

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES
NOTICE OF PROPOSED AMENDED REGULATION**

REGULATION NUMBER AND TITLE: FPU-3.006 Student Code of Conduct

SUMMARY OF THE REGULATION: The proposed amended regulation substantially revises the Student Code of Conduct to ensure compliance with Board of Governors regulation 6.0105, to clarify terms and processes, to add additional types of misconduct, and to update position titles.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the Florida Polytechnic University Board of Trustees website, at <https://floridapoly.edu/about/board-of-trustees/university-policies-regulations-rules/>.

If you would like a copy of the Proposed Regulation, please contact Bacogie Luke, Executive Assistant to the VP and General Counsel at (863)874-8412.

AUTHORITY: Board of Governors Regulations 1.001(4)(a)(10), 6.010, and 6.0105.

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Terry Parker,
Provost

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

THE CONTACT PERSON REGARDING THIS REGULATION IS: Bacogie Luke, Executive Assistant to the VP and General Counsel at 4700 Research Way, Lakeland, Florida 33805-8531, Email: bluke@floridapoly.edu, Phone: (863)874-8412, Fax: (863)874-8716.

DATE OF PUBLICATION: August 11, 2017

THE FULL TEXT OF THE REVISED PROPOSED REGULATION IS PROVIDED BELOW:

THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

FPU-3.006 Student Code of Conduct

(1) **Introduction**

- (a) Community Values. The Student Code of Conduct is designed to promote responsible behavior for all students consistent with the values and welfare of the Florida Polytechnic University (“University”) community. It exists to define the behavioral rights and responsibilities of University students and student organizations. The Student Code of Conduct fosters and enhances the academic mission of the University as well as protects the rights of all University students, faculty, and staff.
- (b) Applicability. The Student Code of Conduct applies to the conduct of any student or student organization that occurs: on University property; at University or student-sponsored activities; and at locations where a University course or program is being conducted, including foreign locations such as study abroad and exchange programs. It also applies to off-campus conduct and online conduct that adversely affects the University community and/or the pursuit of its objectives.

(2) **Authority**

- (a) The Florida Polytechnic University Board of Trustees is charged with the responsibility and authority for creating a Student Conduct Review Process. Authority for the Student Conduct Review Process rests with the University President or designee (“President”).
- (b) Student organizations are also regulated under this authority.

(3) **Definitions**

- (a) **Accused.** Any student or student organization that has been charged with violating the Student Code of Conduct.
- (b) **Advisor.** The person chosen by the Accused who may assist and/or accompany the Accused throughout the Student Conduct Review Process.
- (c) **Business Day.** Monday through Friday from 8 am to 5 pm, excluding University holidays.
- (d) **Complainant.** A person that believes that he or she has been a victim of a student’s misconduct, even if he or she was not the person who submitted the report itself. A Complainant may also be a Reporting Party.
- (e) **Sanction.** Outcome(s) imposed on the Responsible.
- (f) **Faculty Member.** Any person hired by the University to conduct classroom or teaching activities or who is otherwise considered by the University to be a member of its faculty.
- (g) **Good Standing.** A conduct status describing a student who does not have pending charges under the Student Code of Conduct or incomplete misconduct Sanctions.
- (h) **Hearing Body.** Any person or persons appointed by the Vice Provost of Enrollment or designee to conduct hearings to determine whether the Accused has violated the Student Code of Conduct and impose Sanctions. This includes a Hearing Officer or Hearing Panel.
- (i) **May.** The term “may” is used in the permissive sense.
- (j) **Policy.** Any written policies, regulations, or rules of the University as found in, but not limited to, the Student Code of Conduct; University Policies, Regulation and

Rules webpage; the Student Handbook; and the Undergraduate and the Graduate Catalogs.

