Submission of a statistical report each semester to the campus community, reporting the number of cases referred to the office, the number of cases resulting in disciplinary action, and the range of sanctions imposed.<sup>20</sup>

## CONDUCT PANELS

21. Hearings or other proceedings as provided in the *Code* may be held before the following boards or committees:
  - (a) **CONFERENCE BOARDS**, as appointed in accordance with Part 35 of this *Code*.
  - (b) **RESIDENCE BOARDS**, as established and approved by the Vice President for Student Affairs.<sup>21</sup> Students residing in group living units owned, leased, operated or supervised by the University may petition the Vice President for authority to establish conduct boards. Such boards may be empowered to hear cases involving violations of the *Code*, as prescribed by the Vice President for Student Affairs.
  - (c) **THE CENTRAL BOARD** hears cases involving disciplinary violations which are not referred to Residence Boards or resolved in accordance with Parts 34 and 35 of this *Code*. The Central Board is composed of five students, including at least two graduate students when a graduate student case is being heard.
  - (d) **THE APPELLATE BOARD** hears appeals from Residence Boards, the Central Board, and ad hoc boards, in accordance with Part 44 of this *Code*. The Appellate Board is composed of five full-time students, including at least two graduate students.
  - (e) **AD HOC BOARDS** may be appointed by the Director of Student Conduct when a Conference Board, a Residence Board, the Central Board, the Appellate Board or the Senate Adjunct Committee are unable to obtain a quorum or are otherwise unable to hear a case.<sup>22</sup> Each ad hoc board shall be composed of three members, including at least one student.
  - (f) **THE SENATE COMMITTEE ON STUDENT CONDUCT** hears appeals as specified in Part 43 of this *Code*. The committee also approves the initial selection of all conduct board members, except members of conference and ad hoc boards.<sup>23</sup>
22. The presiding officer of each conduct board and of the Senate Adjunct Committee on Student Conduct may develop bylaws which are not inconsistent with any provision in this *Code*. Bylaws must be approved by the Director of Student Conduct.<sup>24</sup>

## **SELECTION AND REMOVAL OF BOARD MEMBERS**

23. Members of the various conduct boards are selected in accordance with procedures developed by the Director of Student Conduct.
24. Members of conference and ad hoc boards are selected in accordance with Parts 35 and 21(e), respectively.
25. Prospective members of the Central Board and the Appellate Board are subject to confirmation by the Senate Committee on Student Conduct.
26. Members of the Senate Committee on Student Conduct are selected in accordance with the bylaws of the University Senate.
27. Prior to participating in board or committee deliberations, new members of the Senate Committee on Student Conduct and all conduct boards, except conference and ad hoc boards, will participate in one orientation session by the Office of Student Conduct.
28. Student members of any conduct board or committee who are charged with any violation of this *Code* or with a criminal offense<sup>25</sup> may be suspended from their judicial positions by the Director of Student Conduct during the pendency of the charges against them. Students convicted for any such violation or offense may be disqualified from any further participation in the University judicial system by the Director of Student Conduct. Additional grounds and procedures for removal may also be set forth in the bylaws of the various conduct panels.

## **CASE REFERRALS**

29. Any person<sup>26</sup> may refer a student or a student group or organization suspected of violating this *Code* to the Office of Student Conduct. Allegations of off-campus event-related misconduct must be supported by a report, statement, or accusation from a law enforcement agency in whose jurisdiction the misconduct is alleged to have occurred. Persons making such referrals are required to provide information pertinent to the case and will normally be expected to appear before a conduct board as the complainant.<sup>27</sup>

## **DEFERRAL OF PROCEEDINGS**

30. The Director of Student Conduct may defer disciplinary proceedings for alleged violations of this *Code* for a period not to exceed 90 days. Pending charges may be withdrawn thereafter, dependent upon the good behavior of the respondent. Students subject to conditional relief from disciplinary charges under the

*Promoting Responsible Action in Medical Emergencies Policy* may also be required to successfully complete an approved alcohol intervention program prior to the withdrawal of charges.

### **HEARING REFERRALS**

31. Staff members in the Office of Student Conduct will review referrals to determine whether the alleged misconduct might result in expulsion, suspension, or disciplinary removal from University housing.<sup>28</sup> Students subject to those sanctions shall be accorded a hearing before the appropriate conduct board. All other cases shall be resolved in the Office of Student Conduct after an informal disciplinary conference, as set forth in Part 34 and 35 of this *Code*.
32. Students referred to a conduct board hearing may elect instead to have their case resolved in accordance with Parts 34 and 35. The full range of sanctions authorized by this *Code* may be imposed, although the right of appeal shall not be applicable.

### **BURDEN OF PROOF**<sup>29</sup>

33. Except as provided below, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence<sup>30</sup>. In disciplinary conferences and hearings under section 9(p) of this *Code* which allege violation of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by a preponderance of the evidence<sup>31</sup>.

