



## ADMINISTRATIVE PROCEDURE

# Procedure for Resolving Alleged-Student Code of Conduct Policy Violations

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**Related Policy:** Student Code of Conduct Policy

## I. Introduction and purpose

This procedure helps explain how New Mexico Tech will implement its Student Code of Conduct policy and details Tech's process for actions initiated against students or student organizations for alleged non-academic violations of the Student Code of Conduct. This procedure, the Procedure for Resolving Academic Dishonesty and Academic Research Misconduct Violations, Procedures for Resolving Alleged Sexual Misconduct Offenses, and the associated policy links can be found on the [NMT Student Support Resources website](#) and on the [Dean of Students website](#).

The purpose of this student conduct/disciplinary process is to provide a framework for resolving misconduct (non-academic) complaints so that:

- A. **Informal resolution is encouraged.** The disciplinary process encourages informal resolution of complaints where appropriate.
- B. **Student development is emphasized.** The disciplinary process emphasizes the educational purpose of student discipline, including helping students understand and accept responsibility for their own behavior. This emphasis and alternative methods (e.g. mediation) are sometimes not included in cases of sexual misconduct.
- C. **Community interests are met.** While the emphasis of the disciplinary process is on responsible student self-development, the nature of the offense may require additional considerations with respect to appropriate sanctions, including the safety and well-being of our students and the greater University community.
- D. **Students receive fair treatment.** Most disciplinary matters are resolved informally, with the agreement of the parties involved (e.g. respondent, complainant/NMT). When an informal resolution is not possible, however, Tech's Student Code of Conduct policy

requires that students have the opportunity to receive a formal, prompt, fair, and impartial hearing, as well as the opportunity for appeal, if needed.

## II. Terms

- A. **Student:** Student shall mean any person defined as a student or student group in the Student Code of Conduct. In these procedures, the term student is also used collectively to refer to student, students, student group/organization, or student groups/organizations. Once a student is first registered at the institution and until which time they are no longer enrolled, they will be considered a student and held accountable under the Student Code of Conduct.
- B. **Student Group:** Student group shall mean any group of students that is or has been registered as a University student group under applicable University policies or procedures. In these procedures, the term student group is also used collectively to refer to student group/organization or student groups/organizations. Student groups can be held accountable for their members' behavior if the inappropriate behavior occurs at a club function or if individuals believe the activity to be a club function.

## III. Resolving non-academic misconduct issues

New Mexico Tech has a similar campus-wide disciplinary process, managed by Academic Affairs, Graduate Studies, Division of Student Life, and various administrative units (e.g. Residential Life), who handle most matters involving alleged Student Code of Conduct and rule violations. There are slight variations in the resolution procedures for the non-academic misconduct and sexual misconduct which are both covered by the Student Code of Conduct policy. These processes and their differences will be detailed later in this document. The various administrative units follow their own due process that includes a prompt, fair, and impartial process:

- A. Academic Affairs maintains its own hearing process for resolving alleged academic integrity dishonesty and research misconduct.
- B. Administrative units such as Housing & Residential Life, Recreation & Well-being, and Intramurals also maintain disciplinary processes for violations of each unit's own rules of conduct.
- C. The Student Government Association (SGA), Graduate Student Association (GSA), Sports Clubs, and other student clubs have their own process but still, fall under the overarching Student Code of Conduct and its associated procedures. The Dean of

Students (DOS) assists with formal resolutions and appeals for these student groups as needed.

*Regardless of the process, the Dean of Students is a resource for students and administrative units with questions and guidance in student conduct and disciplinary matters.*

#### **IV. Complaints of violations of the Student Code of Conduct**

Complaints of non-academic violation of Tech's Student Code of Conduct policy can be issued from the Dean of Students (DOS), Office of Housing & Residential Life, and the Student Leadership and Engagement Office. Complaints should be reported as soon as possible after the incident takes place. Regardless of the source of the complaint, the student or student group is entitled to written notice, identifying the alleged violations, and a brief review of Tech's related policy and procedure/process.

All complaints of violations of the Student Code of Conduct will be resolved in a manner that is prompt, fair, and impartial. This will include the following:

- A. Complaints will be resolved within a reasonably prompt timeframe, allowing for an extension of the timeframe for good cause. If the timeframe must be extended, the respondent and impacted person will be notified in writing of the delay and the reason for the delay.
- B. Proceedings will be conducted in a manner consistent with University policy and transparent to both the respondent and complainant.
- C. Provide timely notice of meetings at which the respondent student, impacted person, or both may be present.
- D. Timely and equal access of the respondent student, impacted person, and appropriate officials to any information that will be used during informal meetings and formal hearings.
- E. Both the respondent and the complainant are permitted to have one (1) support person or advocate (e.g. friend, attorney) present for a misconduct or sexual misconduct proceeding (e.g. initial meetings, interviews, hearing).
- F. Proceedings will be conducted by NMT officials who do not have a conflict of interest or bias for or against the respondent or complainant.