- (k) **Preponderance of the Information.** Information, considered as a whole that indicates the facts sought to be proved are more likely than not. This is the burden of proof that must be met in a determination of responsible or not responsible.
 - (l) **Reporting Party.** Any person who reports a violation of the Student Code of Conduct. A Reporting Party may also be a Complainant.
 - (m) **Representative.** An Office of Student Development employee designated by the Vice Provost of Enrollment to fulfill specified duties under the Student Conduct Review Process.
 - (n) **Responsible.** A student or student organization that has been found to have violated the Student Code of Conduct by a preponderance of the information.
 - (o) **Student.**
 - (i) Persons taking courses at the University (full-time or part-time) in undergraduate, graduate, or professional studies;
 - (ii) Persons who withdraw from the University after allegedly violating the Student Code of Conduct, who were previously enrolled but are not officially enrolled for a particular term and have a continuing relationship with the University; or
 - (iii) Persons who have been notified of their acceptance for admission to the University.
 - (p) **Student Organization.** A registered student organization as described in FPU-3.002 Student Government and Student Organizations.
 - (q) **University Community.** Includes any University officer, employee, student, applicant, visitor, agent, vendor, or contractor.
 - (r) **University Official.** Includes any person employed by the University that is performing assigned administrative or professional responsibilities.
 - (s) **University Property.** Property owned or controlled by the University.
 - (t) **Witness.** A person who has relevant information to help a decision maker determine whether or not an alleged violation of the Student Code of Conduct has taken place.
- (4) **Student Rights In the Student Conduct Review Process.** The student has the right to:
- (a) Be free from self-incrimination. However, the rights and rules of evidence or procedure in a civil or criminal proceeding do not apply to the Student Conduct Review Process.
 - (b) Be informed of and receive just and unbiased treatment under the Policies of the University, in its courses, in its residential life, and in its extracurricular activities;
 - (c) Be informed of decisions impacting his or her status, advancement, or exercise of University benefits, and have the opportunity to appeal, through a defined process and framework, those decisions in accordance with the procedures prescribed in this Student Code of Conduct;
 - (d) Have past behavior considered only when related to the charge(s);
 - (e) Privacy, including the confidentiality of education records according to the Federal Family Educational Rights and Privacy Act of 1974 (FERPA);
 - (f) Adequate notice of charges and a fair and impartial hearing under the Student Code of Conduct;
 - (g) Be secure in their persons, living quarters, papers, and effects against unreasonable searches and seizures by the University; and

(h) Ready access to established University Policies.

(5) **Student Responsibilities.** The student has the responsibility to:

- (a) Observe and comply with all University Policies and local, state, and federal laws;
- (b) Respect the rights and privacy of others;
- (c) Accept the Sanctions imposed due to one's actions;
- (d) Maintain high standards of academic integrity and honor in all work submitted; and
- (e) Conduct oneself in a manner that does not infringe upon the rights of other members of the University community.

(6) **Misconduct.** Any student or student organization found to have committed or to have attempted to commit the following misconduct is subject to Sanctions in accordance with this Student Code of Conduct.

- (a) **Acts of Dishonesty**, including but not limited to the following:
 - (i) **Cheating, plagiarism**, or other forms of academic dishonesty as defined in University Regulation FPU-5.005 Academic Integrity.
 - (ii) **Furnishing false information** to any University official, faculty member, or office.
 - (iii) **Forgery, alteration, or misuse** of any University document, record, or instrument of identification.
- (b) **Disruption or obstruction** of teaching, research, administration, disciplinary proceedings, other University activities, including its public service functions, on or off campus, or of other authorized non-University activities when the conduct occurs on University property.
- (c) **Physical abuse, verbal abuse, threats, intimidation, harassment, stalking, coercion**, and/or other conduct that threatens or endangers the health or safety of any person, group, or animal.
- (d) **Sexual misconduct** as defined in University Policies.
- (e) **Attempted or actual theft** of and/or **damage to property** of the University or property of a member of the University community or other personal or public property, on or off campus.
- (f) **Hazing**, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are violations of this regulation.
- (g) **Failure to comply with directions** of University officials or law enforcement officers acting in performance of their duties and/or failure to identify oneself to such persons when requested to do so.
- (h) **Unauthorized possession, duplication or use of keys** to any University property or unauthorized entry into or use of University property.
- (i) **Violation of any University Policy.**
- (j) **Violation of any federal state, or local law.**
- (k) **Use, possession, manufacturing, or distribution of marijuana, heroin, narcotics, or other controlled substances**, except as expressly permitted by law. This includes the misuse of prescription drugs.
- (l) **Use, possession, manufacturing, or distribution of alcoholic beverages** (except as