### **DISCIPLINARY CONFERENCES**<sup>32</sup>

34. Students subject to or electing to participate in a disciplinary conference in the Office of Student Conduct are accorded the following procedural protections:
  - (a) Written notice of charges at least three days prior to the scheduled conference.
  - (b) Reasonable access to the case file<sup>33</sup> prior to and during the conference.
  - (c) An opportunity to respond to the evidence against them and to call appropriate witnesses on their behalf.
  - (d) The option to be accompanied and assisted by a representative, who may be an attorney. Representatives have the right to make opening and closing statements, to advise their clients during the course of the proceedings, and to petition for recesses. All representatives are subject to the restrictions of Parts 37 and 38 of this *Code*.
35. Disciplinary conferences shall be conducted by the Director of Student Conduct or a designee.<sup>34</sup> Complex or contested cases may be referred by the Director to a

conference board, consisting of one member of the Central Board, one member of the Appellate Board, and a staff member in the Division of Student Affairs. Conference Board members shall be selected on a rotating basis by the Director of Student Conduct.

## HEARING PROCEDURES

36. The following procedural guidelines shall be applicable in disciplinary hearings:
- (a) Respondents shall be given notice of the hearing date and the specific charges against them at least five days in advance and shall be accorded reasonable access to the case file, which will be retained in the Office of Student Conduct.
  - (b) The presiding officer of any board may subpoena witnesses upon the motion of any board member or of either party and shall subpoena witnesses upon request of the board advisor. Subpoenas must be approved by the Director of Student Conduct and shall be personally delivered or sent by certified mail, return receipt requested. University students and employees are expected to comply with subpoenas issued pursuant to this procedure, unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities.<sup>35</sup>

If the Director of Student Conduct or his or her designee determines that a fair hearing cannot be held without the testimony of a particular witness, and, after good faith attempts are made, the witness either fails to or refuses to appear, the disciplinary hearing will be postponed until the witness agrees to appear or the charges will be dismissed.
  - (c) Respondents who fail to appear after proper notice will be deemed to have pleaded guilty to the charges pending against them.
  - (d) Hearings will be closed to the public, except for the immediate members of the parties' families and their representatives, if applicable. An open hearing may be held, at the discretion of the presiding officer, if requested by both parties.
  - (e) The presiding officer of each board shall exercise control over the proceedings to avoid needless consumption of time and to achieve the orderly completion of the hearing. Except as provided in section (o) of this Part, any person, including the respondent, who disrupts a hearing may be excluded by the presiding officer or by the board advisor.
  - (f) Hearings may be tape recorded or transcribed. If a recording or transcription is not made, the decision of the board must include a summary of the testimony and shall be sufficiently detailed to permit review by appellate bodies and by staff members in the Office of Student Conduct.
  - (g) Any party or the board advisor may challenge a board member on the grounds of personal bias. Board members may be disqualified upon

- majority vote of the remaining members of the board, conducted by secret ballot,<sup>36</sup> or by the Director of Student Conduct.
- (h) Witnesses shall be asked to affirm that their testimony is truthful and may be subject to charges of perjury, pursuant to Part 10(i) of this *Code*.
  - (i) Prospective witnesses, other than the complainant and the respondent, may be excluded from the hearing during the testimony of other witnesses. All parties, the witnesses, and the public shall be excluded during board deliberations.
  - (j) Formal rules of evidence shall not be applicable in disciplinary proceedings conducted pursuant to this *Code*.<sup>37</sup> The presiding officer of each board shall give effect to the rules of confidentiality and privilege, but shall otherwise admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.<sup>38</sup>
  - (k) Both parties shall be accorded an opportunity to question those witnesses who testify at the hearing.
  - (l) Affidavits shall not be admitted into evidence unless signed by the affiant and witnessed by a University employee, or by a person designated by the Director of Student Conduct.
  - (m) Board members may take judicial notice of matters which would be within the general experience of University students.<sup>39</sup>
  - (n) Board advisors may comment on questions of procedure and admissibility of evidence and will otherwise assist in the conduct of the hearing. Advisors will be accorded all the privileges of board members, and the additional responsibilities set forth in this *Code*, but shall not vote. All advisors are responsible to the Director of Student Conduct and shall not be excluded from hearings or board deliberations by any board or by the presiding officer of any board.
  - (o) The Director of Student Conduct may appoint a special presiding officer to any board in complex cases or in any case in which the respondent is represented by an attorney. Special presiding officers may participate in board deliberations, but shall not vote.<sup>40</sup>
  - (p) A determination of guilt shall be followed by a supplemental proceeding in which either party and the board advisor may submit evidence or make statements concerning the appropriate sanction to be imposed. The past disciplinary record<sup>41</sup> of the respondent shall not be supplied to the board by the advisor prior to the supplementary proceeding.
  - (q) Final decisions of all conduct panels shall be by majority vote of the members present and voting. A tie vote will result in a recommended acquittal in an original proceeding. A tie vote in an appellate proceeding will result in an affirmation of the original decision.
  - (r) Final decisions of all boards, except conference boards, shall be accompanied by a brief written opinion.