The decision whether or not to take action for an alleged misconduct violation of the Student

Code of Conduct shall belong to the Dean (i.e. Dean of Students for undergraduates and Dean of Graduate Studies for graduate students). The Dean or their designee may proceed with a University investigation and disciplinary action against a student or student group without waiting for the results of criminal proceedings.

## **V. Informal Resolution**

The following offices and administrators have the authority to informally resolve non-academic complaints under NMT's Student Code of Conduct Policy:

### **A. Dean of Students Office (DOS)**

The DOS seeks to resolve complaints of violations of NMT's Student Code of Conduct Policy for all undergraduate students informally. The DOS will assign an individual/s to conduct an investigation, interview, and adjudicate the case. In matters involving sexual misconduct, the Title IX Coordinator will handle all investigations. All Title IX Investigators and Administrative Adjudicators involved in sexual misconduct cases receive annual training on issues related to gender-based discrimination, sexual harassment, intimate partner violence (e.g. dating violence, domestic violence), sexual assault, stalking, due process, and how to conduct an investigation and hearing process that protects the safety of all parties and promotes accountability. The respondent and complainant may be accompanied by an advocate/support person of their choice at any meetings or hearings related to the disciplinary process.

In all cases, especially those involving sexual misconduct, the confidentiality of the impacted persons and other necessary parties will be protected to the extent allowable by law. The University will maintain record keeping, including disclosures for complying with the Clery Act, without including personally identifying information about the parties.

For cases involving sexual misconduct, the staff investigator will provide written notification regarding the availability of on and off-campus resources for counseling, health, mental health, complainant/victim advocacy, respondent advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims of crime. This will be provided if the Title IX Coordinator did not previously provide this information. The respondent will also receive written notification regarding the above resources as appropriate.

For cases involving sexual misconduct, the Title IX Coordinator or staff investigator will provide written notification to the impacted party of the options for, available assistance in, and how to request accommodations for academic, living, transportation, and working

situations and other interim protective measures. The University will provide these accommodations if the impacted person requests them and they are reasonably available, regardless of whether the victim chooses to report the crime to law enforcement. Any accommodations provided to the impacted person will be maintained as confidential to the extent that maintaining such confidentiality will not impair the ability of the University to provide such accommodations or protective measures. The impacted person's rights and options will be provided in writing, regardless of the alleged offense of dating violence, domestic violence, sexual assault, and/or stalking that occurred on or off campus. The Title IX Coordinator will also notify the respondent of their rights.

The Administrative Adjudicator/Hearing Officer will develop a written Letter of Determination (LOD) to summarize the findings and a proposed written resolution, including (1) a decision regarding if the student was found to be responsible for violating the Student Code of Conduct, (2) sanctions where appropriate, and (3) the option for a formal hearing.

In sexual misconduct cases, the Title IX Investigator will submit an Investigation Draft Report (IDR) to the parties and the Administrative Adjudicator/Hearing Officer. The Adjudicator will then make a determination accordingly.

Decisions on whether or not the Student Code of Conduct has been violated will be based on a preponderance of the evidence standard, meaning that it is more likely than not that a violation of the Student Code of Conduct occurred or it is more likely than not that a violation did not occur. For cases involving allegations of sexual misconduct or those cases that could possibly result in disciplinary suspension or expulsion, a clear and convincing standard of evidence will be utilized. The clear & convincing standard (substantially more likely to be true than untrue; highly probable) is a more stringent standard than a preponderance of the evidence standard.

In cases involving sexual misconduct, both parties will be informed in writing of the outcome of the investigation and proposed resolution. Parties may accept the informal resolution of the Administrative Adjudicator, or they may reject the informal decision and submit a written request to the Title IX Coordinator for a formal hearing with a panel of the Student Code of Conduct Board.

In sexual misconduct cases, the impacted student, the respondent, or the Title IX Coordinator may choose to send the complaint directly to a formal hearing, rather than attempt to resolve the case informally.

