

**Board of Trustees  
Academic and Student Affairs Committee  
June 6, 2022 at 1:00 pm  
Zoom Meeting – No Physical Location Available**

The public is invited to view the meeting on YouTube. The link to the Board of Trustees YouTube page can be found the Board website: <https://www.maine.edu/board-of-trustees/>

**AGENDA**

1:00pm - 1:05pm

Tab 1 Faculty Representative Discussion

1:05pm - 1:10pm

Tab 2 Student Representative Discussion

1:10pm - 2:10pm

Tab 3 Proposed Changes to Board of Trustee Policy 501: Student Conduct Policy, 2<sup>nd</sup> Reading

Items for Committee decisions and recommendations are noted in red.

## Academic & Student Affairs Committee - Agenda

Note: Times are estimated based upon the anticipated length for presentation or discussion of a particular topic. An item may be brought up earlier or the order of items changed for effective deliberation of matters before the Committee.

University of Maine System  
Board of Trustees

**AGENDA ITEM SUMMARY**

**NAME OF ITEM:** Faculty Representatives: Discussion

**INITIATED BY:** Lisa Marchese Eames, Chair

**BOARD INFORMATION:** X

**BOARD ACTION:**

**BOARD POLICY:**

**UNIFIED ACCREDITATION CONNECTION:**

**BACKGROUND:**

The Faculty Representatives to the Board of Trustees would like to reserve the opportunity to have a brief discussion on current matters.

5/27/22

University of Maine System  
Board of Trustees

**AGENDA ITEM SUMMARY**

**NAME OF ITEM:** Student Representatives: Discussion

**INITIATED BY:** Lisa Marchese Eames, Chair

**BOARD INFORMATION:** X

**BOARD ACTION:**

**BOARD POLICY:**

**UNIFIED ACCREDITATION CONNECTION:**

**BACKGROUND:**

The Student Representatives to the Board of Trustees would like to reserve the opportunity to have a brief discussion on current matters.

5/27/22

University of Maine System  
Board of Trustees

## AGENDA ITEM SUMMARY

**NAME OF ITEM:** Proposed Revision to Board Policy 501- Student Conduct Code, 2<sup>nd</sup> Reading

**INITIATED BY:** Lisa Marchese Eames, Chair

**BOARD INFORMATION:**

**BOARD ACTION:** X

**BOARD POLICY:**

[501: Student Conduct Policy](#)

**UNIFIED ACCREDITATION CONNECTION:**

None

**BACKGROUND:**

The UMS Student Conduct Code, comprised of policy and procedures, has been in place for many years. The Student Conduct Code is typically reviewed and updated every three years, and is ultimately approved by the Board of Trustees. In their governance role, the Board of Trustees are responsible for reviewing and approving the Student Conduct Code with a focus on the policy portion; the implementation of the procedures and process is the responsibility of the Universities under the oversight of the UMS Chancellor's Office. The UMS Student Conduct Code applies to the entire University of Maine System. In July 2021, the Board of Trustees asked for an off-cycle review of the Student Conduct Code. The review has attempted to both clarify the policy and the process for implementation; and to separate policy from process to align with other Board policies and to create a more logical and agile approach to the review and approval of each, going forward.

The proposed revision to Board Policy 501- Student Conduct Code was previously reviewed by the Academic and Student Affairs (ASA) Committee on May 2<sup>nd</sup> and the full Board on May 23<sup>rd</sup>. It is now being presented for approval by the ASA Committee, followed by submission for final approval at the July 11, 2022 Board of Trustees meeting.

Patricia Peard, Interim General Counsel, and Amon Purinton, UMS Assistant General Counsel, will update the Committee on the review process as well as changes/clarifications to the policy. David Fiacco, Director of Community Standards, Rights and Responsibilities at UM, Donna Seppy, Director of Student Success Initiatives and chair of the UMS Student Conduct Review Committee, and Nina Lavoie, Senior Associate General Counsel will also be available to answer questions.

**TEXT OF PROPOSED RESOLUTION:**

That the Academic and Student Affairs Committee approves this item to be forwarded to the July 11, 2022 Board of Trustees meeting for approval of the following resolution:

That the Board of Trustees accepts the recommendation of the Academic and Student Affairs Committee and approves the proposed changes to Board of Trustee Policy 501 - Student Conduct Policy to go into effect August 1, 2022.