## ATTORNEYS AND REPRESENTATIVES

37. Representatives of both complainants and respondents in hearings pursuant to this *Code* have the right to call witnesses to testify, to question in person all witnesses who appear at the hearing, to voice timely objections, to make opening and closing statements, to petition for recesses in the proceedings and to zealously and lawfully assert their client's position under the *Code of Student Conduct*.<sup>42</sup> All presenters and representatives who participate in disciplinary hearings and disciplinary conferences shall not:
- (a) Intentionally engage in conduct to disrupt a hearing;
  - (b) Intentionally attempt to improperly influence an officer of the Office of Student Conduct, a hearing advisor or member of a conduct board;
  - (c) Intentionally fail to obey a reasonably definite and specific order by a presiding officer;
  - (d) Knowingly make a false statement of material fact, law or representation of the *Code* to other participants in a hearing;
  - (e) Knowingly fail to disclose a material fact in a hearing when disclosure is necessary to avoid assisting a future criminal or fraudulent act;
  - (f) Knowingly offer false evidence, falsify evidence, counsel or induce witnesses to testify falsely, or offer improper inducements to testify;
  - (g) Recklessly and unlawfully obstruct another party's access to evidence, or alter, destroy or conceal material not protected by privilege having potential evidentiary value;
  - (h) If the representative is an attorney, otherwise fail to follow any obligations under relevant standards of professional responsibility in matters pertaining to the representation.
38. (a) Any participant in a hearing may refer complaints about suspected violations of the provisions of Part 37 of this *Code* to the Senate Committee on Student Conduct.
- (b) Within a reasonable time after such referral, the chairperson of the Senate Committee on Student Conduct will review the complaint. After review the chairperson shall dismiss complaints which are anonymous, manifestly frivolous, which cannot be reasonably construed to allege a violation of Part 37, or are based on hearsay alone. Those which are not dismissed will be referred to the full Committee which will convene a hearing no sooner than 10 business days after sending a copy of the evidence presented to the representative named in the complaint. The hearing shall be held under the relevant rules and procedures governing disciplinary hearings outlined in Parts 35-37 of this *Code*.
- (c) A client shall not be compelled either directly or through their representative to waive the attorney-client privilege.
- (d) Representatives found responsible for violations of the provisions of Part 37 may be suspended from the privilege of representation for such time as the Committee may deem appropriate. In addition, the Committee may

refer their findings to the Attorney Grievance Commission, or other appropriate disciplinary body.

- (e) Appeals from decisions of the Senate Committee on Student Conduct regarding violations under Part 37 may be made by parties found responsible. Appeals should be made in writing to the Senate Campus Affairs Committee within 10 business days of receipt of the letter notifying the party of the decision. Appeals will be conducted in accordance with the standards for the hearing of student disciplinary appeals. Decisions of the Campus Affairs Committee regarding these appeals shall be final.

## **STUDENT GROUPS AND ORGANIZATIONS**

- 39. Student groups and organizations may be charged with violations of this *Code*.
- 40. A student group or organization and its officers may be held collectively<sup>43</sup> or individually responsible when violations of this *Code* by those associated with<sup>44</sup> the group or organization have received the tacit or overt consent or encouragement of the group or organization or of the group's or organization's leaders, officers, or spokespersons.
- 41. The officers or leaders or any identifiable spokespersons<sup>45</sup> for a student group or organization may be directed by the Vice President for Student Affairs or a designee to take appropriate action designed to prevent or end violations of this *Code* by the group or organization or by any persons associated with the group or organization who can reasonably be said to be acting in the group's or organization's behalf. Failure to make reasonable efforts to comply with the Vice President's directive shall be considered a violation of Part 10(p) of this *Code*, both by the officers, leaders or spokespersons for the group or organization and by the group or organization itself.
- 42. Sanctions for group or organization misconduct may include revocation or denial of recognition or registration, as well as other appropriate sanctions, pursuant to Part 11(f) of this *Code*.

## **APPEALS**

- 43. Except as provided below, any determination made pursuant to this *Code* resulting in expulsion or suspension<sup>46</sup> may be appealed by the respondent to the Senate Committee on Student Conduct. Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.<sup>47</sup> The Senate Committee shall also hear appeals from denials of petitions to void disciplinary records, pursuant to Part 53 of this *Code*.

