



## Code of Student Conduct Revisions

**PRESENTED BY** Andrea Dragan, Chair

**REVIEW DATES** SEC – November 28, 2017 | SENATE – December 7, 2017

**VOTING METHOD** In a single vote

**RELEVANT POLICY/DOCUMENT** [V-1.00\(B\)](#) – University of Maryland Code of Student Conduct

**NECESSARY APPROVALS** Senate, President

### ISSUE

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In September 2016, the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) recommending a full revision of the *Code of Student Conduct*. The proposal noted that the *Code* has not been thoroughly reviewed since it was established, and it needs to be revised to align with current practices. The proposal suggested revisions in a few major areas, including creating expanded definitions of Prohibited Conduct, adopting the preponderance of the evidence standard rather than the clear and convincing standard, addressing the role of advisors in the conduct process, and revising the structure and language of the *Code*. The SEC reviewed the proposal at its meeting on September 27, 2016 and voted to charge the Student Conduct Committee (SCC) with review of the proposal.

### RECOMMENDATION(S)

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- The Student Conduct Committee recommends that the *Code of Student Conduct* (V-1.00[B]) be revised in its entirety as indicated in the policy document immediately following this report.
- The Student Conduct Committee recommends that the revised *Code* be effective as of January 1, 2018.
- The Student Conduct Committee recommends that all University policies and procedures that reference the *Code* be revised to include accurate citations.

### COMMITTEE WORK

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The Student Conduct Committee (SCC) began its review in October 2016. It consulted with representatives from the Office of General Counsel and the Office of Student Conduct (OSC) throughout its review. The SCC and the OSC conducted extensive research on practices at peer institutions, reviewing *Codes* at Big Ten, University System of Maryland, and other peer institutions. The SCC met with representatives from the Office of Student Legal Aid, the Student Government Association (SGA), the Graduate Student Government (GSG), the Residence Hall Association (RHA), and the Senate Student Affairs Committee during its review to gather feedback on preliminary ideas developed by the committee.

The SCC developed its revised *Code* with the intent of providing clarity on student rights, what conduct is prohibited, and what the student conduct process entails. The SCC sought to address the needs of students as well as the current realities of conduct on campus. Early in its review, the SCC determined that the *Code* needed to be rewritten in full, and redrafted the *Code* using standard language. The *Code* was organized into four sections, and all annotations and references to court cases and civil procedure were removed. The Prohibited Conduct section provides clearer definitions and is organized according to type of conduct, rather than by presumed severity. The proposed *Code* indicates that the sanction for any specific violation will depend on the facts of the case as well as any aggravating or mitigating factors.

During its review, the SCC considered a few key changes to the conduct process. The SCC's proposed revised *Code* changes the standard of evidence, using the preponderance of the evidence standard rather than clear and convincing evidence. Preponderance of the evidence means that based on all of the evidence in the case, a reasonable person would conclude that it is more likely than not that the violation occurred. The SCC also revised the role of attorneys in the conduct process, proposing a limited role for attorneys that allows them to serve as an advisor to the student but prevents them from actively advocating during proceedings. This aligns the *Code* with the role of an attorney in other conduct processes, including the *Code of Academic Integrity* and the University's Sexual Misconduct Policy.

In fall 2017, the SCC developed revisions to the *Code* to ensure that the OSC has the necessary flexibility to charge student groups and student organizations with violations of the *Code*. The SCC also considered an addendum to its charge asking it to consider what sanctions would be appropriate in cases that are motivated by hate or bias. The SCC unanimously agreed that cases motivated by hate or bias should receive stricter sanctions, and agreed to incorporate the proposed language into its revised *Code*.

## **ALTERNATIVES**

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The Senate could reject the proposed revised *Code of Student Conduct*. The current *Code* would remain in effect. However, the University would lose the opportunity to clarify the conduct process and student rights and responsibilities under the *Code*.

## **RISKS**

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There are no known risks to the University.

## **FINANCIAL IMPLICATIONS**

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There are no known financial implications.



## Code of Student Conduct Revisions

### 2017-2018 Committee Members

**Andrea Dragan** (Chair)  
**John Buchner** (Faculty)  
**Blessing Enekwe** (Staff)  
**Andrea Goodwin** (Ex-Officio Director of Student Conduct)  
**Katie Heil** (Undergraduate Student)  
**Gideon Mark** (Faculty)  
**Paul Mavrikes** (Undergraduate Student)  
**Christopher Rand** (Undergraduate Student)

**Jason Speck** (Faculty)  
**Megan Stump** (Graduate Student)  
**Anuj Thakore** (Undergraduate Student)  
**Hilary Thompson** (Faculty)

### Date of Submission

**November 2017**

## BACKGROUND

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In September 2016, the Office of Student Conduct (OSC) submitted a proposal to the Senate Executive Committee (SEC) recommending a full revision of the *Code of Student Conduct*. The proposal noted that the *Code* has not been thoroughly reviewed since it was established, and it needs to be revised to align with current practices. The proposal suggested revisions in a few major areas, including creating expanded definitions of Prohibited Conduct, adopting the preponderance of the evidence standard rather than the clear and convincing standard, addressing the role of advisors in the conduct process, and revising the structure and language of the *Code*. The SEC reviewed the proposal at its meeting on September 27, 2016 and voted to charge the Student Conduct Committee (SCC) with review of the proposal (Appendix 6).

## CURRENT PRACTICE

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The *Code of Student Conduct* was developed and approved in 1980. The *Code* establishes the necessity of ensuring the safety of students and the campus community, sets forth the conduct that is not permitted at the University, and specifies the process by which violations will be considered. The *Code* specifies the composition of conduct boards that adjudicate cases, which are typically composed of students. The Office of Student Conduct is responsible for administering the *Code*.

In the student conduct process, the Complainant is the party that referred the alleged violation to the OSC for review. The Complainant can be a student but is often the University, since cases are often referred by the University of Maryland Police Department (UMPD), the Department of Resident Life, or by University faculty, staff, or administrators. Students, student groups, or student organizations alleged to have violated the *Code* are referred to as Respondents. Student Respondents are afforded due process protections through the *Code*, including a presumption of innocence; adequate notice of the charges against them and of all meetings, hearings, or deadlines through the process; the ability to submit evidence and question witnesses during disciplinary hearings; the right to be assisted by an attorney, a student Advocate, and/or a support person; and the ability to appeal both a finding of responsibility as well as any sanction given as a result of the process.

It is critical that students are able to read and understand the *Code*, as it is the primary guide to their rights and responsibilities at the University. However, students have difficulty navigating the *Code* and the conduct process. The *Code* is legalistic in nature, and is structured in a disjointed fashion

that makes reading difficult. The document has multiple annotations that describe legal concepts or court cases that were relevant at the time when various provisions of the *Code* were written. Since 1980, the *Code* has been revised multiple times to add or revise specific sections as the needs of the University and the OSC changed. However, the *Code* has not been reviewed in full since 1980.

## COMMITTEE WORK

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The Student Conduct Committee (SCC) began its review in October 2016. It consulted with representatives from the Office of General Counsel (OGC) and the Office of Student Conduct (OSC) including the Director of Student Conduct throughout its review. The SCC and the OSC conducted extensive research on practices at peer institutions, reviewing *Codes* at Big Ten, University System of Maryland, and other peer institutions. A brief summary of peer institution practices related to the SCC's review can be found in Appendix 3.

The SCC focused its review on the need to create a clear, readable document, in order to ensure that all students are informed of their rights and responsibilities and to educate students on community standards. The SCC sought to address the needs of students as well as the current realities of conduct on campus. The SCC learned that the OSC's mission is to encourage safety for the individual student and the community while promoting growth and character development. The OSC views the student conduct process as an educational process in that it seeks to support students in reaching their academic and personal goals while fostering a climate of responsibility and accountability. The OSC intends for the *Code* to support the rights and responsibilities of all individuals within the community and uphold the integrity and values of the University of Maryland.

The SCC consulted with students and stakeholders throughout its work. The SCC met with representatives from the Office of Student Legal Aid in order to understand concerns and perspectives from students who serve as student Advocates for Respondents in conduct hearings. Representatives of the SCC and OSC met with the Student Government Association (SGA), the Graduate Student Government (GSG), the Residence Hall Association (RHA), and the Senate Student Affairs Committee to gather feedback on preliminary ideas developed by the committee. While each initially had many questions and concerns regarding the revisions to the *Code*, each organization expressed appreciation for the changes being considered by the SCC. A summary of the concerns and advice from the Student Affairs Committee can be found in Appendix 4. Resolutions from the RHA in favor of specific changes in the *Code* can be found in Appendix 5. In addition to these resolutions, a vote on a resolution to endorse the preponderance of the evidence standard failed in March 2017; however, after additional consultation with the RHA in November 2017, representatives of the RHA indicated their appreciation for the SCC's work and their comfort with the SCC's proposed changes.

After due consideration, at its meeting on November 15, 2017, the SCC voted unanimously to approve its proposed revised *Code of Student Conduct* as well as two administrative recommendations. After final consultation with the OGC and OSC, additional revisions were approved via an email vote concluding on November 21, 2017. An overview of the revisions to the *Code* is presented below.

### ***Language and Structure***

The SCC developed its revised *Code* with the intent of providing clarity on student rights, what conduct is prohibited, and what the student conduct process entails. Students at the University are first introduced to the *Code* during orientations; the OSC seeks to educate new students on their

rights and responsibilities before they come to campus. However, students, faculty, and staff report difficulty understanding the current *Code*. The document uses dated, legalistic language and a disjointed structure, and the many pages of annotations that follow the *Code* disrupt the narrative and present unnecessary or outdated information that can cause additional confusion.

Early in its review, the SCC determined that the *Code* needed to be rewritten in full. The *Code* was redrafted using standard language and all annotations have been removed, so the revised *Code* can be read through without having to refer to other documents or notes. The SCC organized the *Code* into four sections and drafted each section as a narrative that clearly presents pertinent information. The SCC also removed all references to court cases and civil procedure, as these references give students the wrong impression about the conduct process. The student conduct process is an administrative process that is not subject to the procedures used in a court of law, and the SCC felt that continually referring to legal concepts caused students and attorneys to view the conduct process as a legal process rather than an educational administrative process.

### ***Structure/Definitions of Prohibited Conduct***

The SCC's proposed revised *Code* includes an organized Prohibited Conduct section that provides clearer definitions of the types of conduct that are not allowed. The current section in the *Code* is outlined in a single list, with conduct ranked in order of presumed severity of the offense. The *Code* suggests appropriate sanctions for specific items, indicating that items (a) through (h) may result in expulsion and items (i) through (m) may result in suspension. However, in practice, both the severity of the offense and the appropriate sanction depend a great deal on the circumstances of the case. The OSC does not have a standard sanction for any type of misconduct; all cases are fact-specific. The SCC drafted the new Prohibited Conduct section by grouping items according to type of conduct, rather than by severity. The proposed *Code* does not indicate which types of conduct may result in expulsion, suspension, or other types of sanctions, but indicates throughout that the sanction will depend on the facts of the case as well as any aggravating or mitigating factors.

