### 10/18/18

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### STUDENT DISCIPLINE COMMITTEE HEARING PANEL:

###

**FORMAL RESOLUTION PROCEDURES**

**2018-2019**

### STUDENT DISCIPLINE COMMITTEE HEARING PANEL (PANEL)

# HEARING PROCEDURES

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**Student Discipline Committee**

**Formal Hearing Procedures**

1. **INTRODUCTION**

The Hearing Panel (Panel) of the Student Discipline Committee (SDC) assists in implementing Academic Integrity & Academic Research Misconduct Policy resolution and University’s Guidelines for Code and Citizenship Policy resolution (collectively **Student Code of Conduct Policy**-currently being proposed) for New Mexico Tech (NMT). The SDC provides a fair and impartial hearing to determine if a student’s behavior has violated the Student Code of Conduct and to determine what, if any, sanction should be imposed. Complaints of Student Code of Conduct violations are referred to the SDC for a hearing by the Dean of Students Office (DOSO), Office of Academic Affairs, Office of Graduate Studies (OGS) or an Administrative Units (e.g. Office of Residential Life, Study Abroad) for the adjudication of formal student and student group conduct resolution.

#### PARTIES TO THE COMPLAINT

In SDC cases, the University is the formal complainant and the respondent (accused) is the individual/s alleged by the University to be in violation of the Student Code of Conduct. For the purpose of these procedures, the parties are identified as the University presenter and the respondent student. In cases involving student sexual misconduct violations, the impacted person is the individual who asserts that they experienced sexual misconduct (e.g. sexual harassment, intimate partner violence, sexual assault or stalking) by the respondent.

The University appoints a presenter to bring the University’s case before the SDC or its designated panel. Both the respondent and the impacted person (sexual misconduct cases) may be accompanied by one (1) support person (advisor/advocate) in a non-participatory role at the prehearing conference (sexual misconduct cases) and hearing. If a respondent is represented by an attorney as an advisor, the University’s attorney may also be present. Students may request the services of an advisor/advocate through the DOSO or OGS if one is available and willing to serve in that role. Advisors/advocates can serve in a support role and help individuals prepare for their case before the Panel.

The respondent must submit the name of any advocate or attorney to the DOSO or OGS before the prehearing conference, and must give immediate notice to the DOSO/OGS if there is any change in an advocate or attorney. Advisors can accompany students at any time during the investigation process, interviews, meetings, pre-hearings, hearings or during the appeal process, if needed.

#### COMMITTEE AND PANELS

The Faculty Senate appoints faculty members to the SDC, whereas student members are appointed by Student Government Association (undergraduates) and the Graduate Student Association (graduates).

Panels are drawn from the SDC to hear individual cases. A SDC Panel consists of the Panel Chair and a panel of six (6) other voting members. The SDC Chair normally serves as the Panel Chair, but may delegate that role to another SDC member.

Panel members are not advocates for either side. The Panel shall be impartial and fairly consider the information presented at the hearing and may ask questions of the parties and their witnesses. Using a clear and convincing as the standard of proof, the Panel shall decide if it was more likely than not whether the respondent violated the Student Code of Conduct and, if so, assign appropriate sanctions. The Panel may not talk privately (outside of the hearing room) about the complaint with the parties or their advocates.

All panelist must attend annual training prior to serving on the Panel. Panelists for sexual misconduct cases must have additional training as directed by the Title IX Coordinator or designee.

#### CASES OF SEXUAL MISCONDUCT

For hearings involving violations of sexual misconduct policy, the Panel memberships will consists of the Panel Chair and a panel of six (6) other voting members. The hearing room logistics may be modified to accommodate special arrangements. The complainant/impacted person will be allowed to remain in the hearing room during the proceeding and leave with the others during the Panel’s deliberation.

#### THE COMPLAINT AND SCHEDULING

When a complaint is not resolved informally, the appropriate office representative forwards the case to the SDC Chair for a hearing. The appropriate office representative will notify the SDC Chair, the University presenter, the respondent and, where applicable, the Title IX Coordinator and the impacted person, of the statement of the complaint, the Student Code of Conduct, and these procedures. Where more than one student is alleged to have violated the Student Code of Conduct in a related incident, SDC proceedings generally will be held together. The Chair has the discretion to hold separate hearings upon a student’s request prior to the prehearing conference.