44. Except as provided below, final decisions of residence boards, the Central Board and ad hoc boards, not involving the sanctions specified in Part 43, may be appealed by the respondent to the Appellate Board.<sup>48</sup> Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.<sup>49</sup>
45. Requests for appeals must be submitted in writing to the Office of Student Conduct within seven business days from the date of the letter providing notice of the original decision. Failure to appeal within the allotted time will render the original decision final and conclusive.<sup>50</sup>
46. A written brief in support of the appeal must be submitted to the Office of Student Conduct within 10 business days from the date of the letter providing notice of the original decision. Failure to submit a written brief within the allotted time will render the decision of the lower board final and conclusive.<sup>51</sup>
47. Appeals shall be decided upon the record of the original proceeding and upon written briefs submitted by the parties. De novo hearings shall not be conducted.
48. Appellate bodies may:
  - (a) Affirm the finding and the sanction imposed by the original board.
  - (b) Affirm the finding and reduce, but not eliminate, the sanction, in accordance with Parts 49 and 49(a).
  - (c) Remand the case to the original board, in accordance with Parts 48 and 48(b).
  - (d) Dismiss the case, in accordance with Parts 9 and 50(c).
49. Deference shall be given to the determinations of lower boards.<sup>52</sup>
  - (a) Sanctions may only be reduced if found to be grossly disproportionate to the offense.
  - (b) Cases may be remanded to the original board if specified procedural errors or errors in interpretation of University regulations were so substantial as to effectively deny the respondent a fair hearing, or if new and significant evidence became available which could not have been discovered by a properly diligent respondent before or during the original hearing.<sup>53</sup> On remand, no indication or record of the previous conduct hearing will be introduced or provided to members of the new conduct panel, except to impeach contradictory testimony at the discretion of the presiding officer. The board will be directed by the committee not to repeat the specified errors that caused the remand.
  - (c) Cases may be dismissed only if the finding is held to be arbitrary and capricious.<sup>54</sup>

- (d) Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct.<sup>55</sup> Decisions of the Senate Committee on Student Conduct shall be recommendations to the Vice President for Student Affairs. Decisions altering the determinations of all hearing boards and the Senate Committee on Student Conduct shall be accompanied by a brief written opinion.
50. The imposition of sanctions will normally be deferred during the pendency of appellate proceedings, at the discretion of the Director of Student Conduct.

## **DISCIPLINARY FILES AND RECORDS**

51. Case referrals may result in the development of a disciplinary file in the name of the respondent, which shall be voided if the respondent is found innocent of the charges.<sup>56</sup> The files of respondents found guilty of any of the charges against them will be retained as a disciplinary record for three years from the date of the letter providing notice of final disciplinary action.<sup>57</sup> Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.
52. Disciplinary records may be voided<sup>58</sup> by the Director of Student Conduct for good cause, upon written petition of respondents. Factors to be considered in review of such petitions shall include:
- (a) the present demeanor of the respondent.
  - (b) the conduct of the respondent subsequent to the violation.
  - (c) the nature of the violation and the severity of any damage, injury, or harm resulting from it.
53. Denials of petitions to void disciplinary records shall be appealable to the Senate Committee on Student Conduct, which will apply the standard of review specified in Part 51 and 52(c). The requirements for appeals as set forth in Part 44 and 45 shall be applicable.<sup>59</sup>
54. Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.<sup>60</sup>

## **ANNOTATIONS**

1. The University is not designed or equipped to rehabilitate or incapacitate persons who pose a substantial threat to themselves or to others. It may be necessary, therefore, to remove those individuals from the campus and to sever the institutional relationship with them, as provided in this *Code of Student Conduct* and by other University regulations.\*

Any punishment imposed in accordance with the *Code* may have the value of discouraging the offender and others from engaging in future misbehavior. In cases of minor disciplinary violations, the particular form of punishment may also be designed to draw upon the educational resources of the University in order to bring about a lasting and reasoned change in behavior. The underlying rationale for punishment need not rest on deterrence or “reform” alone, however. A just punishment may also be imposed because it is “deserved” and because punishment for willful offenses affirms the autonomy and integrity of the offender. The latter concept was expressed by D.J.B. Hawkins in his essay “Punishment and Moral Responsibility” in *7 Modern Law Review* 205:

*The vice of regarding punishment entirely from the points of view of reformation and deterrence lies precisely in forgetting that a just punishment is deserved. The punishment of men then ceases to be essentially different from the training of animals, and the way is open for the totalitarian state to undertake the forcible improvement of its citizens without regard to whether their conduct has made them morally liable to social coercion or not. But merit and demerit, reward and punishment, have a different significance as applied to men and as applied to animals. A dog may be called a good dog or a bad dog, but his goodness or badness can be finally explained in terms of heredity and environment. A man, however, is a person, and we instinctively recognize that he has a certain ultimate personal responsibility for at least some of his actions. Hence merit and demerit, reward and punishment, have an irreducible individual significance as applied to men. This is the dignity and the tragedy of the human person.*

A similar view was expressed by Justice Powell, dissenting in *Goss v. Lopez* (42 L. Ed. 2d 725, 745):

*Education in any meaningful sense includes the inculcation of an understanding in each pupil of the necessity of rules and obedience thereto. This understanding is no less important than learning to read and write. One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied.*

2. An effort is made in the *Code* to use a simplified numbering and lettering system, without use of Roman numerals or subsets of letters and numbers. Any part of the *Code* can be found by reference to one number and one letter [e.g., Part 10a explains the meaning of expulsion].

