

## **Appendix C: Student Conduct Sexual Misconduct Resolutions 2016-2017**

### **Final report is submitted to Office of Student Conduct with Investigative Findings of Fact**

During the entire Sexual Misconduct investigative and resolution process, all parties are given the opportunity to have one advisor of her or his choosing present, at the cost of the student. The role of the advisor is limited in that a student may confer with his or her advisor, and the advisor is not permitted to speak on behalf of the student.

### **Respondent accepts responsibility for violation(s), post-charges**

The investigator will forward the investigative report to the Office of Student Conduct with the findings of fact and sanction recommendation(s). The Director of the Office of Student Conduct or designee will select violations and send a notice of the violations to the respondent. If after receiving notice of a violation of the Code of Student Conduct, a respondent wishes to accept responsibility for all violation(s) of the Code of Student Conduct and to waive the respondent's opportunity for a formal hearing, the respondent may do so by providing notice to the Director of Student of Conduct in writing. To be effective, this must be received by the Director of Student Conduct no later than 5:00 pm five (5) days before any scheduled conduct hearing.

1. After the respondent has provided this notice, the Office of Student Conduct will notify both parties that the respondent has chosen to accept responsibility and waive the hearing.
2. The Director of Student Conduct will then assign the referral to a sanctions officer.
3. Both parties shall have the opportunity to submit a written statement detailing both the impact of the behavior, sanction recommendations, and any supporting documentation relevant to the sanctioning decision. Each party must submit the written statement within seven (7) days of the date of the notice sent by the Office of Student Conduct. If a student fails to submit the statement before the deadline it will not be considered by the sanction officer. A copy of each impact statement will be provided to the other party. These statements will be reviewed and considered by the sanction officer in determining a sanction.
4. The sanction officer will decide on appropriate sanction(s). In determining the appropriate sanctions, the sanction officer may consider, but is not limited to the following factors:
  - The severity, persistence, or pervasiveness of the violation;
  - The nature or violence of the violation;
  - The perceived impact of the violation on the complainant;
  - The perceived impact on the University community;
  - The prior disciplinary record of the respondent;
  - The maintenance of a safe, nondiscriminatory environment that is conducive to learning; and
  - Any other mitigating or compelling factors.
5. Both the complainant and respondent will be notified of the findings and sanctions in writing, on or about the same date and time. Both parties will receive the same notification, which will include a rationale for the findings and sanctions. This notification should be released to both parties within 5 days of the conclusion of the hearing. However, a longer period of time may be warranted in the discretion of the hearing officer.

6. The decision of the sanction officer may be appealed in accordance with the *Appeals* section as described below. The sanction officer's decision may be appealed only on the grounds of severity of sanction.

### **Respondent contests Student Conduct charges**

#### *Pre Hearing:*

The investigator will forward the investigative report to the Office of Student Conduct or designee with the findings of fact and sanction recommendation(s). The Director of the Office of Student Conduct or designee will select violations and send a notice of the violations to the respondent. The Director of Student Conduct or designee will provide the complainant and the respondent written notice describing the alleged violation(s), the time and date of the hearing, a copy of this procedure, and a procedural outline describing the format of the hearing. The adjudication of the referral will be assigned to a hearing officer who has no previous substantive knowledge of the facts of the case or the students involved. The hearing will ordinarily be scheduled within 10 days of the receipt of the investigative report, but may be scheduled at a later time at the sole discretion of the hearing officer.

If either the complainant or the respondent believes for any reason that the hearing officer would exhibit bias against their position the student has five (5) days prior to the hearing to notify the hearing officer (in writing) of the specific perceived bias that should disqualify the hearing officer from the case. In no event will the gender of the hearing officer alone be considered a valid reason to claim bias by either the complainant or the respondent. This request will be reviewed by the Director of Student Conduct or designee, and a new hearing officer may be assigned if appropriate. The Director's decision is final.

Either the respondent or the complainant may request a pre-hearing conference with the Director of Student Conduct or designee, at which time the Director or designee will describe the hearing process and answer any questions related to the hearing process. The facts of a particular case will not be discussed during the pre-hearing conference.

Prior to the hearing either party may request a partition in the room to visually separate the complainant and respondent, or they may request to be physically located outside the presence of the other individual and participate by teleconference. This request must be provided to the hearing officer no later than five (5) days before the scheduled date of the hearing.

If either party chooses to have witnesses present at the hearing, all witnesses must provide a written statement regarding the information they intend to present no later than five (5) days before the scheduled date of the hearing. Statements must be provided in advance for a witness to be present at the hearing. Both parties will be provided witness statements from the other party in advance of the hearing, at the same date and time.

At the hearing, both parties may submit a written impact statement and recommendation for sanction. If the respondent is found responsible for a violation, these statements will be reviewed by the hearing officer.

#### *Hearing:*

The Hearing Officer will use a procedural outline to facilitate the hearing that students will receive in advance.

At the hearing, the complainant and the respondent meet with the Hearing Officer simultaneously. Both parties will be offered an opportunity to provide a verbal statement and respond to questions posed by the hearing officer. All questions and answers must be directed to and from the Hearing Officer. Neither party is permitted to directly question or have any dialogue with the other party.