## **B. Office of Graduate Studies**

Utilizing the same procedures as the DOS, the Office for Graduate Studies (OGS) attempts to informally resolve complaints of non-academic violations of Tech's Student Code of Conduct Policy for all graduate students. The OGS and the DOS work collaboratively, as needed. In matters involving sexual misconduct, the Title IX Investigator performs the investigations. The OGS and the Title IX Coordinator will work collaboratively to ensure the University's and Title IX compliance are followed. The Dean of Graduate Studies will receive the Investigation Draft Report (IDR) and then develop the LOD to be submitted to the parties.

## **C. Administrative Units**

Housing & Residential Life have their own disciplinary processes (i.e. Community Standards), which may overlap with the Student Code of Conduct. These administrative units are authorized to issue and resolve complaints of their rule violations through their own process. Unit/Club violations or minor and moderate rule violations of the Student Code of Conduct can be resolved through the administrative unit's process. Student Code of Conduct complaints that are serious as to potentially warrant sanctions beyond the authority of the particular administrative units should be forwarded by the unit to DOS for disposition. Housing & Residential Life has an administrator who handles their informal process for all minor and moderate conduct cases.

If the administrative unit (e.g. club sport, student organization, SGA, GSA) does not have policies or procedures for handling any specific violations, the incident can be referred to the Dean of Students for resolution. The case can be forwarded to SGA for resolution if it is a student organization-specific violation.

# **VI. Formal Resolution**

If a non-academic complaint under the Student Code of Conduct is not resolved informally, the student is entitled to a formal hearing. Students desiring a formal hearing must submit a written request to the DOS within five (5) business days of receiving the informal Letter of Determination (LOD). The hearing body and procedures vary depending on the circumstances of the student and the nature of the complaint. The hearing bodies are:

## **A. Student Conduct Board (SCB) - also known as Student and Faculty Conduct Committee.**

The Student Conduct Board (SCB) is a formal, campus-wide hearing body comprised of faculty, staff, and students housed within the Faculty Senate that convenes to hear and

decide upon complaints under the Student Code of Conduct. See Appendix: Student Conduct Board. The SCB has the authority to hear all types of complaints and render a disciplinary action decision under the Student Code of Conduct, including:

1. Complaints under the Student Code of Conduct, including those involving sexual misconduct. Members of the Student Conduct Board receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability.
2. Any other non-academic complaints under the Student Code of Conduct that are referred to SCC by an administrative unit. The SCC is also the appellant body for appeals from these units.

A formal record, an audio recording, or a transcript of the hearing must be kept for appellate purposes. Student Code of Conduct hearings are not court cases; court rules of process, procedure, or evidence do not apply. The University uses a preponderance of the evidence standard when determining whether there was a Student Code of Conduct violation. A copy of the Student Conduct Board: Order of Proceedings is available upon request.

## **VII. Possible Sanctions for Violation of Student Code of Conduct**

The Student Code of Conduct policy outlines the range of sanctions for students who have been found responsible for violations of the Student Code of Conduct. Departments, programs, and administrative units may further define the applicable sanctions under their processes. When hearing cases of non-academic violations of the Student Code of Conduct, the DOS offering informal resolutions and the SCC determining formal resolutions are authorized to apply the full scope of these sanctions or a combination of sanctions, up to including expulsion from the Institution. Administrative units enforcing their own codes or disciplinary rules generally must limit their sanctions to those that fall within the reach of the program or administrative unit, including expulsion from the program or expulsion from Residential Housing. Cases that may warrant a broader Institutional sanction should be referred to or coordinated with the DOS.

### **Interim Student Suspension**

At times, on the basis of the initial investigation, the Dean of Students or Dean of Graduate Studies may conclude that it is necessary to impose an immediate interim suspension on a student or student group prior to a hearing on the matter. This may be the case when the student/s in question is believed to be dangerous to themselves, others, or property. Under such circumstances, the Dean of Students or Dean of Graduate Studies, or, in their absence, the Vice

President for Student Life or another person designated by the University President, may impose an interim suspension with a hearing to be set at a later date, as specified below.

Any student or student group subject to interim suspension must be informed in writing to justify the reasons for the immediate action and the terms of the interim suspension. During the interim suspension, the student or student group may be denied access to some or all University facilities, property, activities, or privileges for which the student or student group might otherwise be eligible, including access to University housing, property, or activities. Those restrictions will be included in the terms of the interim suspension.

An interim suspension may not be imposed unless it is based on facts that show that the student's continued presence on campus may constitute a danger to the student, others, or property. An interim suspension may not be based upon mere suspicion of guilt.