3. Culpable conduct should include conscious acts posing a substantial risk or harm to others (e.g. throwing a heavy object out a tenth floor window above a sidewalk). If the act itself, however, is unintended (e.g. one is distracted by a noise while climbing a flight of stairs and drops a heavy object) the individual may have failed to use reasonable care, but is not normally deserving of the moral stigma associated with a “conviction” for a disciplinary offense.
4. Former students may be charged for violations which allegedly occurred during their enrollment at the University.
5. Colleges and universities are not expected to develop disciplinary regulations which are written with the scope of precision of a criminal *Code*. Rare occasions may arise when conduct is so inherently and patently dangerous to the individual or to others that extraordinary action not specifically authorized in the rules must be taken.
6. The terms “suspension” and “interim suspension” are to be distinguished throughout the *Code* and are not interchangeable.
7. Disciplinary removal from University housing should be distinguished from administrative removal for violations of the residence contract. The latter does not leave students with a disciplinary record and does not come under the purview of this *Code*.
8. The standard set forth here represents the minimal procedural protection to be accorded to students charged with most disciplinary violations. Students who are subject to lengthy suspensions or to expulsion may be entitled to more formal procedures, including a hearing with a right to cross-examine the witnesses against them. *Goss v. Lopez*, 419 U.S. 565 (1975).
9. The Supreme Court has recently rejected the theory that state schools are bound by principles of federal administrative law requiring agencies to follow their own regulations. *Board of Curators, University of Missouri v. Horowitz* 55 L.Ed 2d 124, 136. See, generally, “Violation by Agencies of Their Own Regulations” 87 *Harvard Law Review* 629 (1974).
10. Respondents in disciplinary proceedings may be directed to answer questions concerning their conduct. Students who refuse to answer on grounds of the Fifth Amendment privilege may be informed that the hearing panel could draw negative inferences from their refusal which might result in their suspension or dismissal. If the student then elects to answer, his/her statements could not be used against him/her in either state or federal court. *Garrity v. New Jersey*, 385 U.S 493 (1967). See also *Furutani v. Ewigleben*, 297 F. Supp. 1163 (N.D.Cal. 1969).

11. The “controlled substances” or “illegal drugs” prohibited in this section are set forth in Schedules I through V in the Maryland Criminal Law Article 5-401 through 5-406 and 5-708 (Inhalants).
12. See Annotation 11.
13. Colleges and universities should be a forum for the free expression of ideas. In the recent past, however, unpopular speakers have been prevented from addressing campus audiences by students who effectively “shouted them down.” Both Yale and Stanford Universities have treated such actions (which are to be distinguished from minor and occasional heckling) as serious disciplinary violations. See the “Report from the Committee on Freedom of Expression at Yale University” which is available in the Office of Student Conduct.

The following language from the Yale report may be used to elaborate upon the intent and scope of Part 10(k) of this *Code*.

- A. “There is no right to protest within a University building in such a way that any University activity is disrupted. The administration, however, may wish to permit some symbolic dissent within a building but outside the meeting room, for example, a single picket or a distributor of handbills.”
  - B. “[A] member of the audience may protest in silent, symbolic fashion, for example, by wearing a black arm band. More active forms of protest may be tolerated such as briefly booing, clapping hands or heckling. But any disruptive activity must stop [and not be repeated] when the chair or an appropriate University official requests silence.
  - C. “Nor are racial insults or any other ‘fighting words’ a valid ground for disruption or physical attack... The banning or obstruction of lawful speech can never be justified on such grounds as that the speech or the speaker is deemed irresponsible, offensive, unscholarly, or untrue.”
14. A compilation of published regulations which have been reviewed and approved by the Vice President shall be available for public inspection during normal business hours in the Office of Student Conduct.
  15. This Part and Parts 12 and 13 represent an attempt to give needed guidance to those who are assessing penalties. Moreover the direction of the guidance is toward imposition of more severe disciplinary sanctions in serious cases. Nonetheless, the language concerning “mitigating factors” is broad enough to give decision-makers considerable leeway to “do justice,” depending upon the facts in each case. The burden of establishing facts in mitigation should, of course, be upon the respondent.

16. There does not seem to be any rational basis for imposing less severe penalties for attempts than for completed violations. The authors of the *Model Penal Code*, for example, have written that:

*To the extent that sentencing depends upon the antisocial disposition of the actor and the demonstrated need for a corrective action, there is likely to be little difference in the gravity of the required measures depending on the consummation or the failure of the plan.*

See LaFave, *Criminal Law Treatise* p. 453.

