

## **Due Process — Student Codes**

This policy implements and is consistent with the requirements set out in *Administrative Regulation — Due Process*. In addition, these procedures should be read in conjunction with all student codes.

### **I. Interim Measures**

#### **A. Circumstances Justifying Interim Measures**

Consistent with state law, in certain circumstances, the Dean of Students or their designee may impose reasonable interim measures, including, but not limited to, adjusting student housing arrangements, temporarily suspending a student, restricting a student from University property, educational opportunities and/or extracurricular activities or limiting operations of a student organization. An interim measure may be imposed to:

- Ensure the safety and well-being of members of the University community or preserve University property;
- Ensure the student's own physical or emotional safety and well-being; or
- Ensure that normal operations of the University are not disrupted.

#### **B. Notice of Interim Measure**

Upon taking such action, the Dean of Students or their designee will:

- Advise the student or student organization of the interim measure in writing. The written notice will include the reasons for the interim measure and the right to an interim measure hearing; and
- Immediately notify the Vice President for Student Success of the interim measure.

An interim measure hearing will be held by the Vice President for Student Success within three (3) business days of the written notice, unless otherwise waived by the respondent. A respondent's waiver of a right to an interim measure hearing does not constitute admission of responsibility.

#### **C. Interim Measure Hearing**

The purpose of the interim measure hearing is to determine whether there is substantial evidence that the respondent poses a risk to the safety of the University community and if the interim measure is appropriate to mitigate the risk. At the

hearing, the respondent has the right to be represented by an attorney. The interim measure hearing will be conducted by the Vice President for Student Success, and the decision to affirm, modify or vacate the interim suspension is the University's final action on the interim suspension. There are no further appeals.

## **II. Formal Hearings**

### **A. Hearing Roles and Responsibilities**

#### **1. Hearing Clerk**

The Vice President for Student Success or their designee will appoint a hearing clerk, who will be a staff member in the Dean of Students Office. The hearing clerk is responsible for scheduling the hearing, securing the location, ensuring the availability of the hearing panel and hearing officer and all other logistics. The hearing clerk will schedule a University-approved hearing officer.

#### **2. Hearing Officer**

The Vice President for Student Success or their designee will appoint the hearing officer, who will preside over the hearing, instruct the hearing panel on legal issues and make decisions as to the admissibility of evidence. The hearing officer may or may not be an attorney.

#### **3. Hearing Panel**

As set out in *Administrative Regulation — Due Process*, the Vice President for Student Success will appoint a hearing/appeals board of at least 15 individuals. From this board, there will be a randomly selected three (3)-person hearing panel and if an appeal, a randomly selected three (3)-person appeal panel. The Vice President for Student Success will ensure that two-thirds of the members of the hearing appeals board are employees and one-third are students. The Vice President for Student Success will establish criteria and a selection process for the students.

### **B. Pre-Hearing Procedures**

#### **1. Notice of Charges**

When a formal hearing is requested, the University will provide a statement of charges to the accused student or student organization ("respondent"). The statement of charges will include the (a) detailed circumstances of the alleged violation, including the final investigation report with appropriate redaction; (b) any response to the charges and/or any statement of responsibility submitted by the respondent; (c) the date, time and location of a hearing that is at least 10 business days after receipt of the statement of charges; and (d) the names of the hearing panel members.

If the respondent accepts responsibility for the alleged violation at any time during the investigative process, the formal hearing is waived, and sanctions are considered as outlined in this policy.

If an informal resolution is reached at any time in the investigative process, meaning the respondent accepts responsibility and the recommended sanction, both the formal hearing and the right to appeal are waived.

## **2. Access to Evidence**

No later than seven (7) business days prior to a scheduled hearing, the respondent and if applicable, the complainant(s), will have access to all available evidence to be presented at the hearing.

## **3. Submission of Information**

No later than five (5) business days prior to a scheduled hearing, all parties must submit the following to the hearing clerk: (a) a challenge to any hearing panel member; (b) any documents or information they wish to present at the hearing; (c) the name(s) of their attorney(s) and/or support people; and (d) a list of possible witnesses who have personal knowledge of the subject incident. Character witnesses are not permitted. Information submitted after the deadline will not be accepted or considered.