5/27/22

**UNIVERSITY OF MAINE SYSTEM**  
Policy Manual

**STUDENT AFFAIRS****Section 501 Student Conduct Policy** Effective: 3/72

Last Revised: 5/22/00; 5/22/06; 5/18/09; 11/17/14; 5/18/15; 3/19/18

Responsible Office: Academic Affairs

**DRAFT**  
**Second Read**

The purpose of this University of Maine System Student Conduct Policy (this "Policy") is to promote the intellectual, ethical, and physical development of people within the University of Maine System. This Policy shall be implemented through procedures set forth in the University of Maine System Student Conduct Code (the "Code"). The Code will articulate the expectation that students conduct themselves with proper regard for their rights and responsibilities, and the rights and responsibilities of others including the University. All members of the University community share accountability for maintaining an environment where actions are guided by mutual respect, integrity, and reason. The procedures outlined in the Code seek to promote the safety of persons engaging in those pursuits, the free and peaceful expression of ideas, and the integrity of academic processes. The procedures in the Code will reflect the basic concept of procedural fairness and will make certain that no student is subject to disciplinary action for any misconduct without first being given adequate notice of the charge(s) and the opportunity for a hearing before an impartial body or officer.

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In the implementation of this Policy, the University seeks to harmonize its administrative functions in a manner consistent with and grounded in its educational mission with an emphasis on fundamental fairness, due process, personal responsibility, and community relationships.

**Governing Law**

All members of the University community are governed by University policies, local ordinances, and state and federal laws. For specific governing documents, students and University organizations may refer to: the Code, other University policies and procedures; University student handbooks; University residence hall agreements and manuals; and other official University notices and publications. Individuals who violate state and federal law are subject to prosecution by appropriate state and federal authorities regardless of whether the activity occurs on or off University Property. In addition, students may be subject to disciplinary action by the University pursuant to this Policy and the University of Maine System Student Conduct Code or other applicable University policies, handbooks, catalogs, or standards.

If applicable law or regulation changes in a way that impacts this Policy, this Policy will be construed to comply with applicable law and regulation.

Administration and interpretation of the University of Maine System Student Conduct Code will be solely within the jurisdiction of the University.

**Freedom of Expression**

The UMS Board of Trustees recognizes that students have, within the limits of the law, the right of free expression and advocacy. The UMS Board seeks to encourage and preserve freedom of expression and inquiry within the University.

**Non-Discrimination Statement**

In complying with the letter and spirit of applicable laws and pursuing its own goals of diversity, the University of Maine System does not discriminate in employment, education, or any other programs and activities on the basis of race, color, religion, sex, sexual orientation, transgender status, gender, gender identity or expression, ethnicity, national origin, citizenship status, familial status, ancestry, age, physical or mental disability, genetic information, veteran or military status.

The following person has been designated to handle inquiries regarding non-discrimination policies: Director of Equal Opportunity, North Stevens Hall, Orono, ME 04469; voice: (207) 581-1226; TTY 711 (Maine Relay System) email: [equal.opportunity@maine.edu](mailto:equal.opportunity@maine.edu).

**Training**

All persons responsible for the oversight or administration of the Code will receive required training relevant to their role and responsibility, as described in the Code.

**Policy Review**

Pursuant to the authority of the Board of Trustees, the provisions of this Policy are subject to periodic review and amendment and will include representation of students and other key stakeholders.

**Student Conduct Code Review**

The Student Conduct Code shall be reviewed a minimum of every two years under the direction of the UMS Coordinator of Student Conduct, and in consultation with the University Conduct Officers, Office of the General Counsel, and including representation from the student body and other stakeholders, as appropriate. The UMS Coordinator of Student Conduct will inform the Chair of the Board of Trustees Academic and Student Affairs Committee of any recommendations for major changes. Final approval of the Student Conduct Code will be the responsibility of the Chancellor, in consultation with the Office of the General Counsel.

**Related Documents**

[BOT policy 212 - Gov and Legal Affairs](#)

[BOT Policy 402](#)

[Student Conduct Code Procedures](#)

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# Student Conduct

## Section 501: A Separation of Policy and Procedures *Second Read*

Presented to: Board of Trustees Academic and Student Affairs Committee

June 6, 2022



## Board of Trustees Policies

- Approved policies establish direction for the UMS and its universities
- The Board establishes the overarching mission and values of UMS and is not burdened with the operational tasks necessary to achieve that mission and set of values.
- Responsibility for implementation of Board approved policies rests with the Chancellor and his designees
- This Policy is out of sync with other Board Policies. Most Board policies utilize this effective and efficient division of responsibilities with the exception of Policy 501 which historically has included both policy and procedures. The recommendation before you separates the Board policy from its implementing procedures, in line with other Board approved Policies.