17. These procedures are analogous to those found in the “emergency” disciplinary rules adopted by the Board of Regents in 1971 and are consistent with the formal opinion of the Maryland Attorney General on this subject, dated January 23, 1969. See also *Goss v. Lopez*, 419 U.S. 565 (1975).

Nothing in this provision would prohibit the Vice President from modifying the terms of an interim suspension, so long as the hearing requirement specified in Part 18 was met. For example, a suspended student might be allowed to enter University premises solely for the purpose of attending classes.

18. Staff members in the Office of Student Conduct should endeavor to arrange a balanced presentation before the various conduct boards and may assist both complainants and respondents.
19. This language does not effect any change in previous policy concerning the powers of conduct boards. All board decisions, including those rendered by Conference Boards, shall be treated as recommendations.
20. See Annotation 1, supra. The deterrent effect of punishment is diminished if the community is unaware of the number and general nature of sanctions imposed. The Director of Student Conduct may, for example, arrange for publication of the statistical report in the campus press each semester.
21. Boards established pursuant to this section might include modified versions of the present “Greek” or residence hall boards.
22. It is intended that a quorum will consist of three members (out of five). The authority to appoint ad hoc boards should be broadly construed and might be especially useful, for example, when a conduct board or the Senate Committee is charged with hearing a case involving one of its own members. The final determination as to whether a panel is “unable to hear a case” should be within the discretion of the Director of Student Conduct.
23. The power of confirmation represents a significant grant of authority to the Senate Committee. Moreover, confirmation procedures will give committee members



direct contact with board members and will also allow the committee to exercise more control over the quality of Conduct Board decisions.

24. Proposed bylaws must be submitted to the Attorney General for review.
25. It could be a public embarrassment for the University to have a student charged with or convicted of a serious crime sit in judgment over other students in disciplinary proceedings. The various state criminal *Codes* are usually so broad and archaic, however, that automatic suspension or removal should not result from any violation of any law (e.g., New York makes it a criminal misdemeanor for anyone “to dance continuously in a dance contest for 12 or more hours without respite”).
26. Case referrals should not be limited to members of the “campus community.” A student who assaults another person on campus should not escape University judicial action merely because the person assaulted was a visitor (or, as in a recent case, a former student who had just withdrawn from the University).
27. The Director of Student Conduct may appoint a trained volunteer from the campus community to serve as the complainant. It would be preferable, however, to employ a “community advocate” to present all disciplinary cases.

Several measures in the *Code* are designed to restore balance in disciplinary proceedings, even in those cases in which the complainant is inexperienced with administrative adjudication:

- (a) A hearing officer may be appointed in complex or serious cases. See Part 36(o).
  - (b) The role of attorneys or advisors may be restricted. See Parts 37 and 38, and Annotation 42.
  - (c) The “disciplinary conference” procedure is designed to eliminate adversary proceedings in minor cases. See Parts 34-35 and Annotation 32.
28. Staff members may consider the mitigating factors specified in Part 12 to determine the permissible sanction to be imposed if the respondent is found guilty of charges. For example, a student involved in a minor altercation might be charged pursuant to Part 10(a), but referred to a disciplinary conference, thereby precluding the possibility of expulsion or suspension for the alleged misconduct.
  29. On April 4, 2011, the United States Department of Education, Office of Civil Rights issued a “significant guidance document” to provide universities with information to assist them in meeting their obligations under Title IX of the Education Amendments of 1972 (“Title IX”). This document is known as the “OCR Dear Colleague Letter”. According to the OCR Dear Colleague Letter, Title IX requires that the burden of proof in sexual harassment cases, including sexual assault, be “preponderance of the evidence.” Prior to the issuance of the

OCR Dear Colleague Letter, the burden of proof under the Code was “clear and convincing evidence”. According to the OCR Dear Colleague Letter, Title IX also requires that both parties in disciplinary hearings in sexual harassment cases, including sexual assault, be provided the same appeal rights, if any.