The SCC was asked to consider expanding the list of Prohibited Conduct to be responsive to the types of misconduct currently being seen by the OSC or to align with practices at peer institutions. The SCC determined that the definitions in the current *Code* are overly general, which can lead to inconsistency in interpretation and can make it difficult to bring charges when the conduct does not clearly fit the definition. For instance, the *Code* does not have a provision prohibiting public urination, so the OSC classifies these incidents as disruptive or disorderly conduct instead. The SCC worked with the OSC to revise and add definitions to include conduct that is more prevalent today and to reflect how violations are currently handled. New provisions prohibiting public urination and defecation, operating a vehicle while impaired, trespassing or unauthorized use of facilities or resources, and fire-setting, among others, were all added to the *Code*. Each of these new provisions meet needs identified by the OSC and can be found in *Codes* at peer institutions. An illustration of the changes in the list of Prohibited Conduct can be found in Appendix 2.

### ***Standard of Evidence***

The standard of evidence is the level of certainty needed in order to establish a finding of responsibility under the *Code*. The current *Code* uses a clear and convincing standard, stating that "The burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence." Clear and convincing requires that the evidence be enough to convince a reasonable person that the facts are true. This is a high standard, and it can be difficult for students and student boards to understand.

The SCC's proposed revised *Code* employs the preponderance of the evidence standard. Preponderance of the evidence means that based on all of the evidence in the case, a reasonable person would conclude that it is more likely than not that the violation occurred. The preponderance of the evidence standard is currently used in the University's policy and procedures on sexual misconduct, and the SCC voted unanimously to use the preponderance of the evidence standard for general misconduct cases as well.

Many institutions began using the preponderance of the evidence standard for all misconduct cases after federal guidance was issued in 2011 that required the use of the preponderance standard for sexual misconduct cases. At that time, the University of Maryland instituted the preponderance standard for sexual misconduct cases, but did not revise its standard for other misconduct cases (see Senate Document #11-12-10 for more information). Retaining the clear and convincing standard has set UMD apart from its peers, and the OSC reports difficulty based on enforcing two different standards for students. In September 2017, the Department of Education issued revised temporary guidance for sexual misconduct cases indicating that institutions can use either standard for sexual misconduct, but the standard should be consistent across all types of misconduct at the institution. The SCC raised concerns that the University is now out of alignment with federal guidance by having two different standards, and strongly rejected the notion that a higher standard could be used for sexual misconduct cases. The SCC agrees the most appropriate solution is to use preponderance of the evidence for all non-academic misconduct.

In its review, the SCC found that nearly all Big 10 and other peer institutions use the preponderance of the evidence standard. In a survey of approximately 33 institutions, only two institutions use the clear and convincing standard for all misconduct cases (University of North Carolina – Chapel Hill and University of Michigan), and one institution uses clear and convincing only in cases that could result in expulsion or suspension while it uses preponderance of the evidence for all other cases (University of Wisconsin). All other institutions use preponderance of the evidence or a standard not defined in legal terms (see Appendix 3 for more information). The SCC was concerned to find that the University is overwhelmingly out of alignment with its peers in this area.

Preponderance of the evidence is the standard recommended by the Association for Student Conduct Administration, which is the professional association that provides guidance to all campus conduct administrators. Preponderance is also the standard used in civil procedure, and courts have likened administrative student conduct processes to civil procedures, so preponderance is the appropriate standard to use. It is used in many other similar processes in higher education.

During its review, the SCC became concerned about having two different standards for different types of general misconduct cases at the University. The SCC raised concerns about the University's ability to protect student Complainants, especially since under current policy, the same actions occurring in different contexts can result in different findings because of the standard of evidence. For instance, a physical assault that has the same impact and associated evidence as a domestic assault would be treated differently because of the different standards between sexual misconduct and general misconduct. Likewise, incidents involving harassment or stalking could vary in findings because of the different standards. In any cases where a decision needs to be made as to whether it is sexual misconduct or general misconduct, a student Complainant could be harmed by inconsistent standards.

In addition, the SCC found that there are many other cases where students could be harmed by the clear and convincing standard. In cases where evidence is limited and an assessment is based

largely on interviews and witness statements, it can be difficult to reach the higher clear and convincing standard because it requires certainty. For instance, in cases involving physical harm between roommates in the residence halls, it may be possible to establish what is more likely to have happened, but it can be difficult to establish certainty. A change in the standard of evidence would also impact hazing cases; it is often difficult to determine with certainty what happened in cases involving hazing or cases against student organizations, given the significant group power dynamics and the culture of deception that prevents hazing cases from coming to resolution. In cases like these, the SCC felt the preponderance of the evidence standard would provide necessary protection for student Complainants.

The OSC also suggested it would be easier to communicate to students who serve on conduct boards and to students who are affected by the conduct process. Students who are charged with a violation of the *Code* have difficulty understanding why the University has two standards, and often raise concerns about whether the University's processes are equitable due to the difference in standards. Under preponderance of the evidence, boards are trained on how to weigh the evidence and what it means for the evidence to show that it is "more likely than not" that a violation occurred. The preponderance standard seeks to promote a fair and balanced process for both the Respondent and the Complainant or larger community.

The SCC recognized and considered the concerns raised by those it consulted that a preponderance of the evidence standard would greatly increase findings of responsibility and rates of suspension or expulsion. However, the SCC does not anticipate such significant changes. While there may be a slight increase in findings of responsibility, the SCC anticipates any increase would be in cases involving drugs or alcohol where physical evidence is limited but all signs point to responsibility. In these cases, the OSC's intention is to provide educational interventions as a sanction, in order to provide students with the tools they need to make healthy decisions and reach their academic goals. Cases that could potentially result in suspension or expulsion are reviewed very carefully by student conduct boards, and in most cases, there is enough evidence or certainty to rise above the preponderance standard. In addition, despite the change in the standard of evidence, student Respondents retain all rights and due process protections afforded by the *Code*.

### ***Attorney's Role in the Conduct Process***

The SCC determined that the role of attorneys in the conduct process needed to be revised. In the current *Code*, attorneys are allowed to play an active role. Attorneys can make opening and closing statements, advise the student during the proceedings, call witnesses to testify, question all witnesses who appear at the hearings, voice objections, petition for recesses, and "zealously and lawfully assert their client's position under the *Code of Student Conduct*." The SCC's revised *Code* proposes a limited role for attorneys, which allows them to serve as an advisor to the student but prevents them from actively advocating during proceedings. Advisors can provide advice to the student Respondent, but may not speak for the Respondent. This aligns the *Code* with the role of an attorney in other conduct processes; the *Code of Academic Integrity* and the University's Sexual Misconduct Policy both limit the role of attorneys to that of an advisor, where attorneys may advise their clients, but may not speak or be an active participant during the hearings.

After consultation with the OSC, the SCC found significant concerns with the active role attorneys can play in the conduct process. The student conduct process is educational in nature, and as such, it is critical that students participate in the hearing and speak for themselves. Attorneys tend to prevent their client from speaking, and tend to try to focus the hearing on deficiencies of the *Code* and loopholes in the *Code* rather than on the student's behavior. Attorneys often also put student



boards, student presiding officers, and student Community Advocates at a disadvantage. Student conduct boards and Presiding Officers do not have the training to address legal procedures or motions presented by attorneys. Attorneys often create a power and authority imbalance and can intimidate student boards. The SCC felt that requiring students to speak for themselves would allow the educational component of the process to take place, and would eliminate procedural issues created by attorneys.

The SCC also discussed equity concerns related to attorneys, in that not all students can afford an attorney and there are many cases where only one party in a case has an attorney. While not all students have access to an attorney, all students have access to student Advocates through the Office of Student Legal Aid. Student Advocates provide free assistance to students charged with student conduct violations, and can assist students in all aspects of the conduct process, including during the hearing. The SCC's revised *Code* retains the rights of student Advocates, and allows them to make opening and closing statements, ask questions during the hearing, provide advice to the student, and make recommendations on sanctions if appropriate. In practice, the OSC advises each student Respondent to seek assistance from Student Legal Aid, and all students involved in the conduct process should be aware that this resource is available to them.

### ***Group Responsibility***

In fall 2017, the SCC developed revisions to the *Code* to ensure that the OSC has the necessary flexibility to charge student groups and student organizations with violations of the *Code*. The SCC defined groups and organizations clearly in the *Code*, and revised statements throughout the process as appropriate to clarify that groups and organizations can be the Respondent in any conduct case. The OSC has in practice been able to charge groups and organizations as needed, but the SCC felt that additional clarity was needed in order for groups and organizations to better understand their responsibilities under the *Code*.

As it considered the standard of evidence, the SCC determined that the preponderance of the evidence standard would increase the University's ability to hold groups and organizations accountable. In many cases, group dynamics make it difficult to determine if individual students are responsible for misconduct; feelings of loyalty to group members and to the organization cause many students to withhold information. For instance, in cases involving hazing, group members often band together and conceal the truth in order to preserve the status of the organization. In many of these cases, there would likely be enough evidence to find an organization or group responsible by the preponderance of the evidence standard, despite any efforts to conceal the truth from the University.

The SCC's proposed revisions clarify that officers, leaders, or members of a group or organization can be compelled to participate in the conduct process by standing in as the Respondent in a case. If a group or organization is found responsible for a violation of the *Code*, it is subject to sanctions. The revised *Code* clarifies that sanctions can include expulsion (permanent separation from the University), suspension (temporary removal of recognition), or other sanctions such as social moratoriums. In these cases, the individual students in the group or organization would not be expelled or suspended and no notations would appear on their transcripts, but the group or organization as a whole would be prevented from continuing to meet or operate. Sanctions could prevent the organization from receiving funding, soliciting members, using University resources or facilities, or representing the University, among other activities.

### ***Sanctions for Incidents Motivated by Bias***



In fall 2017, the SCC received an addendum to its charge asking it to consider adding language to the *Code* to ensure that cases motivated by hate or bias receive harsher sanctions. In many cases, violations based on hate or bias are under the purview of the Office of Civil Rights & Sexual Misconduct (OCRSM) and the University of Maryland Non-discrimination Policy & Procedures (VI-1.00[B]), rather than the *Code of Student Conduct*. However, the non-discrimination policy indicates that once the OCRSM reaches a finding of responsibility under the policy, the sanction is determined by the Director of Student Conduct using the sanctioning guidelines in the *Code*. The SCC unanimously agreed that cases motivated by hate or bias should receive stricter sanctions, and agreed to incorporate appropriate language into its revised *Code*.

## RECOMMENDATIONS

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The Student Conduct Committee recommends that the *Code of Student Conduct* (V-1.00[B]) be revised in its entirety as indicated in the policy document immediately following this report.

The Student Conduct Committee recommends that the revised *Code* be effective as of January 1, 2018.

The Student Conduct Committee recommends that all University policies and procedures that reference the *Code* be revised to include accurate citations.

## APPENDICES

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- Appendix 1 – Current *Code of Student Conduct*
- Appendix 2 – Visual Representation of Proposed Prohibited Conduct Revisions
- Appendix 3 – Relevant *Code* Provisions at Peer Institutions
- Appendix 4 – Student Affairs Committee Feedback on Proposed *Code* Changes
- Appendix 5 – RHA Resolutions
- Appendix 6 – Charge from the SEC

## Proposed Revised *Code of Student Conduct*

### 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; May 9, 2013; (Technical amendments approved by the President September 2, 2015)

This *Code* does not apply to matters of student academic integrity. The policy and procedures document applicable to student academic integrity is III-1.00(A) University of Maryland Code of Academic Integrity at <http://www.president.umd.edu/policies/2014-iii-100a.html>.

This *Code* does not apply to student sexual misconduct. The policy and procedures document applicable to student sexual misconduct is VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures at <http://www.president.umd.edu/policies/2014-VI-160A.html>.