- expressly permitted by University Policies), or **public intoxication**. Alcoholic beverages may not, in any circumstance, be used by, possessed by or distributed to any person under twenty-one (21) years of age.
- (m) **Control or operation of any vehicle**, including non-motorized vehicles, **while impaired** by alcohol or another substance.
 - (n) **Illegal or unauthorized possession of firearms, explosives, weapons, or dangerous chemicals** on University property or use of any such item, even if legally possessed, in a manner that harms or threatens others.
 - (o) Soliciting, facilitating, or participating in any **illegal gambling**, bookmaking or illegal betting whether through a bookmaker, a parlay card, a pool or any other method of organized gambling.
 - (p) Causing or attempting to cause a **fire or explosion; falsely reporting a fire, explosion, or an explosive device; tampering with fire safety equipment; or failure to evacuate** University buildings during a fire alarm.
 - (q) **Unauthorized posting of commercial advertising** or engaging in **commercial activity** as described in University Policies.
 - (r) **Participation in an on-campus or off-campus demonstration, riot or activity that disrupts the normal operations** of the University and/or infringes on the rights of other members of the University community; or leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.
 - (s) **Obstruction of the free flow of pedestrian or vehicular traffic** on University property or at University sponsored or supervised functions.
 - (t) **Conduct that is disorderly, lewd, or indecent; breach of peace**; or aiding, abetting, or procuring another person to breach the peace on University property or at functions the University or members of the University community have sponsored or participated in.
 - (i) **Disorderly Conduct** includes, but is not limited to: any unauthorized use of electronic or other devices to make an audio or video record of any person while on University property without his or her prior knowledge, or without his or her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.
 - (u) **Theft or other abuse of computer facilities and resources**, including but not limited to:
 - (i) Unauthorized entry into a file to use, read, or change the contents, or for any other purpose.
 - (ii) Unauthorized transfer of a file.
 - (iii) Use of another individual's identification and/or password.
 - (iv) Use of computing facilities and resources to interfere with the work of another student, faculty member or University Official.
 - (v) Use of computing facilities and resources to send obscene or abusive messages.
 - (vi) Use of computing facilities and resources to interfere with normal operation of the University computing system.
 - (vii) Use of computing facilities and resources in violation of copyright laws.
 - (v) **Abuse of the Student Conduct Review Process**, including but not limited to:
 - (i) Failing to obey the notice from the Office of Student Development or a University official to appear for a meeting or hearing as part of the Student Conduct Review Process.
 - (ii) Falsifying, distorting, or misrepresenting of information before a Hearing Body

- (iii) Disrupting or interfering with the orderly conduct of a Student Conduct Review Process.
- (iv) Reporting a violation of the Student Code of Conduct in bad faith.
- (v) Attempting to discourage an individual's proper participation in, or use of, the Student Conduct Review Process.
- (vi) Attempting to improperly influence the impartiality of a Hearing Body prior to, and/or during the course of, the Student Conduct Review Process.
- (vii) Harassing (verbal or physical) and/or intimidation of a Hearing Body prior to, during, and/or after a Student Conduct Review Proceeding.
- (viii) Failing to comply with the Sanction(s) imposed under the Student Code of Conduct.
- (ix) Influencing or attempting to influence another person to commit an abuse of the Student Conduct Review Process.

(7) **Sanctions.** The Responsible is subject to Sanctions commensurate with the offense with consideration given to any aggravating and mitigating circumstances, including but not limited to the Responsible's conduct record at the University. The Responsible's efforts to get help or assist others may be taken into account in determining Sanctions. The Responsible's failure to complete Sanctions may result in a registration, transcript, final grades, and/or diploma hold. Sanctions that may be imposed upon the Responsible include, but are not limited to:

- (a) **Deactivation.** The loss of all privileges, including University recognition, for a specified period of time when the Responsible is an organization.
- (b) **Discretionary Educational Sanctions.** Work assignments, essays, service to the University, or other related discretionary Sanctions.
- (c) **Fines.** Previously established and published financial fines may be imposed.
- (d) **Loss of Privileges.** Denial of specified privileges for a designated period of time.
- (e) **Probation.** A designated period of time where more severe disciplinary Sanctions will be imposed if the Responsible is found to violate the Student Code of Conduct during the probation period.
- (f) **Residence Hall Expulsion.** Permanent separation of the Responsible from the residence halls.
- (g) **Residence Hall Suspension.** Separation of the Responsible from the residence halls for a definite period of time, after which the Responsible is eligible to return. Conditions for returning to the residence halls may be specified.
- (h) **Restitution.** Requiring compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- (i) **Revocation of Admission and/or Degree.** Admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree, or for other violations that were committed by the student prior to graduation.
- (j) **University Expulsion.** Permanent separation of the Responsible from the University.
- (k) **University Suspension.** Separation of the Responsible from the University for a definite period of time. Conditions for readmission to the University will be specified. The Vice Provost of Student Enrollment or designee will instruct the Registrar to place an overlay on the Responsible's transcript during the period of suspension indicating the period of suspension. Further, while on University Suspension, a hold will be placed on the Responsible's record to prevent registration. All assigned

educational Sanctions must be completed prior to the restoration of student privileges; otherwise the suspension will remain in effect. A suspended student is not permitted on University property during the length of his/her suspension. A suspension may be deferred so that the Responsible can attend classes for the remainder of the semester.