## Board of Trustees: Procedural Implementation

- The Chancellor and his designees, in consultation with the Office of General Counsel and System and campus offices responsible for day-to-day operations, create and periodically revise Administrative Practice Letters and other procedural documents in order to implement Policy established by the Board. The Student Conduct Code is the procedural document that implements the Student Conduct Policy.

# Policy 501

## Current State

- **Combined Policy and Procedures**
  - Reviewed and Approved by Board of Trustee every 3 years
  - Lengthy and Complex revision process

## Proposed State

- **Separate UMS Policy Statement**
  - Short and Clear
  - Provides Foundational Principles
  - Allows Ease of Review and Revision
  - Aligns with other Board approved policies
- **Separate Student Conduct Procedures**
  - Detailed Action Steps
  - Less Complex Revision Process
  - Allows More Frequent Review and Revision - minimum of every 2 years

## **Benefits of Separating**

**Aligns with other Board approved policies**

**Adaptability to changing laws and regulations**

**Flexibility to make corrections and clarifications**

**Supports continuous process improvement**

# Key Policy Provisions

“emphasis on fundamental fairness, due process, personal responsibility and community relationships.”

Governing Law

Freedom of Expression

Non-Discrimination

Training

Policy and Procedure - Standards for Review

# Conduct Procedures Amendments

- **Reorganization and Removal of Duplicated Language**
  - Conflict of Interest
  - Consolidated Administrative Resolution and Conduct Officer Hearing
- **Presidential Appeal Elimination**
- **More Robust Definitions**
  - ◆ eg. Violent Crime, VAWA, Witness, Reporting Party



**Questions?**

UNIVERSITY OF MAINE SYSTEM  
STUDENT CONDUCT CODE

Effective: 1 August 2022

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Amending the Student Conduct Code



## STUDENT CONDUCT CODE

The Student Conduct Code (“Code”) exists to notify students, faculty, and staff of the specific expectations the University of Maine System (“University”) holds related to student behavior and the rights and responsibilities that accompany being a student and participating in student activities and organizations. The University expects students to maintain standards of personal integrity in harmony with its educational goals; to be responsible for their actions; to observe national, state, local laws, and University regulations; and to respect the rights, privileges, and property of others.

The student conduct process is intended to be a learning experience which can yield growth, behavioral changes, and personal understanding of one’s responsibilities and the consequences and impacts of one’s actions. This process balances the needs and rights of students with the needs and expectations of the University and larger community. The student conduct process offers a continuum of responses to allegations of misconduct. Students are treated with care and respect and are afforded the opportunity to receive a fair hearing. Many sanctions and interventions are designed to be educational and restorative in nature, promoting the University’s mission. The Student Conduct Code defines University intervention, resolution options and possible disciplinary actions related to the behavior of both individual students and student organizations.

What constitutes a violation and what sanctions may be imposed will be determined using the definitions set forth in the Code in effect at the time of any alleged violation(s). With regard to the procedures that will be used to resolve any report of an alleged violation, the Code procedures in effect at the time of the report to the University will be used regardless of whether the alleged conduct occurred on or off University Property, and regardless of when the alleged conduct occurred.

### **Student Rights & Responsibilities**

Student rights and responsibilities are outlined throughout this Code. If students have questions or concerns about this Code or the way this Code is being applied, they should contact a Conduct Officer of the University; this may be either the Conduct Officer handling a particular matter or another Student Conduct Officer. If those questions or concerns remain unresolved, the student may contact the Conduct Officer’s supervisor, or the UMS Coordinator of Student Conduct. If those questions or concerns remain unresolved following this process, students may contact the Vice Chancellor for Academic Affairs.

Various timeframes, including for response and submission of information and documents, are outlined throughout this Code. If, at any time, a student would like to request an update or additional information about a particular matter under review, the student may contact the University authority handling the matter.

### **Bias and Conflict of Interest**

A conflict of interest may exist when a person or related organization has an existing or future interest or association which conflicts with their role or responsibility within the University. Faculty, staff, and students participating or serving in any role or process under the UMS Student Conduct Code have the obligation to be unbiased and to avoid ethical, legal, financial or other conflicts of interest and to ensure that their activities and interests do not conflict with their obligation to the University or to its welfare. If a faculty, staff or student believes they may have a current bias or conflict of interest or that one may be foreseen, they shall promptly and fully disclose the bias or conflict to the UMS Coordinator of Student Conduct and shall refrain from participating on behalf of the University.