## I. INTRODUCTION

The *Code of Student Conduct* was created to ensure the safety and security of the University community. The *Code*, administered by the Office of Student Conduct, seeks to balance the rights and responsibilities of all individuals within the community, and uphold the integrity and values of the University of Maryland. Reasonable efforts are made to educate and support students in reaching their academic and personal goals while fostering a climate of accountability and responsibility for one's actions. The *Code* outlines behaviors that are inconsistent with University standards and expectations and sets forth applicable procedures and potential sanctions governing *Code* violations.

### A. The Office of Student Conduct

The Office of Student Conduct administers matters involving student discipline. The office is led by the Director of Student Conduct. The Director of Student Conduct grants at their discretion to the Office of Rights and Responsibilities the authority to administer matters involving student discipline, which occur in or around the residence halls and/or on-campus University-affiliated housing owned by, leased from, operated in cooperation with, or supervised by the University. References in this *Code* to the Director of Student Conduct include the Director and designees. The responsibilities of the Office include:

1. Determining the disciplinary charges to be filed in accordance with this *Code* and the *Code of Academic Integrity*
2. Interviewing and advising parties involved in disciplinary proceedings
3. Supervising, training, and advising all conduct boards
4. Reviewing the decisions of all conduct boards
5. Maintaining all student disciplinary records
6. Developing procedures for conflict resolution
7. Resolving allegations of student misconduct

8. Administering duties set forth in VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures and in VI-1.00(B) University of Maryland Non-Discrimination Policy and Procedures as related to allegations against students.

## **II. STUDENT RIGHTS AND RESPONSIBILITIES**

### **A. Standards**

When students choose to enroll at the University of Maryland, they accept the rights and responsibilities of membership in the University community both on and off campus. Students at the University of Maryland are expected to uphold the values of the University by conducting themselves in accordance with University policies and procedures.

### **B. Student Rights**

The Office of Student Conduct provides a fair and balanced internal University process for resolving allegations of student misconduct. Students will be treated fairly and with dignity and respect without regard to race, color, sex, gender identity or expression, sexual orientation, marital status, age, national origin, political affiliation, physical or mental disability, religion, protected veteran status, genetic information, personal appearance, or any other legally protected status, as outlined in the University's Non-Discrimination Policy.

### **C. Student Responsibilities**

Balancing students' rights with their responsibilities as members of the University community is imperative to creating mature and engaged citizens. All students are expected to understand and follow University policies and procedures as well as to comply with applicable federal, state, and local laws. Due to the high expectations the University has of its community members, responsibilities set forth in University policies may exceed federal, state, or local requirements.

University email is the primary means by which the Office of Student Conduct communicates with students. Students are responsible for reading all official communications delivered to their University email address and are advised to check their email regularly for University communications, including those from the Office of Student Conduct.

### **D. Standard of Evidence**

The focus of disciplinary proceedings is to resolve allegations of student misconduct. Students have the right to be notified of the allegations and specific charges against them, to have access to the information underlying the charges, and to have an opportunity to respond. The preponderance of the evidence standard will be used to determine responsibility for *Code* violations. Preponderance of the evidence means that based on the totality of the evidence, it is more likely than not that the violation

occurred. Sanctions are imposed according to the nature and severity of the violation.

## **E. Definitions**

When used in the context of this *Code*, the terms below mean the following:

1. “University” means the University of Maryland, College Park.
2. “Student” means either a person enrolled in or auditing courses at the University on a full-time or part-time basis at the time the alleged violation occurred or an individual who may not be enrolled for a particular term at the time the alleged violation occurred but has a continuing relationship with the University.
3. The term “University premises” means buildings or grounds owned, leased, operated, controlled, or managed by the University.
4. The term “University-sponsored activity” means any activity on or off campus which is initiated, aided, authorized, or supervised by the University.
5. The term “student organization” means a group of persons who are associated with each other and who have complied with University requirements for student organization registration.
6. The term “student group” means a number of persons who are associated with each other but who do not have status as an officially recognized student organization.
7. “Referral” means a report, complaint, or allegation of misconduct against a student, student group, or student organization.
8. “Complainant” refers to an individual(s) who has referred a student, student group, student organization, or incident to the Office of Student Conduct based on an alleged violation of the *Code*.
9. “Respondent” refers to a student, student group, or student organization alleged to have committed a violation of this *Code*.
10. “Mitigating factors” may be considered in determining sanctions. Factors include, but are not limited to, the present demeanor and past disciplinary record of the Respondent and any steps the Respondent has taken to address their behavior.
11. “Aggravating factors” may be considered in determining sanctions. Factors include, but are not limited to, the present demeanor and past disciplinary record of the Respondent, as well as the nature of the offense and the severity of any resulting damage, injury, or harm.

## **F. Jurisdiction**

This *Code* covers conduct by a student, student group, or student organization that occurs:

1. on University premises; or
2. at University-sponsored activities; or
3. not on University premises, if:
  - a) the conduct would constitute a violation of this *Code* had it occurred on University premises; *and*
  - b) if the Director of Student Conduct determines that the conduct affects the safety of the University community or the orderly operation of the University.

### III. PROHIBITED CONDUCT

This list of prohibited conduct is provided to inform students, student groups, and student organizations of behaviors that are not permitted. The list should be read broadly and is not designed to define misconduct in exhaustive terms. Attempts to commit acts prohibited by this *Code* may be sanctioned to the same extent as completed violations. The University considers prohibited conduct motivated in whole or in part because of an individual or group characteristic or status, or the perception of an individual or group characteristic or status, protected by the University's Non-Discrimination Policy to be an aggravating factor, which may subject the student, student group, or student organization to a more severe sanction than would be imposed in the absence of such motivation.

#### A. Offenses Against Persons

1. Intentionally or recklessly causing physical harm to any person, or intentionally or recklessly causing reasonable apprehension of such harm.
2. Engaging in hazing activities as prohibited by the University's [\*Policy and Procedures on Hazing\*](#).
3. Intentionally and substantially interfering with the lawful freedom of expression of others. (Demonstrations, rallies, leafletting, and equivalent activity are addressed by the University Guidelines for Demonstrations and Leafletting.)

#### B. Alcohol and Other Drug Offenses

"Controlled substance" and "illegal drugs" are defined by Maryland and federal law.

1. Unauthorized distribution of any controlled substance or illegal drug, or the production, manufacture, or possession of any controlled substance or illegal drug for purposes of unauthorized distribution.
2. Unauthorized use, production, manufacture, or possession of any controlled substance or illegal drug.
3. Providing alcohol or alcoholic beverages to a person under the legal age of consumption or possession.
4. The illegal or unauthorized consumption, possession, or sale of alcohol or alcoholic beverages.
5. Operating a motor vehicle while intoxicated or impaired by alcohol or other drugs.

#### C. Property Offenses

1. Theft of property, services, or resources, or the unauthorized use of services to which one is not entitled.
2. Knowingly possessing stolen property.
3. Intentionally or recklessly destroying, damaging, vandalizing, tampering with, or defacing University property or the property of others.
4. Trespassing on or the unauthorized use of University facilities, property, or resources.

#### D. Community Offenses

1. Unauthorized on-campus or illegal off-campus use, possession, or storage of any weapon or explosive. The term "weapon" includes any object or substance

designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, and knives with blades five (5) or more inches in length.

2. Intentionally initiating or causing any false report, warning, or threat of fire, explosion or other emergency.
3. Rioting, assault, theft, vandalism, fire setting, or other serious misconduct i) related to a University-sponsored event, occurring on- or off-campus, that results in harm to persons or property; or ii) which 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.
4. Engaging in disorderly or disruptive action that interferes with University or community activities, including but not limited to studying, teaching, research, and University administration.
5. Intentionally or recklessly misusing or damaging fire safety equipment.
6. Unauthorized setting of fires on University property.
7. Unauthorized use or possession of fireworks.
8. Public urination or defecation.

#### **E. Offenses Against University Operations**

1. Intentionally furnishing false information to the University.
2. Making, possessing, providing, or using any forged, altered, or falsified University document.
3. Failure to comply with a directive of University officials, including law enforcement officials, acting in performance of their duties.
4. Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code* or by the Office of Student Conduct in accordance with other University policies.

#### **F. Other Offenses**

1. Conviction, a plea of no contest, acceptance of responsibility or acceptance of sanctions in state or federal court for a crime (other than a minor traffic offense) not otherwise prohibited by this *Code*.
2. Making, possessing, providing, or using any forged, altered, or falsified instrument of identification.
3. Violation of published University regulations or policies, including but not limited to, regulations or policies addressing residence hall rules, use of vehicles, campus demonstrations, misuse of identification cards, acceptable use of technology resources, non-discrimination, and access to University resources.

### **IV. STUDENT CONDUCT PROCESS**

This section provides general information and an overview of the student conduct process. Not all cases are the same, and allegations differ in their severity and complexity. However, the Office of Student Conduct endeavors to treat similar facts and circumstances consistently.

Certain conduct may constitute both a violation of law and a violation of this *Code*. Therefore, students may be accountable to both criminal authorities and to the University as a result of the same conduct or incident. The University's student conduct process differs from any legal civil or criminal proceedings. Disciplinary action at the University will normally move forward before or during criminal proceedings, and will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced. The same conduct may also result in civil litigation. Civil litigation is separate and independent from any University process under this *Code*, and the resolution of any civil legal action by settlement or other means will not resolve a University action for violation of the *Code*.

### **A. Referral**

Anyone may refer a student, student organization, or student group suspected of violating this *Code* to the Office of Student Conduct. Written referrals are preferred. The Office of Student Conduct will review all referrals for reasonable cause; this means that the Office will review the allegations to determine whether there is evidence which, if true, would amount to conduct in violation of the *Code*. If reasonable cause is established, the Complainant should expect to be a participant and provide pertinent information in any future proceedings. In the absence of a determination that there is reasonable cause to proceed, the case may be dismissed.

There are no time restrictions on reporting potential *Code* violations to the Office of Student Conduct. However, individuals are encouraged to report incidents as soon as they occur so that witnesses can be identified and important information and documents preserved, in the event there is a reasonable cause determination and the Office determines to move forward.

A Complainant may remain anonymous; however, anonymity may limit the University's ability to investigate and respond to a complaint. Retaliation against anyone for reporting an alleged violation of this *Code* is strictly prohibited and persons who retaliate will be considered for further disciplinary action.

### **B. Interim Measures**

Based on the nature and circumstances of the referral, the Director of Student Conduct, in consultation with appropriate University administrators, may authorize interim measures to ensure the safety and well-being of the parties and others in the University community, as appropriate.

1. Interim Suspension: The Director of Student Conduct may suspend a student for an interim period pending resolution of disciplinary proceedings. This interim suspension may become effective immediately without prior notice whenever there is evidence that the continued presence of the student in the University community poses a significant threat to themselves or others, or to the stability and continuation of normal University operations. The student will be offered an opportunity to meet



with the Director of Student Conduct to review the reliability of the information within five (5) business days from the effective date of the interim suspension. However, there is no guarantee that the student will be permitted to return to campus.

2. Cease and Desist: A cease and desist notice may be issued to student organizations or student groups whose continued operation poses a threat to the health and safety of the University community. Directives to cease and desist may be effective immediately without prior notice if there is evidence that the continued presence and operation of the student organization or student group poses a substantial threat to the health and safety of their members or others in the community (e.g., hazing allegation).
3. No Contact Directives: No Contact Directives are effective immediately without prior notice whenever there is evidence that the continued interaction of the student with other particular members of the University community poses a substantial threat to themselves or others, or to the stability and continuation of normal University operations. A No Contact Directive applies to both the Respondent and Complainant and prohibits contact between the two by any means.