- (l) **Warning.** A notice in writing to the Responsible that the Responsible is violating or has violated the Student Code of Conduct.
- (m) **Withholding Degree.** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Code of Conduct, including the completion of any Sanctions imposed.
- (n) More than one of the Sanctions listed above may be imposed for any single violation.

(8) Interim Suspension. In certain situations, the Provost or designee may impose a University or residence hall interim suspension prior to the completion of the Student Conduct Review Process.

- (a) An interim suspension may be imposed:
 - (i) To ensure the safety and well-being of members of the University community or preservation of University property;
 - (ii) To ensure the student's own physical or emotional safety and well-being; or
 - (iii) If the student poses an ongoing threat of disruption of, or interference with, the normal operations of the University.
- (b) If requested in writing by the student, an interim suspension is subject to a review at a hearing within three (3) business days by the Provost or designee to determine the status of the interim suspension. The outcome of an interim suspension hearing remains in effect until the final disposition of the charges unless the Provost or designee decides otherwise.
- (c) During the interim suspension, the student may be denied access to the residence halls and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible, as the Provost or designee determines to be appropriate.
- (d) The interim suspension does not replace the regular Student Conduct Review Process, which proceeds on the normal schedule, up to and through a formal hearing, if required.
- (e) If the student is subsequently found not responsible for the violation, the University will:
 - i) Correct any record of the change in enrollment status in the student's permanent records and reports in a manner compliant with state and federal laws; and
 - ii) Refund to the student a pro rata portion of any charges for tuition and out-of-state fees, as appropriate, if the temporary suspension of the student's ability to attend classes lasts for more than ten (10) business days.

(9) Student Conduct Review Process

- (a) **General Provisions.**
 - (i) Requests for reasonable accommodations. The Accused, Complainant, or other person participating in the Student Conduct Review Process may submit a request for reasonable accommodations for a documented disability for any part of the Student Conduct Review Process to the Office of Student Development

- representative (the “Representative”). The Representative must receive such requests at least three (3) business days prior to the part of the Student Conduct Review Process for which the person is requesting accommodations.
- (1) The Representative has the discretion to grant such requests. The Representative also has the discretion to waive the three (3) business day requirement.
 - (ii) Requests for Postponement. The Accused or Complainant may request to postpone any part of the Student Conduct Review Process.
 - (1) Requests to postpone any part of the Student Conduct Review Process must:
 - (a) Be submitted in writing to the Representative at least three (3) business days prior to the part of the Student Conduct Review Process for which the person is requesting postponement, and
 - (b) State the reason(s) for the request.
 - (2) The Representative has the discretion to grant such requests. The Representative also has the discretion to waive the three (3) business day requirement.
 - (3) The University is not required to postpone a Student Conduct Review proceeding pending the outcome of a criminal prosecution.
 - (iii) Notices. All notices to a student are sent to the student’s official University email account. Notices to a student organization are sent to the student organization’s highest-ranking officer’s official University email account.
 - (iv) Remote Participation. The Representative has the discretion to allow the Accused, Complainant, and/or Witness to participate in the Student Conduct Review Process remotely via telephone or other electronic means.
 - (1) Requests to participate remotely must be received by the Representative at least three (3) business days prior to the part of Student Conduct Review Process for which the request is being made.
 - (2) The Representative has the discretion to waive the three (3) business day requirement.
 - (v) Failure to Attend Scheduled Meeting or Hearing.
 - (1) After receiving notice, if the Accused, Complainant, or Witness does not request a postponement and does not attend a scheduled meeting or hearing, the meeting or hearing will take place as scheduled.
 - (2) Sanctions may be imposed against the Accused even if the Accused does not attend scheduled meetings and hearings. The Accused will be sent written notice of any imposed Sanctions.
 - (3) The Representative may have a hold placed on the Accused’s registration, transcript, final grades and/or diploma if the Accused does not attend a scheduled meeting or hearing. This hold is removed once the Accused attends the re-scheduled meeting or hearing, or the Student Conduct Review Process is concluded.
 - (vi) Advisor. Accused and the Complainant may have, at their own expense and initiative, an Advisor present for any part of the Student Conduct Review Process.
 - (1) If the Accused or Complainant chooses to have an Advisor, it is his or her responsibility to make appropriate arrangements for the Advisor to attend the Student Conduct Review Process. No part of the Student Conduct Review Process will be delayed due to scheduling conflicts with an Advisor.