Upon receipt of information from all participating parties, the hearing officer will review the information and remove any information determined to be redundant, prejudicial or not relevant to the matter. The hearing officer must be prepared to provide the basis of removal for any evidence submitted by any party but not permitted in the hearing. A written record of this decision must be maintained in the hearing record so it may be considered during an appeal. Any explanation or discussion surrounding the removal of submitted information must occur outside the presence of the hearing panel.

## **4. Request for Postponement**

At any time prior to a scheduled hearing, any party may request a reasonable postponement of the hearing. All parties must have notice of the request and an opportunity to object to any postponement. The hearing officer may accept or deny the request after considering the nature of the incident at issue and the basis and legitimacy of the request. The hearing officer's decision is final and may not be appealed.

## **5. Pre-Hearing Disclosures**

No later than seven (7) business days prior to the hearing, all parties and the hearing panel will be provided access to a hearing packet that includes: (a) the final investigation report; (b) the charged policy violation; and (c) the date and location of the charged violation. No later than three (3) business days prior to the hearing, the hearing clerk will provide all parties and the hearing panel with any additional information including: (a) a list of potential witnesses; and (b) any other related information submitted by any party and deemed relevant by the hearing officer.

## **6. Pre-Hearing Materials for the Hearing Panel**

No later than three (3) business days prior to a scheduled hearing, the hearing panel will receive a copy of the following: (a) information about the parties; (b) the final investigative report including any appendices; (c) a list of potential witnesses; (d) the charged policy violations; (e) the date and location of the charged violation; and (f) any other related information. These disclosures will be provided by the Vice President for Student Success.

## **C. Conduct of Hearings**

The Office of Student Conduct, in consultation with general counsel, will present the University's case to the hearing panel.

### **1. Burden of Proof**

The respondent is presumed not responsible and is not required to present a defense. The University has the burden of proving, by a preponderance of the evidence, that the respondent committed the violation. The complainant's only responsibility is to appear as a witness. If a complainant fails to participate, the University may dismiss the matter, absent other relevant evidence to support the alleged violation.

### **2. Right to Counsel**

The respondent has the right to legal counsel of their choice at their own expense.

### **3. Right to Advisor**

The respondent has the right to up to two (2) non-attorney advisors of their choice. An advisor may not be a witness or respondent in the same case. The advisors may communicate privately with the individuals they are supporting but may not question witnesses or offer oral arguments during the hearing. Any advisor in violation of this policy will be dismissed from the hearing.

### **4. No Obligation to Present a Defense**

Because the respondent is presumed not responsible and the burden of proof is on the University, the respondent is not required to present a defense.

## **5. Witnesses**

All parties to the matter may call witnesses and may cross-examine witnesses offered by the other parties. Witnesses other than the respondent will be excluded from the hearing except for the period of their own testimony.

Parties are responsible for arranging the attendance of the witnesses. The hearing clerk will advise all potential witnesses of their right to be free from retaliation.

In matters where the alleged misconduct occurred in an academic or clinical setting, faculty or clinical staff may be called as witnesses by the University to address relevant policies or clinical, technical or professional standards.

## **6. Evidence**

The University and the respondent may present evidence. The Kentucky Rules of Evidence will govern the admission of evidence, but the hearing officer has the discretion to allow hearsay evidence.

## **7. Right Against Self-Incrimination**

Any witness, including the respondent, may refuse to appear and/or exercise the right against self-incrimination. The hearing panel may not draw any inference due to a witness' non-participation or refusal to answer questions. Should a respondent fail to appear or request a reasonable reschedule, the proceedings will occur in the respondent's absence.

## **8. Instructions to the Hearing Panel**

At the onset and conclusion of the hearing, the hearing officer will instruct the hearing panel as to (a) the presumption of non-responsibility and (b) the standard of evidence required to make a finding.

## **9. Record of the Hearing**

The hearing clerk will arrange for a video recording and/or transcript of the hearing.

## **D. Formal Hearing Decisions**

### **1. Determination of Responsibility**

The hearing panel will determine whether the respondent is responsible for a violation. Any finding of responsibility must be unanimous. No member of the hearing panel may abstain.