### **C. Preliminary Interview**

After establishing reasonable cause, the Office of Student Conduct or the Office of Rights & Responsibilities will contact the Respondent and request that they attend a Preliminary Interview. The purpose of the Preliminary Interview is to review the allegations with the Respondent and to assist the Respondent in understanding the student conduct process. Respondents may discuss the alleged incident during the Preliminary Interview; however, they are not required to do so. Relevant information shared in this meeting may become part of the case file for future proceedings.

The officers, leaders, or any identifiable spokespersons for the student group or student organization may be directed by the Director of Student Conduct to act on the group or organization's behalf as the Respondent.

The Director of Student Conduct may initiate, defer, or dismiss disciplinary charges against a Respondent regardless of whether they choose to attend or discuss the alleged incident during the Preliminary Interview. A deferral of disciplinary proceedings may not exceed a period of 90 days.

### **D. Resolution Procedures**

Staff members in the Office of Student Conduct will review referrals to determine whether the alleged misconduct might result in suspension or expulsion from the University or University housing termination. Alleged misconduct which results in or could have foreseeably resulted in significant injury to persons or damage to property, or which otherwise poses a substantial threat to the stability and continuation of normal

University or University-sponsored activities, may result in a student's suspension or expulsion from the University or University housing termination. Students who face potential suspension or expulsion from the University or University housing termination have the right to a hearing before the appropriate conduct board, or may waive their right to a student conduct hearing and proceed to have their case resolved in a Disciplinary Conference. Respondents who waive their right to a hearing before a Student Conduct Board and opt for a Disciplinary Conference are subject to the full range of sanctions and also waive their right to an appeal.

Respondents do not have a right to a hearing before an appropriate conduct board in cases that do not have the potential to result in a student's suspension or expulsion from the University. Such cases are resolved in a Disciplinary Conference.

### 1. Disciplinary Conference

A Disciplinary Conference is a resolution meeting between the Respondent and the designee(s) assigned by the Director of Student Conduct who is (are) deciding the case. Respondents participating in Disciplinary Conferences receive the following procedural protections:

- a) Written notice of the charges at least three (3) days prior to the conference;
- b) Reasonable access to the case file prior to and during the conference;
- c) An opportunity to respond to the allegations and bring forward any evidence, witnesses, or information on their behalf; and
- d) The option to be accompanied by an Advocate or Advisor of their choosing as outlined in the section titled "Role of Advocate and Advisor."

The Director of Student Conduct may refer complex or contested cases to a Disciplinary Conference Board for resolution. A Disciplinary Conference Board consists of two students from the University Student Judiciary and a staff member from the Office of Student Conduct.

### 2. Student Conduct Boards and the Hearing Process

In Student Conduct Board hearings, a designated panel of board members hears a case, determines facts, renders a decision, and recommends sanctions to the Office of Student Conduct.

#### a) *University Student Judiciary Boards*

Students play an integral role in the student disciplinary process. The University Student Judiciary is a diverse group of students specifically trained in the *Code* and matters related to the University's Student Conduct Board process, and operates under the direction of the Office of Student Conduct. Students are selected to assume positions of responsibility in the University Student Judiciary for the express purpose of providing student perspective as a part of the student conduct process. Final authority in disciplinary matters, however, is

vested in the University administration and in the Board of Regents. Students selected for Student Conduct Boards are selected according to procedures developed by the Director of Student Conduct.

- 1) Resident Board – is a panel of five students from the University Student Judiciary which hears cases involving alleged violations of the *Code* when the incident occurs in or around the residence halls and/or on-campus University-affiliated housing owned by, leased from, operated in cooperation with, or supervised by the University.
- 2) Central Board – is a panel of five students of the University Student Judiciary which hears cases involving violations of this *Code* which are not referred to Resident Boards or resolved in Disciplinary Conferences.
- 3) Ad-Hoc Board – is a panel appointed at the discretion of the Director of Student Conduct when a Resident Board or the Central Board is unable to convene in a timely manner. An Ad-Hoc Board shall be comprised of three members, including at least one student.

All Student Conduct Board hearings, with the exception of an Ad-Hoc Board hearing, are facilitated by a Presiding Officer. The Presiding Officer is a non-voting member of the Board whose role is to exercise control over the proceedings for the purpose of time management and an orderly completion of the hearing. The Presiding Officer may be a trained member of the University Student Judiciary or a staff designee as determined by the Director of Student Conduct.

All Student Conduct Boards may be advised by a University staff member as designated by the Director of Student Conduct. A Board Advisor is a non-voting member of the Board and has all the privileges of Board members, including the ability to comment on questions of procedure and on the relevance of evidence, and will otherwise assist in the administration of the hearing.

University Student Judiciary members charged with a violation of this *Code*, a University policy, or with a criminal offense may be suspended from their University Student Judiciary positions by the Director of Student Conduct while charges are pending. Students found responsible for *Code* violations or convicted of criminal offenses may be removed from further participation in the University Student Judiciary by the Director. Additional grounds and procedures for removal may also be set forth in the bylaws of the University Student Judiciary.

Community Advocates are University community members who are trained to assist or represent the Complainant and present disciplinary cases at Student Conduct Board hearings. Their responsibilities include preparing a formal charge for alleged violations of the *Code* on behalf of the University community, providing brief opening and closing statements, presenting

evidence, and other duties as requested by the Student Conduct Board. Community Advocates perform their responsibilities under the oversight of a Campus Advocate designated by the Office of Student Conduct.

In all Student Conduct Board hearings, the burden of proof rests upon the Complainant, Campus Advocate, or Community Advocate to establish that it is more likely than not that a Respondent committed a violation of this *Code*.

*b) Hearing Procedures*

Written notice of the specific charges and a hearing date are provided to the Respondent at least five (5) business days in advance of the hearing. Respondents will have reasonable access to their case file maintained in the Office of Student Conduct prior to their hearing. Hearing dates are scheduled in consultation with the parties whenever possible.

Respondents who fail to appear at a hearing after proper notice will have a plea of “no contest” to the charges against them entered into the record on their behalf. A decision may be made without the participation or presence of the Respondent at a hearing.

All hearings are closed to the public. Requests for exceptions must be approved at least two (2) business days in advance of the hearing by the Director of Student Conduct.

Hearings may be recorded or transcribed by the Office of Student Conduct, and no other recordings will be permitted. Recordings and transcripts are maintained in the Office of Student Conduct for the purpose of permitting a review by appellate bodies and by staff members in the Office of Student Conduct.

Prior to the start of a hearing, any party may challenge a Student Conduct Board member based on a potential conflict of interest. Board members may be disqualified due to a conflict of interest upon majority vote of the remaining members of the Board conducted by secret ballot, or by the decision of the Director of Student Conduct.

Formal rules of evidence are not applicable to Student Conduct Board proceedings. The Presiding Officer of each Student Conduct Board shall admit all matters into evidence which reasonable persons would accept as relevant, significant, and important to the issues being decided in the case. Unnecessarily repetitious, irrelevant, or prejudicial evidence may be excluded at the discretion of the Presiding Officer.

Both parties will be provided an opportunity to question witnesses who testify at hearings.

All parties and witnesses will be excluded during Student Conduct Board deliberations. The parties will be informed when a determination of responsibility has been made, and will be given an opportunity to submit evidence or make statements concerning appropriate sanctions. At this time, character witness statements or letters of reference may be provided to the Student Conduct Board. The Student Conduct Board shall hold a separate session to review sanction recommendations, during which it may consider aggravating and mitigating factors. The past disciplinary record of a student shall not be provided to the Student Conduct Board prior to a determination of responsibility.

Final decisions of all Student Conduct Boards shall be by a majority vote of the members present and voting. A tie vote on a determination of responsibility for a *Code* violation will result in a finding of “not responsible.”

Final decisions of all Student Conduct Boards, except Disciplinary Conference Boards, shall be accompanied by a brief written report.

### 3. Role of Advocate and Advisor

The Respondent may be assisted by an Advocate, who must be a registered, degree-seeking student at the University. The role of the Advocate is limited to:

- a) Making brief opening and closing statements.
- b) Asking relevant questions, which may be directed to witnesses.
- c) Providing confidential advice to the student.
- d) Following a determination of responsibility, the Advocate may make recommendations regarding sanctions, if appropriate.

The Respondent may also choose to be assisted by an Advisor of their choice, including an attorney, at their own initiation and expense. The Advisor is present to provide advice and consultation to the Respondent. If necessary, the Respondent may request a recess in order to speak privately with an Advisor. The Advisor shall not be an active participant in the hearing. The Advisor may not speak for the Respondent, advise the Advocate, serve as a witness, provide evidence in the case, delay, or otherwise interfere with the University’s disciplinary process.

As a general practice, disciplinary proceedings will not be delayed due to the unavailability of an Advocate or Advisor.

### 4. Role of Support Person

Respondents may choose to be supported by a Support Person of their choice to

provide emotional and logistical support. A Support Person shall not be an active participant in the process.

#### 5. Witnesses

The Presiding Officer of any Board may direct a witness to appear before the Board upon the request of any Student Conduct Board member, at the request of either party, or at the request of the Board Advisor. Directives for witnesses to appear must be approved by the Director of Student Conduct. University students and employees are expected to comply unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities.

If the Director of Student Conduct determines that a fair hearing cannot be held without the testimony of a particular witness and after good faith attempts are made to notify the witness, if the witness either fails to or refuses to appear, the hearing will be postponed until the witness agrees to appear or the charges will be dismissed.

Witnesses will be asked to sign an ‘Honesty Statement’ affirming the information they present during the hearing will be truthful and accurate. Students who knowingly provide false information may be charged with a violation under this *Code*.

Prospective witnesses, other than the Complainant and the Respondent, may be excluded from the hearing during the testimony of other witnesses.

Witnesses may expect to be questioned by the Complainant, Respondent, the respective Advocates, and Board members during hearing proceedings.

A witness who is unable to attend the hearing, may submit a signed statement to the Office of Student Conduct prior to the hearing. Statements will not be admitted into evidence unless signed by the witness in the presence of a staff member in the Office of Student Conduct or a person designated by the Director of Student Conduct.

#### **E. Sanctions**

Students found responsible for disciplinary offenses are subject to sanctions. The aims of sanctioning are to protect the campus community, deter future offenses, promote individual accountability, and enhance ethical development. Reasonable efforts are made to educate and support students in reaching their academic and personal goals while fostering a climate of accountability and responsibility for one’s actions. However, the University is not designed nor equipped to rehabilitate or incapacitate persons who pose a substantial threat to themselves or others. The following sanctions may be imposed by the Director of Student Conduct for violations of the *Code of Student Conduct*:

1. Expulsion: permanent separation of the student, student organization, or student group from the University. In the case of individual students, a permanent notation will appear on the student’s transcript. The student will also be barred from

University premises. (Expulsion requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred, or withheld.)