- (2) The Advisor may be present to advise the Accused or Complainant but cannot speak for or present the case or otherwise participate directly in the Student Conduct Review Process.
- (3) If the Accused or Complainant chooses an attorney as the Advisor, the Accused or Complainant must inform the Representative of such at least three (3) business days prior to the Initial Meeting.
- (vii) University's Right to Attorney. The University may be advised by an attorney at any time prior to, during, or after the Student Conduct Review Process.
- (viii) Burden of Proof. The burden of proof for any portion of the Student Conduct Review Process is not on the Accused.
- (ix) Student's Eligibility to Attend Classes and University Activities.
 - (1) A student remains eligible to attend classes and University activities pending the outcome of the Student Conduct Review Process and until any appeal is concluded except for in the following situations:
 - (a) The student is currently subject to an Interim Suspension; or
 - (b) Where there is an appeal and the Sanction(s) imposed included University or Residence Hall Suspension or Expulsion.
 - (2) If the student is subsequently found not responsible, the University will:
 - (a) Correct any record of the change in enrollment status in the student's permanent records and reports in a manner compliant with state and federal laws; and
 - (b) Refund to the student a pro rata portion of any charges for tuition and out-of-state fees, as appropriate, if the suspension of the student's ability to attend classes lasted for more than ten (10) school days.
- (b) **Student Conduct Report.** Any person or entity may report an alleged violation of the Student Code of Conduct to the Office of Student Development. The University may conduct an investigation regarding the circumstances of the report. An investigation is a neutral fact finding process that determines whether there is sufficient information to move forward with formal student conduct charges or other action as appropriate. An investigation may include interviews with the Reporting Party, the Complainant, the Accused, and any Witnesses.
- (c) **No Charges Filed.** The Representative may choose to not file charges if:
 - (i) It is found that there are not sufficient facts or information to substantiate a violation of the Student Code of Conduct;
 - (ii) The person being accused of violating the Student Code of Conduct is not a student;
 - (iii) The action claimed as misconduct is not a violation of the Student Code of Conduct.
 - (iv) Or in other appropriate circumstances such as Medical Amnesty as reference in University policy FPU-1.0003P Alcohol Policy.
- (d) **Filing Charges and Timeline.** The Representative will review the relevant information to determine if a student or student organization will be charged with violating the Student Code of Conduct. Upon receipt of a report, the Representative has six (6) months to file a charge. The Representative may exercise discretion when applying the time provision to account for circumstances that warrant a waiver of the six (6) month time limit.
- (e) **Notice of Charges.** The Representative will give the Accused written notice of the