The SDC will strive to complete a hearing within one month of the student’s request for a hearing, not including periods when the University is not in session. The Conduct Code Coordinator will be responsible for scheduling a prehearing conference and the hearing, taking into account the parties’ schedules (and the impacted person’s schedule, if applicable) as appropriate. The appropriate office representative generally will provide at least 5-day notice before the prehearing conference. In cases of sexual misconduct, the Title IX Coordinator may assist and serve as hearing secretary.

#### STUDENT STATUS DURING THE PROCESS

A respondent ordinarily is allowed to continue the status of a student-in-good-standing pending the outcome of the SDC hearing. However, in certain cases, the Vice President for Academic Affairs or Vice President of Student and University Relations or their designee may administer an Interim Suspension, pending the SDC’s hearing and decision, as provided in the Student Code of Conduct. In such situations, the SDC should hold a hearing as soon as possible.

In complaints of alleged academic dishonesty or academic research misconduct, any grade affected will be redacted from the transcript pending a disposition from the Panel.

1. **PREHEARING CONFERENCE**

The Panel Chair will convene a prehearing conference to plan for the hearing and discuss the topics outlined in Appendix A of these procedures. The University presenter, the accused student, and their advocate, appropriate office representative, and the Panel Chair attend the prehearing conference. If applicable, the impacted person also has the right to attend the prehearing conference and bring an advocate, as well, but is not required to do so. The Title IX Coordinator will also attend the prehearing conference for sexual misconduct cases. If either party does not attend the prehearing conference, the Panel Chair will determine whether and how that absence will affect the scheduling and presentations at the hearing.

The parties shall be informed of the names of the Panel Chair and potential members of the Panel at the prehearing conference. At that time, either party may ask that the Panel Chair to recuse them self from the hearing due to a direct relationship with the case or being a reporting party or witness. At that same time, either party may challenge the panel member(s) and/or collegiate representative(s) on the ground of conflict of interest or bias. The Panel Chair, after hearing arguments, will decide whether a Panel member should be removed/disqualified from Panel. If a quorum (6) is lost because of a successful challenge, a new person will be appointed from the SDC. A party who learns after the prehearing conference of a potential conflict must immediately notify the Panel Chair or appropriate office representative of an objection. In a case involving sexual misconduct, the impacted person has the same rights described in this paragraph as the parties.

The parties will identify the witnesses they intend to present at the hearing. The Panel Chair or the Panel may, in its discretion, exclude from the hearing witnesses who were not previously identified to the other party.

All evidence that will be presented at the formal hearing should be made available to the parties if not already done so. The Chair will rule on any new evidence that was not previously and reasonable available or known prior to the prehearing. The hearing secretary will make the appropriate copies for the parties and the panel.

Any special requests or accommodations for the hearing should be present at the time of the prehearing conference.

The University is committed to informal resolution of complaints whenever possible. During the prehearing conference and up to 24 hours prior to a hearing, the respondent or the impacted person, when applicable, can accept an informal resolution previously offered.

#### THE HEARING

**1.) Decorum**

The Panel Chair is responsible for maintaining an orderly, fair, impartial and respectful hearing. The Chair has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. All electronic devices must be turned off during the entire hearing, except for an official hearing recording device.

**2.) Record of Hearing**

Investigations, meetings with the parties, prehearing conferences, and hearings are closed to the public. Guests may be permitted to attend with agreement from both parties and the Panel Chair and, when applicable, the impacted person. The hearing secretary or appropriate office representative shall keep an official recording of each hearing. No camera, TV, or other equipment other than that used by hearing secretary or appropriate office representative to keep the official record of the hearing will be permitted in the hearing room. In sexual misconduct cases, technology accommodation may be utilized upon request by the Title IX Coordinator.

A copy of the correspondence, the complaint, responses, the exhibits presented at the hearing, the recording of the hearing, and the Hearing Panels’ disposition shall be maintained in a file in the appropriate office (e.g. DOSO, Office of Academic Affairs, OGS, Administrative unit). In cases of sexual misconduct, these records will be maintained in a file in the Title IX office.

**3.) Attendance**

If the respondent does not appear in person at the hearing, the Panel may elect to either (1) vote to suspend the respondent until a hearing is held (serious cases); (2) vote to place a hold on the respondent’s student record, preventing the respondent from registering or obtaining a transcript until they appear; (3) vote to proceed with the hearing in the absence of the student: or (4) vote to reschedule the formal hearing and prehearing if necessary. A respondent choosing not to appear may provide the Panel with a written statement signed and dated by the respondent prior to the scheduled hearing.