2. Suspension: separation of the student, student organization, or student group from the University for a specified period of time. In the case of individual students, a permanent notation will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises during the period of suspension. Suspended time will not count against any time limits required by 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.)
3. Disciplinary Probation: the student is prohibited from representing the University in any extracurricular activity or from running for or holding office in any student or University organization. Additional restrictions or conditions may also be imposed.
4. Disciplinary Reprimand: warning to the student that further misconduct may result in more severe disciplinary action.
5. Educational Sanctions: may be imposed in addition to those specified above with the intent of providing the student with learning, assistive, or growth opportunities. Alcohol or other drug education, research or reflective assignments, community service, values/ethics-based activities, or other sanctions may be assigned.
6. Other Sanctions: other sanctions may be imposed in addition to those specified above. For example, students may be subject to University housing termination 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. Students may be required to pay fines or to make payments to the University or to other persons, groups, or organizations as restitution for damages incurred as a result of a violation of this *Code*. Student groups or student organizations may be subject to social moratorium (prohibited from hosting, sponsoring, or attending events where alcohol is present), or other relevant restrictions and sanctions as determined by the Director of Student Conduct.

Repeated or aggravated violations of any section of this *Code* may also result in expulsion or suspension or in the imposition of lesser sanctions as deemed appropriate.

Any decision to impose a sanction less than suspension or expulsion for event-related misconduct 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.



## **F. Appeals**

The Respondent may appeal both a finding of responsibility and the sanction resulting from a Student Conduct Board hearing. The scope of the appeal is limited to the grounds outlined below. Mere dissatisfaction with the decision and sanction is not a valid basis for appeal.

An appeal must be submitted in writing within five (5) business days from the date of the letter providing notice of the outcome. At the discretion of the Director of Student Conduct, extensions may be granted with written permission in extenuating circumstances. If an appeal is received by the Office of Student Conduct, the Campus Advocate will be notified and given an opportunity to respond. Responses shall be submitted directly to the Office of Student Conduct.

Appeals of decisions resulting in suspension or expulsion will be decided by the University Senate Student Conduct Committee Appellate Body, which is comprised of three members from the Student Conduct Committee including at least one student. Appeals of decisions resulting in sanctions other than suspension or expulsion will be decided by the Appellate Board, which is a branch of the University Student Judiciary and is comprised of students.

If the Respondent does not submit an appeal, the decision and sanction are final after five (5) business days from the date of the letter providing notice of the outcome. Appeals submitted after five (5) business days shall be denied. The Director of Student Conduct has the discretion to defer the imposition of sanctions pending any appeal.

Grounds for an appeal shall be limited to:

1. Substantial Procedural Error

Procedural errors or errors in interpretation of University policy that were so substantial as to effectively deny a Respondent notice or a fair opportunity to be heard. Deviations from procedures that were not so substantial as to deny a Respondent notice or a fair opportunity to be heard will not be a basis for granting an appeal.

2. Disproportionate Sanction

The sanction is substantially disproportionate to the offense, which means it is far in excess of what is reasonable given the facts or the circumstances of the violation.

3. Arbitrary and Capricious

An arbitrary and capricious decision is a decision without a rational basis or that is not supported by any evidence in the case.

4. New Evidence

New and significant relevant information has become available which a reasonably diligent person could not have discovered before or during the original hearing.

When the basis of the appeal is new evidence, the appellate body will determine whether the information is new and was unavailable at the time of the hearing. If the appellate body determines that the information is not new and was available at the time, the appeal will be denied. If the information is determined to be new and unavailable at the time of the hearing, the appellate body will consider whether the new information could have changed the outcome of the original hearing. If it is determined that the outcome could have been impacted by the new evidence, the case will be sent back to the original hearing board for further review.

Appeals are not intended to allow for a second review of the facts of the case and determination of whether there was a violation. A review of the matter will be prompt and narrowly tailored to the stated grounds for appeal. In most cases, appeals are confined to a review of the written record and the relevant documentation regarding the grounds for appeal. In all cases, deference shall be given to the determinations of the lower board.

The appellate body will consider the appeal and may:

1. Affirm the Decision and the sanction imposed;
2. Affirm the Decision and reduce, but not eliminate, the sanction;
3. Remand the case to a new hearing board, if there were procedural or interpretation errors;
4. Remand the case to the original hearing board in accordance with procedures outlined under “New Evidence”; or
5. Dismiss the case if the decision is determined to be arbitrary and capricious.

Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct. Decisions of the Senate Student Conduct Committee Appellate Body shall be recommendations to the Vice President for Student Affairs. Decisions altering the determinations of all hearing boards and the Senate Student Conduct Committee Appellate Body shall be accompanied by a brief written opinion.

## **G. Disciplinary Records**

Students, student groups, and student organizations found responsible for violations of this *Code* will have a disciplinary record. Disciplinary records are maintained by the Office of Student Conduct for a period of three (3) years from the date of the letter providing notice of final disciplinary action. Disciplinary records may be retained for longer periods of time or permanently, if specified in the sanction. Disciplinary records of students, student groups, or student organizations with a sanction of suspension or expulsion will be retained permanently unless otherwise specified.

Students may petition the Office of Student Conduct to void their disciplinary record early, for good cause. Factors to be considered in review of such petitions shall include:

1. the present demeanor of the Respondent.
2. the conduct of the Respondent subsequent to the violation.
3. the nature of the violation and the severity of any damage, injury, or harm resulting from it.

Denials of petitions to void disciplinary records can be appealed to the Senate Student Conduct Committee Appellate Body, which will consider the appeal using the grounds for appeal outlined in Part IV.F.3. Such an appeal must be submitted in writing within five (5) business days from the date of the letter providing notice of the original decision. Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.

## Appendix 1 - Current Code of Student Conduct

### 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; May 9, 2013; (Technical amendments approved by the President September 2, 2015)

This Code does not apply to matters of student academic integrity. The policy and procedures applicable to student academic integrity is III-1.00(A) University of Maryland Code of Academic Integrity at <http://www.president.umd.edu/policies/2014-iii-100a.html>.

This Code does not apply to student sexual misconduct. The policy and procedures applicable to student sexual misconduct is VI-1.60(A) University of Maryland Sexual Misconduct Policy & Procedures at <http://www.president.umd.edu/policies/2014-VI-160A.html>.

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* 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**

10. The following conduct is subject to disciplinary action:
  - (a) Intentionally or recklessly causing physical harm to any person, 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.
  - (c) Intentionally initiating or causing to be initiated any false report, warning or threat of fire, explosion or other emergency.
  - (d) Off-campus conduct which constitutes a criminal offense as defined by state or federal law, resulting in conviction. 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 safety or well-being of the campus or campus community.
  - (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.
  - (f) Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code*.

- (g) Intentionally or recklessly misusing or damaging fire safety equipment.
- (h) Unauthorized distribution or possession for purposes of distribution of any controlled substance or illegal drug.<sup>11</sup>
- (i) Use or possession of any controlled substance or illegal drug.<sup>12\*\*\*</sup>
- (j) Intentionally furnishing false information to the University.
- (k) Making, possessing, using any forged, altered, or falsified instrument of identification; making, possessing, or using any forged, altered, or falsified University document.
- (l) Intentionally and substantially interfering with the freedom of expression of others.<sup>13</sup>
- (m) Theft of property or of services; knowing possession of stolen property.
- (n) Intentionally or recklessly destroying or damaging the property of others.
- (o) Engaging in disorderly or disruptive conduct which interferes with the activities of others, including studying, teaching, research, and University administration.\*
- (p) Failure to comply with the directions of University officials, including campus police officers, acting in performance of their duties.
- (q) Violation of published University regulations or policies.<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.
- (r) 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.\*\*\*
- (s) 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 (h) 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 (i) through (m) 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(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.

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>
  - (j) Administration of duties set forth in VI-1.60(A) University of Maryland Sexual

Misconduct Policy & Procedures as related to allegations of disciplinary misconduct by students.

## 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 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 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 and/or drug 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**

33. The burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence.<sup>29</sup>

### **DISCIPLINARY CONFERENCES**<sup>30</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>31</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>32</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>33</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>34</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(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>35</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>36</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>37</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>38</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>39</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>40</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 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 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>41</sup> or individually responsible when violations of this *Code* by those associated with<sup>42</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>43</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>44</sup> may be appealed by the respondent to the Senate Committee on Student Conduct. 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>45</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>46</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>47</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 49 and 49(b).
  - (d) Dismiss the case, in accordance with Parts 49 and 49(c).
49. Deference shall be given to the determinations of lower boards.<sup>48</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>49</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>50</sup>
  - (d) Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct.<sup>51</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>52</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>53</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>54</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 49 and 49(c). The requirements for appeals as set forth in Part 45 and 46 shall be applicable.<sup>55</sup>
54. Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.<sup>56</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 Code* 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 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. 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(l) 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 University policies, procedures and regulations is available at <http://www.umd.edu>.
  15. This Part and Parts 13 and 14 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 19 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 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 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. "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).



30. The hearing procedures specified at Part 36 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).*

31. 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.
32. Determinations made in accordance with Parts 34 and 35 are not appealable.
33. 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.
34. 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.
35. 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).

36. Testimony containing hearsay may be heard, if relevant. A final determination should not be based on hearsay alone.
37. Every statement or assertion need not be proven. For example, board members may take notice that many students commute to the University.
38. 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.
39. 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.
40. 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.

41. 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.
42. 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.
43. 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.

44. "Suspension" includes deferred suspension but not interim suspension or suspension which is withheld. See Annotation 6.
45. Students left with a disciplinary record after a disciplinary conference may request that their record be voided, in accordance with Part 52. Denials may be appealed, pursuant to Part 53.
46. 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.
47. 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.
48. 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.

49. 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.
50. 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).
51. See Annotation 19.

52. Voided files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record.
53. Disciplinary records may be reported to third parties, in accordance with University regulations and applicable state and federal law.
54. Void records shall be treated in the manner set forth in Annotation 56.
55. The scope of review shall be limited to the factors specified at Part 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 52(c), it is to be assumed that the violation occurred and that the respondent was responsible for it.
56. 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.

Proposed Prohibited Conduct Language  
Text in yellow shows rewordings/changes to current *Code* language  
Text in green shows proposed additions to UMD's Prohibited Conduct  
Text in grey shows language from current *Code* that has not been significantly changed

### III. PROHIBITED CONDUCT

This list of prohibited conduct is provided to inform students, student groups, and student organizations of behaviors that are not permitted. The list should be read broadly and is not designed to define misconduct in exhaustive terms. Attempts to commit acts prohibited by this *Code* may be sanctioned to the same extent as completed violations. Any violation of the *Code* that is motivated by consideration of a status protected from discriminatory treatment under the University's Non-Discrimination Policy will be considered an aggravated violation, and may subject the student, student group, or student organization to a more severe sanction than would be imposed in the absence of such motivation.

#### A. Offenses Against Persons

1. Intentionally or recklessly causing physical harm to any person, or intentionally or recklessly causing reasonable apprehension of such harm.
2. Engaging in hazing activities as prohibited by the University's *Policy and Procedures on Hazing*.
3. Intentionally and substantially interfering with the lawful freedom of expression of others. (Demonstrations, rallies, leafletting, and equivalent activity are addressed by the University Guidelines for Demonstrations and Leafletting.)

#### B. Alcohol and Other Drug Offenses

"Controlled substance" and "illegal drugs" are defined by Maryland law.

1. Unauthorized distribution of any controlled substance or illegal drug, or the production, manufacture, or possession of any controlled substance or illegal drug for purposes of unauthorized distribution.
2. Unauthorized use, production, manufacture, or possession of any controlled substance or illegal drug.
3. Providing alcohol or alcoholic beverages to a person under the legal age of consumption or possession.
4. The illegal or unauthorized consumption, possession, or sale of alcohol or alcoholic beverages.
5. Operating a motor vehicle while intoxicated or impaired by alcohol or other drugs.