- charge(s) at least five (5) business days prior to the Initial Meeting. The Notice of Charges must include:
- (i) Specific charges including specific code sections alleged to have been violated;
 - (ii) A description of the behavior that led to the charges; and
 - (iii) An opportunity for the Accused to attend an Initial Meeting.
- (f) **Notice of Complainant’s Rights.** The Representative will give the Complainant written notice of his or her rights at least five (5) business days prior to the Initial Meeting. The Complainant has the same rights as the Accused, including the right to appeal and the rights described in Section (9)(j)(v) Complainant’s Rights. The Complainant also has the responsibilities as the Accused.
- (g) **Initial Meeting.** The Accused has the opportunity to attend an Initial Meeting with the Representative. The Accused may choose an Advisor to accompany the Accused to the Initial Meeting.
- (i) At the Initial Meeting, the Accused will be given an overview of the Student Conduct Review Process, information known at the time the charge(s) were filed, and an opportunity for the Accused to accept or deny responsibility for the charge(s).
 - (ii) At the conclusion of the Initial Meeting, the Representative will select an option for resolution. The options are: 1) Dismissal of Charges; 2) Non-Formal Resolution; or 3) Formal Hearing.
 - (1) Accused Accepts Responsibility. If the Accused accepts responsibility, the Representative may choose to resolve the violation through non-formal resolutions.
 - (2) Accused Denies Responsibility. If the Accused denies responsibility or wishes to have a Formal Hearing, the charge(s) will be resolved by a Formal Hearing.
 - (3) Non-Formal Resolution Requirements. Non-formal resolutions may be used when the student accepts responsibility and possible Sanctions do not include suspension or expulsion. Non-formal resolutions may not be used for violations that the Representative deems to be serious, such as sexual misconduct, violence, or violations involving weapons.
- (h) **Non-Formal Resolution.** Non-formal resolutions include:
- (i) Mediation Agreement: Depending on the nature and severity of the charge, the Representative may recommend mediation. The Accused and the Complainant must both agree to mediation for mediation to be an option. Mediation is confidential.
 - (1) In mediation, the Accused and the Complainant voluntarily meet with an impartial mediator to communicate their concerns and needs to each other and to reach their own agreement on the resolution of the case (“Mediation Agreement”). The Accused and Complainant are responsible for honoring their Mediation Agreement or renegotiating it, if necessary.
 - (2) Breach of a Mediation Agreement may result in a follow up mediation session, or the Representative may refer the matter back through the Student Code Review Process.
 - (3) In the event that the Accused and Complainant do not agree to mediate or mediate but do not reach a full and final resolution, the matter will be referred back through the Student Conduct Review Process for an Administrative

Agreement or a Formal Hearing.

- (ii) Administrative Agreement: An Administrative Agreement is negotiated by the Representative and the Accused. The Administrative Agreement is between the Accused and the Office of Student Development.
 - (1) The Administrative Agreement may include punitive Sanctions (disciplinary warning or disciplinary probation) as well as educational Sanctions (papers, seminars, community service, etc.).
 - (2) Breach of an Administrative Agreement may result in a new Administrative Agreement, or Representative may refer the matter to be resolved by a Formal Hearing or Mediation.
- (i) **Failure to Resolve Through Non-Formal Resolution.** If the charge is not resolved by a non-formal resolution, the matter will be resolved through a Formal Hearing.
- (j) **Formal Hearing:** The Formal Hearing is not a criminal or judicial proceeding and is designed to address student or student organization behavior; therefore, alleged violations of the Student Code of Conduct will be addressed independently of any penalty imposed by the courts for a criminal offense. All Formal Hearings are recorded and confidential.
 - (i) Notice of Formal Hearing. The written Notice of Formal Hearing is sent to the Accused and the Complainant at least five (5) business days prior to the Formal Hearing. The notice must include:
 - (1) The date, time, and location of the Formal Hearing;
 - (2) The names of witnesses to be called and information to be used in the Accused's matter;
 - (3) Whether the Hearing Body received any additional information after the Initial Meeting that will be used in the Formal Hearing, and, if so, will indicate when and where the additional information may be viewed; and
 - (4) The names of the members of the Hearing Body.
 - (ii) Accused's Right to Hearing Panel and Waiver. The Accused has the right to a Formal Hearing conducted by a Hearing Panel. If the Accused chooses to waive this right, a Hearing Officer conducts the Formal Hearing. The Accused may waive his or her right to a Hearing Panel if:
 - (a) The Accused requests such a waiver in writing on forms provided by the University that include an explanation of the effect of the waiver; and
 - (b) The Vice Provost of Enrollment or designee approves the Accused's request.
 - (iii) Accused's and Complainant's Right to Inspect Information. The Accused and the Complainant each have the right to inspect all of the information, including witnesses, that will be presented against the Accused at least three (3) business days before the Formal Hearing.
 - (iv) University's Right to Inspect Information. The University also has the right to review any information, including witnesses, the Accused and Complainant intend to use at least three (3) business days before the Formal Hearing.
 - (v) Complainant's Rights. Complainant has the right:
 - (1) To have unrelated past behavior excluded from the hearing.
 - (2) To participate in and be present throughout the entire Formal Hearing or any portions thereof. If the Complainant does not want to be present in the same room as the Accused Student, the Hearing Body will make alternative