Any student suspended on an interim basis has the right to a formal hearing before the Student Conduct Board (see Section 13 of the Student Code of Conduct policy). The student suspended on an interim basis must present a written request for a hearing to the Dean of Students or Dean of Graduate Studies. The hearing must be held within five days of the suspended student's request for a hearing. The student charged may ask for a brief delay in the hearing, in which case the Dean will weigh the grounds of the request and decide. The interim suspension shall remain in effect and terminate when the hearing is held. The Student Conduct Committee will hear and decide the case and may impose regular disciplinary penalties at that point in the proceedings. Cases involving interim suspension will generally take precedence over other cases pending before that body.

Prior to the Student Conduct Board (SCB) hearing on the underlying Student Code of Conduct case, the student or student organization has a right to a prompt hearing before the appropriate Dean on the questions regarding the interim suspension. This hearing will be limited to confirming identity, the necessity of the action, and whether the interim suspension should remain in effect until the full hearing is completed. The Dean's decision from this hearing is final regarding the overall need for the interim suspension or its modification.

## **VIII. Appeal Process**

A student or student group found to be in violation of the Student Code of Conduct is entitled to an appeal of disciplinary decisions (e.g. finding the student to be responsible and/or the related sanction) made in the formal hearing body. The Administrative units' decisions (e.g. Housing & Residential Life) and other University staff members can be appealed to the Student Conduct Board. The Student Conduct Board does not have appellate jurisdiction over its own action. The final source of appeal on New Mexico Tech Campus for action by the Student Conduct Board is

to the Vice President of Student Life. The respondent or the impacted person in a sexual misconduct case has the right to appeal decisions of the formal hearing body.

#### **A. Grounds for appeal**

The committee or individual receiving a request for an appeal will only be concerned with reviewing and deciding on those matters raised in the written appeal. Under no circumstances will an appellate body become involved in re-hearing an original complaint. The following will be recognized as grounds for appeal within the University's disciplinary system.

1. The decision was made without the benefit of relevant evidence not reasonably available at the time of the initial formal hearing. (If this ground is favorably reviewed, the case will be returned to the formal hearing body for presentation of the new evidence.)
2. The hearing was procedurally unfair, in that:
  - The original hearing deviated in a substantial way from the board's established hearing procedures.
  - During the formal hearing of the original complaint, a student's right established under Institutional policy was violated.
3. The sanction/s was clearly inconsistent with the severity of the alleged violation of rules or policy.
4. The decision was made contrary to the weight of the evidence.
5. The interests of the residents, group, unit, or the University were not adequately or sufficiently weighed and considered.

The grounds for appeal as specified will not preclude filing an appeal in other instances that can be documented or supported as a valid claim for review. If a new ground is to be proposed by the appellant, the ground should be clearly stated and documented in the written request for the appeal.

In any written requests and initial hearings on appeals, the mere assertion of any of the stated or created grounds for appeals alone will not constitute sufficient reason for an appellate body to accept the appeal for review. The statement of grounds must be supported in writing and at the initial hearing with reasoned argumentation and, if possible, with specific references to testimony, procedures, or rulings that support the assertions.

#### **B. Procedures for filing an appeal**

The written request for an appeal must be received within five (5) business days of receipt of the formal resolution Letter of Determination. The appellant then has five (5) additional days to compose a written letter that explains the grounds for the appeal request.

1. Either the student found responsible may appeal the decision of the Student Code

of Conduct Hearing Panel. This appeal, which must be in writing, will be sent to the Vice President of Student Life, for undergraduate Students, or the Vice President for Academic Affairs for graduate students within ten days of the date of the Student Code of Conduct Hearing Panel's written decision.

2. The Vice President of Student Life review shall typically be limited to a review of the record made before the Student Code of Conduct Hearing Panel, including all documentary evidence, if any, admitted.
3. However, the Vice President of Student Life may allow such additional testimony and/or documentary evidence to be presented to them as they may, at their sole discretion, determine necessary in order to clarify the facts and/or the respective position of the parties. The Vice President of Student Life may affirm, reverse, or modify the Student Code of Conduct Hearing Panel's decision.
4. Following this, the decision of the Vice President of Student Life shall be binding.

### **C. Nature of appellate review**

Appellate review generally is a review of the record to determine whether a serious error occurred in the formal resolution proceedings that resulted in unfairness. The appellate review respects the credibility judgments of the hearing body and respects the hearing body's determinations as long as there is any reasonable evidence to support them.

In the review of a disciplinary appeal at any level of adjudication within the Institution, the appellate body/officer will need to determine the merit of the appeal initially and whether to accept or deny the request for appeal. If the appellant's written appeal adequately provides grounds for an appeal as required in section IX.A. above, the appeal will be accepted for an official review.