#### C. Property Offenses

1. Theft of property, services, or resources, or the unauthorized use of services to which one is not entitled.
2. Knowingly possessing stolen property.
3. Intentionally or recklessly destroying, damaging, vandalizing, tampering with, or defacing University property or the property of others.
4. Trespassing on or the unauthorized use of University facilities, property, or resources.

#### D. Community Offenses

1. Unauthorized on-campus or illegal off-campus use, possession, or storage of any

- weapon or explosive. The term “weapon” includes any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, and knives with blades five (5) or more inches in length.
2. Intentionally initiating or causing any false report, warning, or threat of fire, explosion or other emergency.
  3. Rioting, assault, theft, vandalism, fire setting, or other serious misconduct i) related to a University-sponsored event, occurring on- or off-campus, that results in harm to persons or property; or ii) which 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.
  4. Engaging in disorderly or disruptive action that interferes with University or community activities, including but not limited to studying, teaching, research, and University administration.
  5. Intentionally or recklessly misusing or damaging fire safety equipment.
  6. Unauthorized setting of fires on University property.
  7. Unauthorized use or possession of fireworks.
  8. Public urination or defecation.

#### **E. Offenses Against University Operations**

1. Intentionally furnishing false information to the University.
2. Making, possessing, providing, or using any forged, altered, or falsified University document.
3. Failure to comply with a directive of University officials, including law enforcement officials, acting in performance of their duties.
4. Knowingly violating the terms of any disciplinary sanction imposed in accordance with this Code or by the Office of Student Conduct in accordance with other University policies.

#### **F. Other Offenses**

1. Conviction, a plea of no contest, acceptance of responsibility or acceptance of sanctions in state or federal court for a crime (other than a minor traffic offense) not otherwise prohibited by this Code.
2. Making, possessing, providing, or using any forged, altered, or falsified instrument of identification.
3. Violation of published University regulations or policies, including but not limited to, regulations or policies addressing residence hall rules, use of vehicles, campus demonstrations, misuse of identification cards, acceptable use of technology resources, non-discrimination, and access to University resources.

## Appendix 3 - Relevant Code Provisions at Peer Institutions

Group	Institution	Standard of Evidence	Attorney Involvement	Fire setting/safety	Public Urination	Prohibited Conduct		
						Criminal Conviction	Trespassing / Unauthorized use of facilities	DUI
Big 10	Indiana University - Bloomington	Preponderance of the evidence	Can have advisor or support person but they may not participate in the proceeding	Unauthorized setting of fires on university property; unauthorized use of or interference with fire equipment and emergency personnel.	Urinating in public can result in a criminal charge for public nudity, whether you opt to do so in an alley, parking lot, or public fountain. Penalties are harsher in parks and schoolyards. Likewise, whether you're doing a private act in public or showing off your body, you may be arrested for the more-serious charge of "public indecency."	A violation of any Indiana of federal criminal law	Unauthorized entry, use, or occupancy of university facilities	A person convicted of driving while intoxicated may be punished by fine, be jailed, and lose his or her driver's license.
Big 10	Michigan State University	Preponderance of the evidence	Attorney can serve as an advisor but cannot speak unless chair of the hearing body grants the attorney or advisor permission to have limited voice; attorneys can only be advisor if it can be demonstrated that criminal charges are pending	Tamper with or misuse University fire or safety equipment, including, but not necessarily limited to fire extinguishers, fire hoses and alarm systems	No person shall urinate or defecate in any public place or upon any public or private property, except in a sanitary facility intended for such activities.		Cannot enter or remain in another individual's place of residence or work without permission of that individual or without proper authorization; cannot without proper authorization enter or remain in any University building or on University property	
Big 10	Northwestern University	Preponderance of the evidence	Advisor may not function as legal counsel		It shall be unlawful for any person to urinate or defecate in or on a public street, alley, sidewalk, yard, park, building, structure, plaza, public utility right-of-way, or other public place; or in public view		Whoever enters upon the land or building or any part thereof of another after receiving, immediately prior to such entry, notice from the owner or occupant that such entrance is forbidden, or remains upon the land or building or any part thereof of another after receiving notice from the owner or occupant to depart shall be fined	Driving under the influence of alcohol or while intoxicated
Big 10	Ohio State University	Preponderance of the evidence	Attorney can serve as an advisor but cannot represent the student		Public urination or defecation. Urination or defecation in a place such as a sidewalk, street, park, alley or yard, residence hall space, or on any other place or physical property that is not intended for use as a restroom.			Any student involved in a DUI/OVI may be subject to University disciplinary action under the code of Student conduct, including the possibility of suspension or dismissal from the University.
Big 10	Penn State University - University Park	Preponderance of the evidence		Tampering with fire or other safety equipment or setting unauthorized fires. Exhibiting behaviors that risk health and safety of self or others during a fire related incident. Burning candles, incense or other items in the Residence Halls or other University facilities, whether attended or unattended.	It is illegal to urinate or defecate in/on a public area, on private property where the public is admitted or on private property without the consent of the owner. It is illegal to urinate or defecate in any public place other than in an appropriate sanitary facility or fail to clean, remove, or dispose of it properly. Fines include \$750 for the first offense and \$1,000 for any subsequent offense plus court costs for each violation.			If you have a first-time violation for excessive consumption or driving while impaired, at a minimum, you will be placed on conduct probation. You will also be required by Penn state to attend the Basics program which has a \$250 fee. A letter will also be sent home as part of our parental notification policy for any alcohol or drug violation.
Big 10	Purdue University	Preponderance of the evidence	Attorney can participate as an advisor but they are not allowed to speak or participate in the disciplinary proceeding				Unauthorized entry or access to, or unauthorized use or occupancy of, any University property including without limitation lands, buildings, structures, telecommunications, computer or data processing equipment, programs, systems, or software, or other facilities	
Big 10	Rutgers University - New Brunswick	Preponderance of the evidence	Attorney can participate as support person but cannot participate in the hearing	Intentionally or recklessly starting a fire (does not include University approved programs including fire, e.g., bonfires.); Misusing fire safety equipment			Unauthorized entry into, use of, or misuse of University property, including computers and data and voice communication networks.	



Big 10	University of Illinois	More likely than not / Preponderance of the evidence	Students are expected to speak for themselves in all university disciplinary proceedings. Although a student respondent is entitled to the presence of an advisor of their choosing, the role of that advisor is limited.	The unauthorized use, abuse, or interference with fire protection equipment, firefighting personnel, or warning devices may result in death, injury, or substantial property damage. It is a violation of Illinois criminal law to willfully or maliciously cut, injure, damage, tamper with, or destroy any fire hydrant, fire hose, fire engine, or other public or private firefighting equipment. A violation of any federal, state, or local law concerning fire protection equipment or firefighting personnel may result in suspension or dismissal from the University.	Indecent exposure of the body, including, but not limited to urination or defecation in public.		Unauthorized entry to or use of University, public, or private premises.	
Big 10	University of Iowa	Preponderance of the evidence	Attorney can call witnesses, ask clarifying procedural questions, lodge objections to witnesses, evidence, and other issues, and can consult with the respondent, but otherwise may not speak unless requested by the adjudicator	Disruption of Safety: Tampering with or improper activation of a fire alarm. Arson/fire violations: Intentional setting of fires in any University building or on the campus without proper authority; unauthorized tampering with or activation of fire prevention equipment in any University Building or on the campus.			Trespassing: Unauthorized entry into or occupation of any University room, building, or area of the campus, including such entry or occupation at any unauthorized time, or any unauthorized or improper use of any University property, equipment, or facilities. Unauthorized possession, use, or duplication of University keys, cards, codes, or other methods of access also violates this rule.	
Big 10	University of Michigan - Ann Arbor	Clear and convincing	Attorney can advise but cannot participate in the meeting	Tampering with fire or other safety equipment or setting unauthorized fires	It is illegal to urinate in any public place not designated for that purpose including alley spaces. A person caught urinating in public may be charged with indecent exposure.		Officers may use their discretion to issue a trespass warning if an individual: a. Committed a crime while on campus or is suspected of committing crimes against persons or property; b. Refuses or fails to comply with established University rules; c. Disrupts the operations and lawful functions of the University; or d. Demonstrates a risk of physical harm or injury to others or property.	Individuals can be arrested and/or convicted of operating a vehicle while intoxicated with a blood alcohol concentration (BAC) level at .08 or higher. If a student is under 21, there is a "zero tolerance" law in the state of Michigan and any blood alcohol level of .01 or higher can lead to a minor in possession (MIP) citation as well as being cited for operating a vehicle while intoxicated, if applicable. This is in addition to suspension of driving privileges.
Big 10	University of Minnesota - Twin Cities	Preponderance of the evidence		Unauthorized use of University facilities or services means wrongfully using University properties or facilities; misusing, altering, or damaging fire-fighting equipment, safety devices, or other emergency equipment or interfering with the performance of those specifically charged to carry out emergency services...	Disorderly conduct-applies to behavior or language that is offensive, obscene, abusive, or noisy and may alarm, anger or disturb others. It applies to public and private places and includes behavior such as fighting and public urination.		Accessing without authorization University property, facilities, services, or information systems, or obtaining or providing to another person the means of such unauthorized access, including, but not limited to, using or providing without authorization keys, access cards, or access codes. Wrongfully using University properties or facilities; ... or acting to obtain fraudulently - through deceit, unauthorized procedures, bad checks, or misrepresentation - goods, quarters, services, or funds from University departments or students	

Big 10	University of Nebraska - Lincoln	Greater weight of the evidence	Attorney can advise but cannot participate in the meeting	Turning in false fire alarm or bomb threat or misusing fire safety equipment on University Premises, including any student housing unit is a Student Code violation. Failing to report a fire or any other extremely dangerous condition when known or recognized on campus.	Conduct that is disorderly or indecent, including public urination	Violation of any federal, state or local law.	Unauthorized possession, duplication or use of keys and/or keycards to any University premises or unauthorized entry to or use of University premises.	
Big 10	University of Wisconsin - Madison	Clear and convincing for susp/exp; Preponderance for all others	Attorney can be a support person but cannot speak unless the student has been charged with a crime in connection with the same conduct ..., or the recommended sanction is suspension or expulsion, in which an attorney may question adverse witnesses, present information and witnesses, and speak on behalf of the student.	Conduct that violates ch. UWS 18, including, but not limited to provisions regulating fire safety, theft, and dangerous weapons.				
USM	Bowie State University	Preponderance of the evidence	Attorneys are allowed in the hearing but may not in any way represent the student	Violation of Fire and Other Campus Safety Regulations These include, but are not limited to: (a) setting unauthorized fires; (b) turning in false fire alarms; (c) possession, use or threatened use of fireworks, bombs or explosive devices of any type; and (d) failure to comply with evacuation procedures.			Entry of Restricted Areas Unauthorized entry or attempted entry of students into university buildings, rooms, or facilities, including residence halls during hours when such buildings or facilities are locked or closed to the student body and the public is prohibited.	
USM	Coppin State University	Preponderance of the evidence	Both the complainant and accused can have an attorney as an advisor, but they cannot cross examine witnesses, present evidence, or make opening and closing statements				Unauthorized possession, duplication, or use of keys to any University premises or unauthorized entry to or use of University premises.	
USM	Frostburg State University		Legal counsel can serve a student's advisor but may not participate in the hearing	The University and the state of Maryland prohibit the tampering with, removal of, setting off of or damage to fire equipment or alarm systems in any university building when no fire or immediate danger of fire exists.			Unauthorized entry or attempted entry of students into university buildings, rooms, or facilities, including residence halls during hours when such buildings, rooms or facilities are locked or closed or posted restricted access to the student body and the public, is prohibited.	
USM	Salisbury University	Preponderance of the evidence	Attorney may be present as an advisor but cannot participate in the hearing	Breaching campus fire safety or security through: i. Setting a fire, making a bomb threat, causing or creating a false alarm, or other such intentional or reckless conduct that causes harm or reasonable fear of harm to persons or property. ... iii. Misusing, tampering or damaging safety equipment or fire safety equipment iv. Failure to immediately vacate University buildings during or after an alarm.	Conduct that infringes upon the rights of other individuals is prohibited. Such conduct includes, but is not limited to, acts of destruction and violence, disorderly conduct, public drunkenness, public urination, obscenity, publishing demeaning images of others, nudity and sexual activity in public places.		Unauthorized access or entry to, into, or onto any physical property owned or operated by the University or any private or restricted property including, but not limited to, unauthorized access into University computers, computer systems or other computers, and buildings, construction sites, vehicles and athletic fields.	No person may operate a vehicle, bicycle, scooter, skateboard, etc. under the influence of alcohol.
USM	Towson University	Preponderance of the evidence	Advisor may not be or act as legal counsel, unless concurrent criminal charges have been filed				Unauthorized presence in institutional facilities	