- arrangements, if possible.
- (3) To testify in limited privacy. In lieu of testifying in person or via telephone, the Complainant may submit a written or recorded statement. The determination of whether the testimony will be given in limited privacy is made at the discretion of the Vice Provost of Enrollment or designee.
 - (4) To submit a “student impact statement” and offer to the Hearing Body a suggestion of what the Complainant believes to be an appropriate Sanction for the Accused. This information may be used only to determine Sanctions.
 - (5) To be excluded from direct examination in cases where sexual misconduct or abuse is alleged. The Accused will not be permitted to directly question the Complainant where the alleged violations are sexual misconduct or abuse. In such cases, the Accused and the Complainant must submit questions to the Hearing Body; however, the Hearing Body is not required to ask all of the questions submitted.
- (vi) Hearing Body. The Hearing Body reviews all information presented during the Formal Hearing and determines whether the Accused is responsible. The Representative that conducts the Initial Meeting cannot serve as a Hearing Body.
- (1) Formal Hearing Conducted by Hearing Panel. The Representative facilitates a Formal Hearing conducted by a panel. The Representative does not participate in deliberations. The Hearing Panel must consist of at least 50% students. The Provost or designee appoints faculty, staff, and student representatives to the Hearing Panel.
 - (2) Formal Hearing Conducted by Hearing Officer. The Hearing Officer conducts the hearing and determines the findings and Sanctions.
 - (3) Hearing Body for Charges Involving Sexual Misconduct. The Hearing Body is comprised of staff and/or faculty for charges involving sexual misconduct. However, upon request by the Accused, and provided there is no objection from the Complainant, Representative may approve that the Hearing Body will be a Hearing Panel with at least one-half of the members being students.
 - (4) Hearing Body Member Unable to Serve. If a Hearing Body member is unable to serve due to an emergency or unforeseeable occurrence, the Provost may appoint a new Hearing Body member prior to the scheduled hearing..
 - (5) Challenging a Hearing Body Member’s Impartiality. The Accused and/or Complainant has the right to challenge any Hearing Body member’s impartiality at least three (3) business days prior to the scheduled hearing. The Accused may challenge the substitution of a substituted Hearing Body member at the time of the Formal Hearing. The challenge must be in writing, and must show actual bias (such as a conflict of interest, animosity, pressure, or influence) that would preclude a fair and impartial hearing. The Vice Provost of Enrollment or designee determines whether to grant such a challenge and such decision is final.
- (vii) Witnesses and Information. The Accused and/or Complainant may present or arrange for witnesses to voluntarily present relevant information during the Formal Hearing. Character witnesses cannot participate in the Formal Hearing. The Hearing Body may accept pertinent records, reports, exhibits, and written statements as information for consideration.
- (1) The Hearing Body facilitates the questioning of witnesses.

- (2) The Accused and/or Complainant may submit a request in writing to the Representative to provide relevant information during the Formal Hearing in a manner that avoids direct contact with the Accused and/or Complainant.
- (3) The Representative has the discretion to approve or deny the request.
- (viii) Determination of Responsibility. The determination of “responsible” or “not responsible” will be based upon a preponderance of the information. The determination must be based solely upon the information presented at the Formal Hearing.
- (k) **Conduct of Formal Hearings.**
 - (1) Reading of charge(s) by Hearing Body.
 - (2) Accused’s response of “responsible” or “not responsible.”
 - (3) Hearing Body presents information regarding the charges.
 - (4) Accused’s opening statement and presentation of information.
 - (5) Complainant’s opening statement and presentation of information.
 - (6) Hearing Body’s questioning of the Accused.
 - (7) Hearing Body’s questioning of Complainant, witnesses, and/or Reporting Party. (This may include questions submitted to the Hearing Body for charges of sexual misconduct and abuse. See Section (j)(v)(5).
 - (8) Hearing Body’s final questions of the Accused.
 - (9) Accused’s closing remarks.
 - (10) Complainant’s closing remarks.
 - (11) Hearing is brought to a close.
- (l) **Deliberations.** Deliberations by the Hearing Body are not part of the hearing and are confidential. Deliberations occur after the close of the hearing and are not recorded.
- (m) **Findings, Recommendation, and Determination.**
 - (i) Announcement of Proposed Findings and Sanctions. Following deliberations, the Hearing Officer or the Representative will announce to the Accused the proposed findings and any Sanctions. The announcement of the proposed findings and any Sanctions are recorded as part of the official hearing record.
 - (ii) Presentment of Proposed Findings and Sanctions to Vice Provost. The Hearing Body’s proposed findings and Sanctions must be presented to the Vice Provost of Enrollment or designee within a reasonable period of time after the conclusion of the Formal Hearing.
 - (iii) Vice Provost’s Determination. The Vice Provost of Enrollment or designee may accept the proposed findings of responsible or not responsible or remand the matter for a rehearing.
 - (1) If the Vice Provost of Enrollment or designee accepts the proposed finding of responsible, then he/she may approve, mitigate, or increase the Sanctions proposed by the Hearing Body.
 - (2) If the Vice Provost of Enrollment or designee alters the proposed Sanctions or remands the matter for a rehearing, the Accused must be given a concise and explicit written statement that explains the basis for the decision to alter the Sanctions or remand the matter for a rehearing.
- (n) **Notice of Determination and Sanctions.** Following the Student Conduct Review Process, the Vice Provost of Enrollment or designee notifies the determination. The Representative notifies the Accused and the Complainant in writing of the determination and, to the extent permitted by law, of any Sanctions imposed.