30. "Clear and convincing" means "the evidence should be 'clear' in the sense that it is certain, plain to the understanding and unambiguous, and 'convincing' in the sense that it is so reasonable and persuasive as to cause [one] to believe it." *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting Maryland Civil Practice Jury Instruction Section 1:8b (1984). It does not call for "unanswerable" or "conclusive" evidence. *Attorney Grievance Commission v. Harris*, 366 Md. 376, 389 (2001). To be clear and convincing means that it is substantially more likely than not that the allegations are in fact true but that it "need not be established with absolute certainty". *Vogel v. State*, 315 Md. 458, 473 (1989). The burden is "more than a mere preponderance of the evidence [the burden of proof in ordinary civil cases] but not beyond a reasonable doubt [the standard in criminal cases]". *Berkey v. Delia*, 287 Md. 302, 319-20 (1980).
31. "Preponderance of the evidence" means it is "more likely than not" that the violation occurred as alleged. To meet a burden of proof by a preponderance of the evidence, means that "the scales tipped in the direction" of one of the parties. "When the scales are 'in a state of even balance,' the party with the burden of proving its case by a preponderance of the evidence loses. *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting *Potts v. Armour & Co.*, 183 Md 483, 490 (1944). See Maryland Civil Pattern Jury Instructions Section 1:8a (1984).
32. The hearing procedures specified at Part 35 need not be followed in disciplinary conferences. Instead a disciplinary conference would normally consist of an informal, nonadversarial meeting between the respondent and a staff member in the Office of Student Conduct. Complainants would not be required to participate, unless their personal testimony was essential to the resolution of a dispositive factual issue in the case. Documentary evidence and written statements could be relied upon, so long as respondents are given access to them in advance and allowed to respond to them at the conference. Respondents would also be allowed to bring appropriate witnesses with them and might be accompanied by a representative, who may participate in discussions, although not in lieu of participation by the respondent.

The conference procedure is designed to reduce the steady growth of unnecessary legalism in disciplinary proceedings. The worst features of the adversary system (including the concept that judicial proceedings are a “contest” to be “won by clever manipulation of procedural rules) undermine respect for the rule of law. Colleges and universities can and should be a testing ground for development of carefully reasoned alternatives to current procedural excesses in the larger society.\*\*

Procedures comparable to the disciplinary conference (referred to as “structured conversations”) are suggested by David L. Kirp in his 1976 article “Proceduralism and Bureaucracy: Due Process in the School Setting” 38 *Stanford Law Review* 841.

*The benefits of such conversations in the school setting may better be appreciated by contrasting them with the typical due process hearing. Hearings are designed to determine the facts of a particular controversy, and apply predetermined rules to the facts thus found. At that point, the function of the hearing is at an end. The wisdom of the underlying substantive rules has no relevance, nor is broader discussion of grievances generally encouraged, unless it is somehow pertinent to the dispute at hand.*

*Conversation knows no such limits. It too serves as a vehicle for resolving what are likely to be factually uncomplicated disputes, but it does more than that. It enables students to feel that they are being listened to and may encourage them to raise underlying grievances. It provides administrators with a relatively inexpensive vehicle for monitoring, and hence a basis for reshaping institutional relationships. The outcome of these ‘orderly thoughtful conversations’ may well be decisions different in their particulars from what might otherwise have been anticipated; repeated conversations which touch upon similar student grievances may ultimately lead disciplinarians to reassess whether control is so vital, and collaboration so improbable, as a means of assuring institutional order.*

The conference procedure would not be used in any case which might result in any form of separation from the University. Accordingly, the procedure appears to meet or exceed the due process requirements set forth by the United States Supreme Court for cases involving suspensions of ten days or less. In *Goss v. Lopez* the Court held:

*[W]e stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.*

*On the other hand, requiring effective notice and an informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced (42 L. Ed. 725, 740).*

33. The case file consists of materials which would be considered “education records,” pursuant to the Family Educational Rights and Privacy Act. Personal notes of University staff members or complainants are not included.
34. Determinations made in accordance with Parts 33 and 34 are not appealable.
35. Internal subpoenas may be desirable, since cases have arisen in which complainants or respondents were unable to present an effective case due to the indifference and lethargy of potential witnesses. A student who refused to respond to a subpoena may be charged with a violation of **Part 10(p) of the Code**. The Director of Student Conduct should not approve a subpoena unless the expected testimony would be clearly relevant. Likewise, a subpoena designed to embarrass or harass a potential witness should not be authorized. The subpoena power specified here is not designed to reach documents or other materials.
36. Board members should be disqualified on a case basis only; permanent removal should be accomplished in accordance with Part 28. Board members should not be readily disqualified. The term “personal bias” involves animosity toward a party or favoritism toward the opposite party. See, generally, Davis, *Administrative Law Treatise* “Bias” Section 12.03.
37. The exclusionary rule generally does not apply to civil administrative proceedings. Furthermore, the University of Maryland is exempted by statute from the applicable portions of the Administrative Procedure Act. The Maryland Court of Appeals, however, has barred evidence from administrative proceedings where a respondent establishes that officials were improperly motivated to illegally seize the evidence. See *Sheetz v. City of Baltimore*, 315 Md. 208 (1989).
38. Testimony containing hearsay may be heard, if relevant. A final determination should not be based on hearsay alone.
39. Every statement or assertion need not be proven. For example, board members may take notice that many students commute to the University.
40. Student presiding officers are often at a disadvantage when the respondent is represented by an attorney. The proceedings might progress more rapidly and

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**Comment [5]:** Is this the right section?

efficiently if a special presiding officer were appointed. Generally, a staff member in the Office of Student Conduct would be selected for such a responsibility, although other University employees with legal training might also be called upon.