USM	University of Baltimore			Tampering, misuse and/or damage of fire extinguishers, alarms or other safety equipment. Intentionally or recklessly interfering with fire, police, or emergency services and/or intentionally initiating or causing to be initiated any false report, warning, threat of fire, explosion, or other emergency.			Trespassing and/or unauthorized entry into or use of university facilities or equipment	
USM	University of Maryland, Baltimore County	More likely than not		a) failure to comply with posted evacuation procedures; b) tampering with fire protection apparatus; ... d) use of open flame devices or combustible materials, including chemicals, which endanger the safety or well being of the University community; e) unauthorized use of, tampering with, or misuse of electrical equipment, burglar alarms, fire exits, or giving false alarms or false reports of fire or emergency; or, f) Fire-setting.			Prohibits a) failure or refusal to leave University Property, or a specific portion thereof, or a University facility when requested by an authorized University official; or b) improper or unauthorized entry into a University building, facility, or campus residence.	
MD	Morgan State University	Preponderance of the evidence		1. Setting fires, intentionally or recklessly misusing or damaging fire safety equipment, including, but not limited to, alarms, heat sensors, smoke detectors, hoses, fire extinguishers, and emergency telephones. 2. Failure to exit any building when a fire alarm has sounded or a building is evacuated.			Trespass or unauthorized entry to any University premises, facility, property or at a University-sponsored event or activity.	
MD	St. Mary's College of Maryland	Preponderance of the evidence		Tampering with, removal of, setting off, or damage to the equipment or alarm systems in any College building when no apparent fire or immediate danger exists			Unauthorized possession or use of keys to any College door or facility, unauthorized operation of any locking mechanism; unauthorized entry to or use of College facilities.	
Peer	University of California, Berkeley	Preponderance of the evidence					Unauthorized entry to, possession of, receipt of, or use of any University services; equipment; resources; or properties, including the University's name, insignia, or seal.	
Peer	University of California, Los Angeles	Preponderance of the evidence						
Peer	University of Massachusetts, Amherst	Preponderance of the evidence		Hazard Creation: The creation of a fire hazard, the improper use of electrical appliances or the improper use or possession of inflammable or hazardous substances.		Any act chargeable as a violation of local, state or federal law may be charged as a violation of a relevant section of the University Code of Student Conduct	Unauthorized presence in or use of University premises, facilities or property.	
Peer	University of North Carolina, Chapel Hill	Clear and convincing		Misusing, removing, tampering with, or otherwise making less effective, equipment (including but not limited to, fire extinguishers, fire alarms, smoke detectors, and emergency call boxes) intended for use in improving or protecting the safety of members of the University community			Trespassing upon housing units, offices, classrooms, laboratories or other facilities or unauthorized intrusion into electronic records owned or managed by the University, an affiliated organization, or another member of the University community.	Operating a motor vehicle: i. while impaired by alcohol, drugs, or other substances, and/or ii. in a reckless manner so as to create a significant threat to members of the University community.

Peer	University of Texas at Austin	Preponderance of the evidence						engages in the improper use, possession, or consumption of alcoholic beverages, including but not limited to underage possession of alcohol, underage consumption of alcohol, providing alcohol to a minor, public intoxication, minor driving under the influence of alcohol, driving while intoxicated;
Peer	University of Vermont	Preponderance of the evidence		Public Order/University Order Offenses: 1) Creating a fire, safety, or health hazard.			Property Offenses: 2) Trespassing upon, forcibly entering, or otherwise proceeding into unauthorized areas of University owned or leased buildings or facilities, their roofs, or the residential space of another without permission.	
Peer	University of Virginia						Unauthorized entry into or occupation of University facilities which are locked, closed to student activities or otherwise restricted as to use	
Peer	University of Washington, Seattle						The unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises is prohibited, as is the unauthorized entry upon or use of university premises or property. Providing keys to an unauthorized person or providing access to an unauthorized person	
Peer	Virginia Tech University			Misuse of firefighting equipment, including tampering, removing, or discharging a fire extinguisher or any other fire emergency equipment except when there is a real need for such equipment. 1. Unauthorized Burning – Unauthorized burning of any material in any university building or on university property, including arson.	Public Urination/Nudity Any act or attempted act of public nudity, including but not limited to streaking, mooning, and urinating in public.		Unauthorized Entry Entering, attempting to enter, or being present in buildings, residence(s), public or private property and/or facilities, or other areas without proper authority.	



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To: Ed Kenny, Chair, Senate Student Conduct Committee

From: Adam Berger, Chair, Senate Student Affairs Committee

Date: March 24, 2017

Re: Request for Feedback on Proposed Changes to the *Code of Student Conduct*

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On behalf of the Student Affairs Committee (SAC), I would like to thank you and your colleagues for speaking with the committee at its meeting on February 3. Committee members found your overview and answers very informative, and they grounded both the SAC's consideration of the proposed changes and its efforts to gather input from other students. In addition to discussing the changes at committee meetings on February 24 and March 15, the SAC worked with ex-officio committee members representing the Student Government Association (SGA) and Graduate Student Government (GSG), who gathered feedback from their respective organizations. That feedback, along with that of SAC members, is provided below. We have organized it using the same general categories provided in your overview. In addition to comments and suggestions, we include specific questions the overview solicited, which will hopefully be of use when it comes time to present your recommendations to the Senate. You will also find minutes from the SAC meeting where the topic was discussed most extensively. Please let me know if there is anything else the SAC can do to help.

### *Standard of Evidence*

- Some committee members expressed concern that lowering the standard of evidence might increase the number of people found responsible. One member asked whether the severity of sanctions would be lessened if more people were found responsible.
- Some committee members questioned whether violations that could result in the most severe penalties should have a higher standard of evidence, given the potential consequences.
- The committee appreciates that disciplinary proceedings are intended to educate, rather than simply punish. Given this goal, many committee members support the greater opportunity for proactive intervention that a revised standard of evidence would allow. The committee found the example of marijuana usage in residence halls was helpful in demonstrating the value of early intervention in certain behaviors that run counter to the educational mission of the University.
- Educating students on both the purpose and nature of conduct proceedings is important, as students who have not participated in the process are likely to have misconceptions. Students should understand that it is misleading to view "preponderance of the evidence" as meaning that 50.1% is sufficient to make a finding. The committee appreciates your explanation that the circumstances of an alleged violation are investigated in their totality and believes that this should be communicated if and when any changes to the *Code* are proposed.
- Should the Student Conduct Committee hold any forums or information sessions, it might be valuable to hear the perspective of a student who has served on a conduct panel. This might alleviate any suspicions that the proposed changes are designed by the University to make it easier to punish

students, or that those hearing conduct cases are eager to find as many students as possible responsible. It could also be valuable to include a student who has experienced the process as a respondent.

### *Role of Attorneys in the Adjudication Process*

- In general, this was the proposed change that elicited the most concern from those consulted. This uneasiness seems largely to be based on misunderstanding of the differences between conduct and legal proceedings. Students do not necessarily understand that “due process” is not the same in a conduct case as in a legal proceeding.
- Multiple individuals consulted by the SAC asked about the relationship and possible interaction between concurrent conduct and legal proceedings. Some were concerned that a respondent’s statements in a disciplinary hearing could be used as evidence in a subsequent legal proceeding.
- As noted above, students would benefit from a better understanding of the general course of a conduct case, its stages, and the individuals involved. This would help students appreciate the disruption that can occur when an attorney speaks for a student.
- Some questioned whether this change would invite lawsuits by the families of students who might not appreciate the aforementioned distinctions between conduct and legal proceedings, and who might believe that due process rights were violated (regardless of the merits of any such lawsuits).
- The anecdotal evidence concerning parents who later regretted involving an attorney in the process was compelling.

### *Changing the Organization of the Prohibited Conduct Section*

- Some expressed appreciation that the University exercises discretion when it comes to the consequences of first-time marijuana violations, and hoped this leniency would continue in any revised *Code*.
- Some were concerned that arranging prohibited conduct by category rather than sanction would confuse students, and perhaps mislead them about the potential severity of the consequences for violations of the *Code*.
- Committee members generally agreed that the least aggressive level of intervention to head off repeat violations should be pursued whenever possible. This supports the principle that conduct proceedings are primarily educational rather than punitive.
- Students inquired whether “offenses against persons” would include hate speech.

### *Making the Language More Accessible to Students, Faculty, and Staff*

- Most individuals consulted strongly support simplifying the *Code*’s language and removing legalistic phrasing and outdated references to case law. Such revisions will make it easier for students to understand the *Code*’s procedures, particularly students who are feeling overwhelmed by the prospect of a conduct proceeding. Removing legalistic language can also emphasize the educational goals of the *Code* and better indicate that its procedures are distinct from any legal proceeding.
- Committee members felt that any revisions to the structure and language of the *Code* should be designed to maximize flexibility and ensure its definitions and procedures can accommodate changing circumstances.

While the committee members and students consulted by the SAC generally supported the changes, several expressed a belief that broader outreach efforts may be necessary, both to educate students on the nature of the proposed changes develop a base of support. Students suggested a town hall or forum could accomplish this.

**Attachments:**

Minutes from the February 3, 2017 meeting of the Senate Student Affairs Committee

**Appendix 5 - RHA Resolutions**

Residence Hall Association  
DJT001S 2017  
March 14, 2017

1 **A Resolution to Support Language and Definition Changes in the Code of Student Conduct**  
2

3 **WHEREAS** the Residence Hall Association (RHA) is the governing body for all on-campus  
4 students at the University of Maryland (UMD), and

5  
6 **WHEREAS** the RHA is guided by its governing documents, and

7  
8 **WHEREAS** the students represented by the RHA must abide by all UMD school policies,  
9 including the Code of Student Conduct, and

10  
11 **WHEREAS** the RHA assisted in creating the Residence Hall Rules, which are jointly  
12 administered by the Office of Student Conduct and Department of Resident Life Rights and  
13 Responsibilities Office, and

14  
15 **WHEREAS** the Code of Student Conduct is written in extremely dated and legalistic language  
16 that makes it hard for students and their families to understand, and

17  
18 **WHEREAS** the proposed changes to the language will increase transparency of the process,  
19 focus on the development and learning of the student, as well as increase the ability to hold  
20 students reasonably and fairly accountable for University policies, and

21  
22 **WHEREAS** the Code of Student Conduct provides a very broad definition of “Prohibited  
23 Conduct” that does not reflect the constantly changing culture of college students and violations  
24 referred to the Office of Student Conduct because they are overly general, which leaves a wide  
25 latitude for interpretation for anyone reviewing its contents, and

26  
27 **WHEREAS** the proposed changes to the definition will create more expansive definitions under  
28 “Prohibited Conduct,” which will make the code less confusing and more consistent,

29  
30 **THEREFORE BE IT RESOLVED** that the RHA supports the proposed changes in the  
31 language of the UMD Code of Student Conduct and the definition of “Prohibited Conduct,” and

32  
33 **BE IT FINALLY RESOLVED** that the RHA continue to work with the Office of Student  
34 Conduct to ensure that student conduct proceedings are administered in a transparent, fair, and  
35 equitable manner.