## **2. Post–Hearing Recommendations**

If the hearing panel reaches a responsible finding, or the respondent accepted responsibility prior to a hearing, the hearing panel will convene a supplemental proceeding to determine the appropriate and recommended sanctions. The respondent’s past violations of University policy may be considered at this time.

## **3. Decisions of the Hearing Panel**

The hearing panel will issue written findings, rationale and recommended sanctions. The recommendation is forwarded to the Dean of Students.

## **4. Imposition of Sanctions**

The Dean of Students is responsible for accepting, modifying or rejecting the recommendations of the hearing panel, as well as imposing any sanctions.

The Dean of Students may impose any sanction up to and including expulsion or revocation of status as a registered student organization. Although the Dean of Students may impose a greater or lesser sanction, they cannot overturn a finding of responsibility.

# **III. Appeals**

## **A. Eligibility for Filing an Appeal**

A student or student organization may appeal when a formal hearing results in a finding of responsibility for a violation of the Code of Student Conduct and the imposed sanction includes any of the following: (a) disciplinary expulsion; (b) disciplinary suspension exceeding three (3) days; (c) revocation of status as a registered student organization; or (d) termination of the respondent’s residence in campus housing.

## **B. Grounds for Appeal**

Any respondent who has been found responsible by a hearing panel may appeal either the finding of responsibility, the sanction imposed or both.

The University may not appeal.

## **C. Appointment of an Appeal Clerk**

The Vice President for Student Success or their designee will appoint an appeal clerk who will have responsibility for empaneling the appeals panel, receiving and distributing the briefs, scheduling oral arguments, if requested, and distributing findings.

#### **D. The Notice of Appeal**

A respondent may appeal by submitting a notice of appeal to the appeal clerk within seven (7) business days of the decision determining the sanction.

The notice must state (a) the grounds of the appeal, and (b) whether the respondent is appealing the finding of responsibility, the sanction imposed or both. Appeals not filed in a timely manner will not be accepted or considered.

#### **E. Appeal Record**

Upon receipt of a notice of appeal, the appeal clerk will prepare the appeal record. The appeal record consists of the following:

- Pre-hearing materials provided to the hearing panel;
- The hearing officer's pre-hearing written rulings;
- The hearing panel's written decision and any recommended sanctions;
- The determination and imposition of sanctions from the Dean of Students, if any;
- A transcript or recording of the hearing;
- Any other materials admitted into evidence during the hearing;
- The respondent's written request for an appeal; and
- Names of the appeals panel members responsible for hearing the appeal.

Upon completion of the appeal record, the appeal clerk will send a copy to all parties.

#### **F. Briefs**

##### **1. Respondent's Brief**

When the respondent is challenging a finding of responsibility, sanctions or both, the respondent's brief is due to the appeal clerk 10 business days after receipt of the appeal record.

The respondent's brief must not exceed 10 pages, double-spaced with 12-point type. The respondent's brief will be provided to the University.

## **2. University's Brief**

The University's brief is due to the appeal clerk 10 business days after the respondent's brief is submitted.

The University's brief must not exceed 10 pages, double-spaced, with 12-point type.

## **3. Respondent's Reply Brief**

The respondent may file a reply brief within 10 business days after the University's brief.

The reply brief must not exceed five (5) pages, double-spaced, with 12-point type.

## **G. Oral Arguments**

The respondent may request to make an oral argument before the appeals panel as part of the notice of appeal. The appeal clerk is responsible for scheduling oral arguments.

## **H. Appeal Decisions**

### **1. Decision by the Appeals Panel**

After reviewing all briefs and the appeal record, and hearing oral arguments, if applicable, the appeals panel will make a written decision. The decision must be supported by a majority of the respective appeals panel. No member of the appeals panel may abstain.

The decision of the appeals panel is final.

### **2. Standard of Review**

In reviewing the decision of the hearing panel, findings of fact are reviewed under the clearly erroneous standard and conclusions of law are reviewed de novo (reviewing without any deference to the hearing panel).

### **3. Decisions Concerning Responsibility**

The appeals panel may affirm, reverse or reverse and remand for further proceedings any finding of responsibility.

#### **4. Decisions Concerning Sanctions**

The appeals panel may affirm or impose a lesser sanction but may not increase the sanctions.

#### **Reference:**

[KRS 164.370](#)