If the request for appeal does not provide adequate grounds for the appeal, the appeal will be denied. Requests for appeal will be denied if there is no justification for the review (e.g. the student provided no justification or facts other than they were dissatisfied with the formal decision). The central focus should be how the previous adjudicative agency clearly erred.

The Student Conduct Board, when serving as an appellate body, will assign a panel to meet initially to determine whether the grounds for appeal are sufficient as presented to warrant a formal review. This hearing is based on the written request for an appellate review and whatever argument is necessary to support the written request. Only in unusual cases will grounds for an appeal not cited in the written request be allowed to be added at the time of this first hearing. This initial hearing will not involve the substance of the appeal, only the merits of the grounds as presented.

If the appellate body finds the grounds sufficiently established and convincing to warrant a

formal review, they will commence such a review within one month and conclude within a reasonable amount of time thereafter.

In addition, the appellate body may review the record of proceedings of the previous adjudicate agency prior to the actual appellate hearing.

All student disciplinary hearings are closed hearings.

If, as part of the appeal, new evidence that is demonstrated not to have been reasonably available at the time of the original hearing and that is also demonstrated as potentially having a substantial impact on the outcome of the original hearing is introduced, the complaint will be returned to the previous adjudicative agency for a hearing of the new evidence. The appellate body will, in other cases, accept the factual determinations of the previous agency if it determines that the agency had a reasonable basis for its findings. This is done with the understanding that a choice between one or two or more permissible interpretations of evidence or testimony is not clearly erroneous. An appellate body will also accept the determinations of the previous agency regarding policy interpretations and sanction dispositions if such determinations cannot be shown to be clearly erroneous in light of the record.

If the appellate body decides that the previous agency clearly erred in a matter involving substantial procedural unfairness, they may dismiss the case, amend or reverse the previous decision, or return the case for a rehearing. If an appellate body determines that in a procedurally based appeal, a rehearing at the original hearing level is appropriate, attention should be given to the possibility that the original body has become incapable of rendering a fair hearing and, dependent on the nature of the alleged procedural unfairness, the appellate body may consider the possibility of mandating alternate panel membership.

If the determination of the original agency regarding the appropriateness of sanctions or the application of policy is overruled on the basis of disagreement rather than clear error, the original hearing body will be informed in writing of the basis for the decision so that guidelines for the application of future sanctions or policy interpretations can be made. In all cases, the previous adjudicative agency will be notified of the disposition of any appeal. All parties will also be notified of the final decision, minus any related FERPA-protected sanction information (e.g. information regarding a personal matter/nature).

#### **D. Review of information**

To decide on an appeal, the appellate officer/body reviews the written appeal submitted by the appellant and may review any or all portions of the record. The appellate officer also has discretion to seek further information to assist in deciding the appeal, including one or more of the following:

1. additional written information from the appellant, (i.e. the student or student group who submitted the appeal, including citations to key portions of the record);
2. a written response from the respondent, (i.e. formal hearing Chairperson or designated panel member);
3. written responses to questions from either the appellant or the respondent; and
4. oral presentations from the appellant and the respondent, which will be recorded. Appellants or respondents may have their advocate/support person present for the questioning, but the advocate/support person will not have an active role in the discussions.

In cases of sexual misconduct, if the student found to have violated the Student Code of Conduct is asked to submit written information or to appear for an oral presentation, the impacted person will be offered the same opportunity. If the impacted person in a sexual misconduct case is asked to submit written information or to appear for an oral presentation, the respondent will also be offered the same opportunity. At any oral presentation, a support person may accompany the respondent and the impacted person.

#### **E. Appellate Decision**

The appellate officer/body makes the final University decision. The appellate officer may accept, modify, or reject the disciplinary decision of the hearing body, or return the matter for further proceedings. The appellate officer will provide a written decision to the appellant and the chair of the hearing body. In cases of sexual misconduct, the appellate officer will provide simultaneous written notice to the accused student, the impacted person, the chair of the hearing body, and the Title IX Coordinator. The appellate officer will strive to issue a final decision within thirty (30) calendar days of the request for appeal.

#### **F. Sanctions Pending Appeal**

Disciplinary sanctions affecting the student's status/attendance at the University generally are stayed pending appeal, unless the President or delegate determines that sanctions should be immediately implemented because the underlying offense involved serious harm to another person or the student otherwise presents a continuing risk of harm or disruption to the community. All other disciplinary sanctions are generally stayed pending the final decision on the appeal.

### **IX. Student Disciplinary File**

The file is considered part of the student's academic record - private information protected by FERPA and University policies. Any sharing of information external by the University is done only with the student's consent or as required by law.