36  
37 Authored by:  
38 Doron Tadmor  
39 LaPlata Hall Senator  
40 Residence Hall Association

Approved by:  
Steve Chen  
President  
Residence Hall Association



1     **A Resolution to Support the Change from Attorneys as Representatives to Advisors in the**  
2                                                             **Code of Student Conduct**

3  
4     **WHEREAS** the Residence Hall Association (RHA) is the governing body for all on-campus  
5 students at the University of Maryland (UMD), and

6  
7     **WHEREAS** the RHA is guided by its governing documents, and

8  
9     **WHEREAS** the students represented by the RHA must abide by all UMD school policies,  
10 including the Code of Student Conduct, and

11  
12     **WHEREAS** the RHA assisted in creating the Residence Hall Rules, which are jointly  
13 administered by the Office of Student Conduct and Department of Resident Life Rights and  
14 Responsibilities Office, and

15  
16     **WHEREAS** UMD is in the small minority of institutions that allow attorneys to fully participate  
17 as representatives in the Student Conduct Process, and

18  
19     **WHEREAS** the involvement of attorneys causes significant delays in case resolution time and  
20 often reduces the potential for student learning from the disciplinary process, and

21  
22     **WHEREAS** attorney involvement can also lead to undue stress for students going through the  
23 process, financial inequities among students who cannot afford private attorneys, and a focus on  
24 “legal loopholes” rather than student learning, and

25  
26     **WHEREAS** the Code of Academic Integrity and Sexual Misconduct Policy limits attorney roles  
27 to that of an advisor only,

28  
29     **THEREFORE BE IT RESOLVED** that the RHA supports the proposed change to the Code of  
30 Student Conduct to include attorneys as advisors only, and

31  
32     **BE IT FINALLY RESOLVED** that the RHA continue to work with the Office of Student  
33 Conduct to ensure that student conduct proceedings are administered in a transparent, fair, and  
34 equitable manner.


35  
36     Authored by:  
37     Doron Tadmor  
38     LaPlata Hall Senator  
39     Residence Hall Association

Approved by:  
Steve Chen  
President  
Residence Hall Association

**Appendix 6 - Charge from the SEC**



**University Senate  
CHARGE**

<b>Date:</b>	September 27, 2016
<b>To:</b>	Ed Kenny Chair, Student Conduct Committee
<b>From:</b>	Jordan A. Goodman  Chair, University Senate
<b>Subject:</b>	Code of Student Conduct Revision
<b>Senate Document #:</b>	16-17-08
<b>Deadline:</b>	March 31, 2017

The Senate Executive Committee (SEC) requests that the Student Conduct Committee (SCC) review the attached proposal regarding proposed revisions to the University's Code of Student Conduct.

Specifically, we ask that you:

1. Review the University of Maryland, College Park Code of Student Conduct ([V-1.00 \[B\]](#)).
2. Review best practices related to student conduct at peer institutions.
3. Consult with a representative from the Office of Student Conduct.
4. Consult with the Senate Student Affairs Committee.
5. Consider whether revisions to existing policy are necessary.
6. Consult with the University's Office of General Counsel on any proposed recommendations.

We ask that you submit a report to the Senate Office no later than March 31, 2017. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.

Attachment

JAG/rm



## University Senate PROPOSAL FORM

<b>Name:</b>	Andrea Goodwin
<b>Date:</b>	9/12/2016
<b>Title of Proposal:</b>	Code of Student Conduct Revision
<b>Phone Number:</b>	301-314-8204
<b>Email Address:</b>	agoodwin@umd.edu
<b>Campus Address:</b>	2117 Mitchell Building
<b>Unit/Department/College:</b>	Office of Student Conduct
<b>Constituency (faculty, staff, undergraduate, graduate):</b>	Staff
<b>Description of issue/concern/policy in question:</b>	It is the practice of the Office of Student Conduct to conduct a review of the <i>Code of Student Conduct</i> periodically to ensure that we are incorporating and maintaining best practices within the field of student affairs and student conduct at the University of Maryland. Over the past decade, updates have been made to amend the current <i>Code of Student Conduct</i> to reflect policy changes and updates, but it is our determination that a “top-to-bottom” revision should be made to this long-standing document.
<b>Description of action/changes you would like to see implemented and why:</b>	<p>The Office of Student Conduct has begun to gather a multitude of resources to begin this process, including comparison information from peer/aspirational institutions, BIG 10 schools, and University System of Maryland institutions. We are reviewing our annual report data, community conduct issues, and best practices within the field of student conduct to ensure that our revisions meet standards outlined by the Council for the Advancement of Standards in Higher Education (CAS) and those outlined by the Association for Student Conduct Administration (ASCA), NASPA or Student Affairs Administrators in Higher Education (formerly the National Association Student Personnel Administrators), and the American College Personnel Association (ACPA). It is our goal to revise our current <i>Code of Student Conduct</i> to remove some of the legalistic barriers and create a more inclusive, student-centered, and balanced approach to student growth and development through the disciplinary process.</p> <p>Below we share a brief description (although not an exhaustive list) of several concerns with the current <i>Code</i> and hope to implement changes to be in line with best practices in our field which are also in line with University values of fairness, impartiality, and learning:</p> <ol style="list-style-type: none"> <li>1. Create more expansive definitions under “Prohibited Conduct” <ul style="list-style-type: none"> <li>○ Many current definitions under prohibited conduct do not reflect the constantly changing culture of college students and violations referred to the Office of Student Conduct. They are overly general, which leaves a wide latitude for interpretation for anyone reviewing its contents. This can lead to confusion, lack of consistency in</li> </ul> </li> </ol>

enforcement, and an inability to hold students accountable for specific conduct which may not cleanly fall under one of those definitions.

- Ex: *Part 10(r) – 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.*
    - This particular policy does not encompass a realistic description of the behaviors which are typically referred to our office or are in line with local, state, and federal laws. We often review cases of excessive alcohol consumption, possession of open containers (over 21 years of age), and driving under the influence of alcohol, which do not specifically fall under this provision. Additionally, with the increased sales of alcohol from various campus venues, we believe it is imperative to reference more specifically the University’s Alcohol Policy within this framework.
2. Adopt the standard of evidence to be “preponderance of the evidence” as opposed to “clear and convincing”
- In reviewing peer and BIG 10 institutional policies, we find that the University of Maryland is not consistent with this particular standard.
  - ASCA has provided guidance regarding their recommendations for switching to “Preponderance of the Evidence” in line with federal guidance surrounding Sexual Misconduct  
<http://www.theasca.org/files/The%20Preponderance%20of%20Evidence%20Standard.pdf>
  - The University has already adopted the “preponderance of evidence” standard in cases of sexual misconduct, and it would be incumbent upon us to align our university policies with one another in this manner
3. Advisor roles in the Student Conduct Process
- Currently the University of Maryland is one of the small minority of institutions that allow attorneys to fully participate as representatives in the Student Conduct Process.
  - The *Code of Academic Integrity* and *Sexual Misconduct Policy and Procedures* limits attorney roles to that of an advisor only
  - Involvement of attorneys causes significant delays in case resolution time and often removes the educational development of students from the discipline process. This can cause undue stress for students going through the process, financial inequities among students who cannot afford private attorneys, and a focus on “legal loopholes” rather than student learning in the process.
  - We would like to include attorneys as advisors only, similar to the structure as outlined by the *Code of Academic Integrity*, given that we have the unique resource of a free legal resource in the form of Student Legal Aid on campus.
4. Revise the structure of the *Code of Student Conduct*
- The *Code* is written in extremely dated and legalistic language. In keeping with best practices, we would like to change the format of our *Code* to be more easily understood by students and their families. This would increase transparency of our process, focus on the development and learning of the student, as well as increase the ability to hold students reasonably and fairly accountable for University policies.
  - Our proposed structure would have approximately three (3) major components including:
    - Student Rights and Responsibilities
    - Prohibited Conduct

	<ul style="list-style-type: none"> <li>▪ Student Conduct Process and Procedures</li> <li>○ Removal of annotations and unnecessary/outdated information <ul style="list-style-type: none"> <li>▪ The annotations reference various court cases which have formulated the foundations of any code of student conduct however many are outdated and are irrelevant. We instead would incorporate relevant language and references to this information throughout the sections of the <i>Code</i> without them needing to be a separate list of guidelines.</li> </ul> </li> </ul>
<b>Suggestions for how your proposal could be put into practice:</b>	Amend the current Code of Student Conduct to include these changes or redraft a new version.
<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!***




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Date: September 9, 2017

To: Andrea Dragan  
Chair, Student Conduct Committee

From: Daniel Falvey   
Chair, University Senate

Subject: Code of Student Conduct Revision (Senate Document #16-17-08)

The Senate Executive Committee approved an amendment to the charge given to the Student Conduct Committee on the Code of Student Conduct Revision (Senate Document #16-17-08) at its meeting on August 29, 2017. The SEC would like the committee to include the following element into its charge:

1. Consider whether the Code of Student Conduct should include a provision that violations of the Code found to be motivated by bias may result in a more severe sanction.

Please find attached a memo that explains the rationale for this change and suggested language that could be incorporated into the Code.

If you have any questions about the revision to this charge, please contact Reka Montfort in the Senate Office ([reka@umd.edu](mailto:reka@umd.edu) or 301.405.5804)

**Code of Student Conduct Revision ([Senate Doc No 16-17-08](#)) – Addendum**  
**Andrea Goodwin, Director, Office of Student Conduct**

I am proposing that the additional revision noted below be made to the Code of Student Conduct. This language was developed as a result of the climate issues that the University is currently facing but has been a practice in student conduct for a number of years. Dr. Loh also requested that the OSC consider adopting language to clearly inform students that violations of the Code motivated by bias would likely result in more severe sanctions. Given the current charge in the SCC, it makes sense for the SCC to review this language and consider adding it to the Code revisions currently being considered.

I am proposing adding the following language to **Part II B. Student Rights:** "Students will be treated fairly and with dignity and respect without regard to race, color, sex, gender identity or expression, sexual orientation, marital status, age, national origin, political affiliation, physical or mental disability, religion, protected veteran status, genetic information, personal appearance, or any other legally protected status, as outlined in the University's Non-Discrimination Policy."

I am proposing adding the following language to **Part III. Prohibited Conduct:** "Any violation of the *Code* that is motivated by consideration of a status protected from discriminatory treatment under the University's Non-Discrimination Policy will be considered to be an aggravated violation, and may subject the student or student organization to a more severe sanction than would be imposed in the absence of such motivation."

This language should be shared with the SCC for consideration at its next meeting.