41. Information pertaining to prior findings of disciplinary and residence hall violations might be reported, as well as relevant criminal convictions. Prior allegations of misconduct should not be disclosed.
42. The dynamics of a judicial hearing in a University setting are not the same as those of a courtroom. Strict adherence to the conventions of courtroom advocacy may not be in the best interest of clients in University judicial proceedings.

The presiding officer and the board advisor are authorized to take reasonable measures to maintain control over the proceedings in order to elicit relevant facts, to prevent the harassment of participants, to insure that proceedings are not disrupted and the interests of fairness are served. This may include regulating the timing, length and manner of presentations and objections, declaring recesses in the proceedings, and other appropriate actions. Presiding officers should have training and experience appropriate to the demands of the office.

Before hearings, presenters for both complainants and respondents shall be presented with a written statement approved by the Senate Committee on Student Conduct regarding their rights and obligations during hearings and the powers of the presiding officer to control behavior in hearings.

43. Punishment of one or several individuals for the acts of others should be avoided if the identities of the specific offenders can be readily ascertained.
44. Association does not require formal membership. Individuals who might reasonably be regarded as regular participants in group or organization activities may be held to be associated with the group or organization.
45. Leaders or spokespersons need not be officially designated or elected. For example, if a group or organization accepted or acquiesced in the act or statement of an individual associated with it, that individual might reasonably be regarded as a leader or a spokesman for the group or organization.
46. "Suspension" includes deferred suspension but not interim suspension or suspension which is withheld. See Annotation 6.
47. See Annotation 29.
48. Students left with a disciplinary record after a disciplinary conference may request that their record be voided, in accordance with Part 50. Denials may be appealed, pursuant to Part 53.

49. See Annotation 29.
50. The decision will be “final and conclusive” on the part of the conduct board, but will remain a recommendation to the Director of Student Conduct.
51. This Part is intended to discourage frivolous appeals. Respondents who are genuinely interested in pursuing an appeal can reasonably be expected to prepare a written brief.
52. Appellate bodies which do not give deference (i.e., a presumption of validity) to lower board decisions will distort the entire disciplinary system. Respondents would be encouraged to “test their strategy” and “perfect their technique” before lower boards, since the matter would simply be heard again before a “real” board with final authority.

Lower board members usually have the best access to the evidence, including an opportunity to observe the witnesses and to judge their demeanor. Members of appellate bodies should be especially careful not to modify a sanction or to remand or dismiss a case simply because they may personally disagree with the lower board’s decision.

The opportunity to appeal adverse decisions has not been determined to be a requirement of constitutional “due process” in student disciplinary cases.\*\*\* There is presently no legal obstacle to adopting an amendment to the Code which would eliminate the appellate system altogether.

53. Respondents who obtain information at the hearing which might lead to new evidence are required to request an adjournment rather than wait to raise the matter for the first time on appeal.
54. An arbitrary and capricious decision would be a decision “unsupported by any evidence.” The cited language has been adopted by the Federal Courts as the proper standard of judicial review, under the due process clause, of disciplinary determinations made by the state boards or agencies. *See McDonald v. Board of Trustees of the University of Illinois*, 375 F. Supp. 95, 108 (N.D. Ill., 1974).
55. See Annotation 19.
56. Voided files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record.
57. Disciplinary records may be reported to third parties, in accordance with University regulations and applicable state and federal law.
58. Void records shall be treated in the manner set forth in Annotation 56.

59. The scope of review shall be limited to the factors specified at Part 51. An inquiry into the initial determination of guilt or innocence is not permitted. For example, when considering the “nature” of the violation, pursuant to Part 51 (c), it is to be assumed that the violation occurred and that the respondent was responsible for it.
60. Some discretion must be retained to void even “permanent” disciplinary records. It may be unnecessary, for example, to burden a graduating senior with a lifelong stigma for an act committed as a freshman. Social norms also change rapidly. “Unacceptable” conduct in one generation may become permissible and commonplace in the next.
- \* See the procedures for mandatory medical withdrawal developed by the Vice President for Student Affairs
- \*\* See Macklin Fleming, *The Price of Perfect Justice*: “in our pursuit of . . . perfectibility, we necessarily neglect other elements of an effective procedure, notably the resolution of controversies within a reasonable time at a reasonable cost, with reasonable uniformity . . . we impair the capacity of the legal order to achieve the basic values for which it is created, that is, to settle disputes promptly and peaceably, to restrain the strong, to protect the weak, and to conform the conduct of all the settled rules of law.”
- \*\*\* See the due process standard set forth in *Dixon v. Alabama*, 294 F.2nd 150, 158-159 (Fifth Cir., 1961), Cert. den 368 U.S. 930.