- (o) **Official Record.** The recording of the Formal Hearing will serve as the official record of the Formal Hearing and is the property of the University. Retention of the record is subject to the General Records Schedule GS5 for Universities and Community Colleges.
- (p) **Appeal Process.**
- (i) Responsibility. The President is responsible for overseeing the appeal process. The President may designate the Provost to oversee the appeal process.
 - (ii) Appeal deadline. The Responsible or the Complainant may appeal a determination reached or an imposed Sanction to the President. Such appeals must be in writing and must be received by the President no later than five (5) business days after the date the determination was sent.
 - (iii) Persons who may not hear or decide an appeal. No person may hear or decide an appeal if he or she conducted or participated in the Student Conduct Review Process being reviewed on appeal.
 - (iv) Basis of Appeal.
 - (1) Formal Hearing was not Properly Conducted. The purpose of the appeal will be to determine whether the Formal Hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures. However, deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
 - (2) No Substantial Information to Support Recommendation. The purpose of the appeal will be to determine whether the Hearing Body's recommendation regarding the Responsible was based on substantial information. A recommendation is based on substantial information when the Hearing Body adequately considered all relevant facts presented during the Formal Hearing.
 - (3) Sanctions Imposed were Improper. The purpose of the appeal will be to determine whether the Sanction(s) imposed were appropriate for the charge(s) for which Responsible was found responsible.
 - (4) New Information not known at time of Formal Hearing. The purpose of the appeal will be to consider new information, sufficient to alter a recommendation, that was not known to the Responsible at the time of the Formal Hearing.
 - (v) Information to be Reviewed on Appeal. An appeal is limited to a review of the verbatim record of the Formal Hearing and supporting documents unless the basis of appeal is to consider new information.
 - (vi) President's Decision. The President determines whether to uphold the determination and sends written notification of such decision to the Representative within five (5) business days of receiving the appeal.
 - (1) If the result of the appeal is to uphold the determination, the matter is final and binding on all involved.
 - (2) If the earlier determination is not upheld on appeal, a new Formal Hearing will occur.
 - (vii) Notice of Appeal Outcome. The Representative provides written notice of the outcome of the appeal within three (3) business days of receiving the President's decision.
 - (viii) Final Decisions Resulting in University Suspension or Expulsion. Final appellate decisions that result in a University Suspension or Expulsion of the

Responsible must include notice of the right to appeal to an external judicial forum.

- (10) **Disciplinary and Academic Records.** The Vice Provost of Enrollment determines whether disciplinary Sanctions are noted on the Responsible student's permanent academic record and disciplinary record. Upon graduation, the Responsible student may submit a request to the Office of Student Development to have his/her disciplinary record expunged of disciplinary actions other than Residence Hall Expulsion, University Suspension, University Expulsion, or revocation or withholding of a degree.
- (11) **Student's Education Record.** The records of the Student Conduct Review Process and of the Sanctions imposed, if any, are considered "education records" of both the Responsible and the Complainant (if Complainant is a student) pursuant to The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).
- (12) **Interpretation and Revision.**
- (a) Any questions of interpretation or application of the Student Code of Conduct are referred to the Provost or designee for final determination.
 - (b) The Student Code of Conduct is reviewed periodically by a committee that includes student representation under the direction of the Provost or designee.

Authority: FBOG regulations 1.001(4)(a)(10), 6.010, 6.0105

History: New 1.14.14, Amended 7.29.14 Amended _____