**4.) Standard of Proof**

To establish that a respondent violated the Student Code of Conduct, the University presenter must persuade amajority of the Panel that it is more likely than not that the student committed the violation. This standard of proof is also known as a preponderance of evidence.

**5.) Evidence Review Prior to the Hearing**
For hearings involving sexual misconduct, the Chair and Panel members are expected to review the report prepared by the Title IX Investigator prior to the hearing. The person(s) who requested the hearing (the respondent and/or the impacted person) may provide a written rebuttal to the Title IX Investigator report. The written rebuttal must be received by the Student Conduct Coordinator at least five calendar days before the hearing, during the informal process or during the investigation process. The Chair and Panel members are expected to review any submitted rebuttal prior to the hearing. These records are confidential and should not be disseminated outside of Hearing Panel.

**6.) Case Presentation**

The parties are expected to be prepared for a clear, complete yet economical presentation of their cases. The Panel Chair may impose reasonable time limits on any phase of the proceedings.

Each party may offer reliable information relevant to the issue and may object to the information offered by the other party. The Panel Chair and the Panel have discretion to determine what information can be fairly included or excluded.

The parties may also introduce relevant written documents, objects, films, or other materials as exhibits. Each party is responsible for bringing copies of written materials in sufficient number for distribution to panel members and the opposing party at the hearing. The appropriate office representative or Title IX Coordinator can assist the students with the copies if those documents are submitted at least 48 hours prior to the prehearing conference.

Parties should offer witnesses in person whenever possible. Each party is responsible for getting its own witnesses to the hearing. If reasonable efforts to accommodate their schedules are not successful, the unavailability of a witness is not grounds for postponement of the hearing. If an important witness prefers not to testify, the parties may ask the Panel Chair to assist in encouraging the witness to testify. When necessary, witnesses may present information by telephone, video conference or signed written statement. After a party’s witness presents information, the other party may ask questions, and then Panel members may ask questions. A respondent is not permitted to directly cross-examine the impacted person in sexual misconduct cases. These questions can be directed to the Panel Chair and the Chair will redirect the questions.

The Panel Chair will exclude witnesses from those parts of the hearing in which they do not testify. However, in sexual misconduct cases, the impacted person and their advocate may be present in the hearing room throughout the proceedings, not including the deliberative session. The Title IX Coordinator will also be present in sexual misconduct cases and serve are the hearing secretary.

Based on issued court orders or preference of the impacted person, a remote site with video conferencing capabilities may be established. It is up to the individual with the court order against them to contact the courts (i.e. the judge who issues the order) to request a stay of the order for the campus proceedings. The Title IX Coordinator can assist with the request, if given adequate notice. If an impacted person wishes to remain in the hearing room, various accommodations with dividers/partitions can be made to prevent direct visual contact of the parties.

#### PANEL DELIBERATIONS AND DECISION

At the end of the hearing the Panel will retire to deliberate in closed session. The Chair, Secretary, and Panel members may attend.

The task of the Panel is more than determining responsibility; it is one of assessing the qualifications of the respondent (if determined responsible for the conduct) for continuing membership in the University community in light of the individual’s record of conduct and responsiveness to opportunities, advice, and counsel. The Panel decides the issues based on the information presented by the parties at the hearing and determines whether the University presenter persuaded them that the respondent violated specified subdivisions of the Student Code of Conduct. The Panel must be prepared to make a judgment based on the information provided even if it is not complete.

Each Panel member will vote on whether or not the respondent is responsible for violating the Student Code of Conduct for each alleged charge. A majority vote of Panel members is required to find a violation. If a respondent is found responsible for one or more items, the Panel will next vote on appropriate sanctions, as listed in the Student Code of Conduct.

The Panel’s decision will be communicated in writing to the parties and to the impacted person and Title IX Coordinator in sexual misconduct cases no later than one week following the hearing. No one participating in the deliberations will give any party verbal information about the decision or the deliberations.

#### APPEAL

A respondent and/or impacted person student who is dissatisfied with the decision of the SDC may file a request for appeal with the appellate officer according to the Administrative Procedure – Procedures for Resolving Student Code of Conduct Violations.