At the hearing, either party may call and cross-examine witnesses. Neither party may directly cross-examine the other party. However, they may present written questions to the hearing officer to ask. The hearing officer will have sole discretion in determining the relevancy of any questions asked during the hearing.

If either party submits information at the time of the hearing that was not previously provided to the investigator, the relevancy of this information will be determined by the hearing officer who will have sole discretion over what additional information will be considered (if any) at the time of the hearing.

The investigator will be present at the hearing to clarify information contained in the investigative report. If necessary, the hearing officer may call witnesses to clarify information or provide additional clarification on the investigative report.

The Hearing will be audio recorded. The recording will be stored in the Office of Student Conduct. Upon request, either party may be provided access to review the recording. Additional recordings or recording devices are strictly prohibited.

Either party may decline to participate in the actual hearing. If a party declines to participate, the party's absence will not be used as an inference of responsibility or lack of cooperation.

#### *Post Hearing:*

Following the conclusion of the hearing, the hearing officer will render a determination of responsibility (responsible or not responsible). The hearing officer will apply a preponderance of evidence standard (more likely than not).

If a student is found not responsible for all violation(s), the matter is concluded, pending appeal (see the next section on Appeals below).

If the respondent is found responsible for any violation(s), the hearing officer will report the findings and sanction recommendations to the Director of Student Conduct, or designee. The Director of Student Conduct or designee will refer the recommendations to a professional staff member in the Office of Student Conduct or the University Life Division who has no previous substantive knowledge of the case. This professional staff member will then decide and impose sanction(s).

Factors included in the determination of sanctions include, but are not limited to:

- The severity, persistence, or pervasiveness of the violation;
- The nature or violence of the violation;
- The perceived impact of the violation on the complainant;
- The perceived impact on the University community;

- The prior disciplinary record of the respondent;
- The maintenance of a safe, nondiscriminatory environment that is conducive to learning; and
- Any other mitigating or compelling factors.

Sanctions may range from a warning through expulsion from the University. Students who are found in violation of the Sexual Misconduct policy are often sanctioned with suspension or expulsion. A full list and description of sanctions are detailed in the Code of Student Conduct, Section XVII (<http://studentconduct.gmu.edu/university-policies/code-of-student-conduct/>).

Both the complainant and respondent will be notified of the findings and sanctions in writing, on or about the same date and time. Both parties will receive the same notification, which will include a rationale for the findings and sanctions. This notification should be released to both parties within 5 days of the conclusion of the hearing unless a longer period of time is deemed necessary.

If an appeal is not filed within the timelines stated below, the decision is final.

### **Appeals**

Either the respondent or the complainant may file an appeal of the decision. Valid grounds for an appeal of the decision are limited to:

- Substantial procedural irregularity in any part of the investigative or hearing process;
- Demonstrated evidence of hearing officer bias;
- Severity of sanction;
- The emergence of new information that was unavailable at the time of the hearing that would have significantly altered the outcome of the hearing.

In order to file an appeal, the student must fill out the form located at:

<http://studentconduct.gmu.edu/our-process/contact/>. **The appeal form must be submitted within ten (10) days following the date of the notice of findings (by 5:00 p.m.). Late appeals will NOT be considered.**

Upon receipt of the appeal request, the Director of the Office of Student Conduct or designee will assign the appeal to an appeal officer. The appeal officer will be a person who has no prior substantive knowledge of the facts of the case, and has no personal knowledge of, or association with either the respondent or complainant. The complainant or respondent may challenge the impartiality of an appeal officer in writing, to the Director of Student Conduct or designee. Following a review of this documentation, the appeal may proceed, or a new appeal officer may be assigned. The decision of the Director of Student Conduct or designee is final.

The appeal officer will provide the non-appealing student a copy of written materials provided by the appellant. The non-appealing party may submit a written response to the appeal request. If the non-appealing party wishes to provide a response, documentation must be provided no later than five (5) days following the request (by 5:00 p.m.). After receipt of such written materials, the appeal officer shall provide a copy of the response to the appealing party.

The appeal officer will base the decision on all case materials and the recording of the hearing. The appeal officer may:

- Deny the Appeal;
- Modify the sanctions;
- Return the case to the Office of Student Conduct with instructions to conduct a new hearing.

Typically, appeals will be concluded within 15 days unless a longer period of time is deemed necessary.

The appeals officer shall issue the written decision to both the respondent and complainant, on or about the same date and time. The documentation will contain the rationale for the appeal decision.

Both the complainant and respondent have the opportunity to file one appeal per case.

### **Transcript Notations**

As is required by Virginia law, a student who has been suspended or expelled for a sexual misconduct violation shall have a notation placed on his or her academic transcript. The notation will state that a student has been “Suspended or Dismissed for a Violation of the Code of Student Conduct.”

Additionally, any student who is alleged to have violated this policy who withdraws from the University while under investigation will also have a notation placed on her or his academic transcript. This notation will state that the student has withdrawn from the institution while under investigation for a violation.

### **Reasonable Alterations**

The Office of Student Conduct and the Office of Compliance, Diversity and Ethics may alter this process, at their sole discretion, when extenuating circumstances exist.