**APPENDIX A**

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**STUDENT DISCIPLINE COMMITTEE**

**PREHEARING CONFERENCE**

(For Title IX & Sexual Misconduct Cases, Optional but Recommended for Other Cases)

New Mexico Tech vs. Student

Date:

Time:

Place:

Purposes for the Prehearing Conference are:

1. To identify the advocates or attorneys of the parties.
2. To review the complaint.
3. To describe the procedures to be followed at the regular hearing (Appendix B).
4. To review the date, time, and place for the hearing.
5. To identify the panel members (6 required for a quorum).
6. To identify if a department/college representative will be appointed from the accused student’s major (not applicable when the accused is a student organization or in cases of sexual misconduct). This person is a voting member of the panel.
7. To identify and exchange the names of potential witnesses that may be scheduled to appear.
8. In non-sexual misconduct cases, to discuss an informal resolution of the complaint.
9. To resolve special considerations, answer other questions, or share information prior to the hearing.

 **APPENDIX B**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TECH’S FORMAL STUDENT DISCIPLINE HEARINGS**

**ORDER OF PROCEEDINGS**

**Case #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ New Mexico Tech** vs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time:\_\_\_\_\_\_\_\_\_\_\_\_\_ Location:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Notify:** Panel, Administrator,Respondent/s, Complainant, Advisors, Witnesses, and Title IX Coordinator, if needed.

1. Call to order by the Chairperson.
2. Announcements and opening remarks by the Chair, including such items as:
3. Notice that the hearing is being recorded (turn on recorder).
4. Reminder to turn off all cell phones.
5. State the date, time, name of the case and case # for the recorder.
6. Identification of the parties attending the hearing.
7. Review the standard of proof i.e. preponderance of evidence standard.
8. Witnesses are dismissed to go to the waiting room until their turn to be questioned.
9. The Respondent and Complainants may be present in the room during the hearing if they so desired.

3. Opening the hearing by the Chair, including such items as:

1. Presentation of the complaint/s and alleged specific rules/policies violated.
2. Poll the panel for bias, prejudice or preformed judgment.
3. Allow both parties to challenge any of the panel members

4. Chair will ask Respondent/s to responds to the complaint (responsible or not responsible).

5. Opening comments (5-10 minutes), University Presenter and then Respondent/s.

a. Presenter-

b. Respondent-

c. Respondent 2 (etc.)- (if more than 1 Respondent)

6. Institute Presenter presents information about the alleged violation

1. Respondent/s may question Presenter.
2. Panel members may question Presenter.

7. Respondent/s present information about the alleged violation.

1. University Presenter may question Respondent/s.
2. In sexual misconduct/Title IX cases, the Complainant may present questions to the Presenter to ask Respondent/s
3. Panel members may question Respondent/s.

8. Witnesses may be called one at a time by the Presenter to testify:

1. Title IX Coordinator or Hearing Secretary will escort witnesses in and out of the room
2. Presenter questions the witness
3. Respondent may question the witness.
4. If the witness is a Complainant in a sexual misconduct/Title IX case, the Chair will redirect any Respondent questions for the Complainant.
5. Panel members may question witness.

9. Witnesses may be called one at a time by the Respondent/s to testify:

1. Title IX Coordinator or Hearing Secretary will escort witness in and out of the room
2. Respondent questions the witness
3. Presenter may question witness.
4. Complainant/s may present questions to the Presenter to ask witness
5. Panel members may question witness.

10. Closing comments (5-10 minutes), University Presenter and then Respondent.

11. Hearing is closed by the Chairperson.

12. Panel retires to deliberate (closed meeting, recorder is turned off).

1. The Panel finds the Respondent responsible or not responsible for Student Code of Conduct violations alleged in the complaint. A determination must be made for each complaint/charge.
2. If responsible, the Panel decides on appropriate sanctions.
3. The Panel’s decision will be reported in writing to the parties (included impacted person in sexual misconduct cases) by the Chair and copied to the Title IX Coordinator (sexual misconduct case).

**Special Notes:**

The Title IX Coordinator will serve as the Hearing Secretary and be present during the hearings and deliberations for cases involving sexual misconduct.

Special arrangements will be made to accommodation Complainants who do not want to directly confront or see the Respondent during a hearing.

Each party is permitted one (1) advisor as support at the hearing however the advisor will have no active role in the hearing. The advisor can consult with their advisee and the advisee can address the Chair with any questions. If the advisor attempts to be actively involved, the Chair will provide the advisor a warning of protocol. If the advisor continues to intervene or is disruptive, the advisor will be asked to leave the room.

A request for a brief recess can be made by either party or the panel. Individuals should be confined to separate rooms as needed. The secretary can organize utilization of the local restrooms. Parties and panel members should not discuss the hearing during any the brief recess.

Water bottles will be provided by the hearing secretary. Food items are not permitted at the formal hearing. Special needs and accommodations should be presented at the prehearing conference.