**Accessibility Support**

The University is committed to providing necessary accommodations to ensure a fair and safe process for participants. Accommodations will take into consideration disabilities, personal safety and language differences.

**Student Conduct Amnesty**

The University strives to maintain a balance between student support and accountability. The University believes in addressing student health and safety concerns directly, and confronting dangerous behaviors, but also encouraging students to seek help in situations where their own, or another student's health is endangered. As such, a student who seeks assistance on behalf of themselves or another individual experiencing an alcohol and/or drug related incident, may not be subject to disciplinary action for the alcohol and/or drug use under the Student Conduct Code, at the discretion of the Conduct Officer. Students who participate in student conduct investigations may also be eligible for Student Conduct Amnesty at the discretion of the Conduct Officer.

Student(s) involved in reported incidents of sexual misconduct may receive student conduct amnesty for the alcohol and/or drug violation(s) only, unless the report is determined to be without a proper basis and fact. Student Conduct Amnesty is only granted to individual students, not student groups and/or student organizations.

**I. JURISDICTION**

This Code applies when the University has jurisdiction over both the Responding Party and the alleged conduct.

- A.** The University has jurisdiction over the Responding Party when the Responding Party is, at the time of the alleged conduct, any one of the following:
- 1.** A student who is enrolled at the University.
    - a. A "student" means any person who has accepted, registered, or enrolled in any course or program offered by the University, including distance courses, and who has not been absent from the University greater than one (1) calendar year.
    - b. A student is considered to be "enrolled" at the University until such time as the student has:
      - i. Officially graduated from the University; or
      - ii. Been officially dismissed from the University; or
      - iii. Been absent from the University for a period of time greater than or equal to one (1) calendar year.
    - c. A student who is on probation or suspended from the University at the time of the alleged conduct will be considered to be enrolled for the purposes of determining the University's jurisdiction.
  - 2.** A University-recognized student organization, or any student organization not recognized at the time of the report, but under University probation or suspension.
- B.** The University has jurisdiction over the alleged conduct when the alleged conduct occurs:
- 1.** On any campus of the University, on any property owned or controlled by the University or when the alleged conduct involves University Property; or
  - 2.** At an activity or program sponsored by the University; or
  - 3.** In any context where the University can demonstrate a substantial interest regardless of the location of the conduct, including online or off-campus, and where the conduct threatens:
    - a. Any educational process; or
    - b. Legitimate function of the University; or
    - c. The health or safety of any individual.
  - 4.** It is at the University's discretion to determine whether jurisdiction applies. In general, jurisdiction is determined as of the date of the alleged conduct.

- C. An enrolled student may not graduate if they have a pending conduct case. If a student officially withdraws from the University or does not participate in the disciplinary process, the process will continue and the student may not, at the discretion of the University, be permitted to return to the University or graduate until the student is found not responsible for a violation of this Code or until any imposed sanctions have been satisfied.

## II. DEFINITIONS

- A. **Administrative Resolution:** A meeting with a Conduct Officer to determine if a Responding Party has violated any section(s) of the Code.
- B. **Advisor:** A person who is available to advise or support any Party involved in any matter governed by this Code. An Advisor may not serve as a witness or a participant in a hearing. Examples of Advisors include, but are not limited to, family members, friends, University employees, and attorneys.
- C. **Appeal Panel:** A panel that hears appeals from the Administrative Resolution or Student Conduct Hearing Board.
- D. **Conduct Officer:** A person designated by the University to address alleged violations of this Code.
- E. **Conflict of Interest:** When a person or related organization has an existing or future interest or association which conflicts with their role or responsibility within the University.
- F. **Coordinator of Student Conduct:** The University of Maine System person responsible for providing guidance, support and direction in the University conduct process and ensuring compliance with applicable policies, regulations, and laws.
- G. **Consent:** A person's voluntary agreement to engage in specific sexual acts with another person.
1. Consent must be:
    - a. Informed, freely, and actively given, and consist of a mutually agreeable and understandable exchange of words or actions; and
    - b. Clear, knowing, and voluntary; and
    - c. Active, not passive.
  2. Consent may be withdrawn at any time and when outwardly communicated that Consent is withdrawn, sexual activity must cease.
  3. Silence, passivity, or absence of resistance, in and of itself, cannot be interpreted as Consent.
  4. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and conditions of) sexual activity.
  5. Past Consent does not imply future Consent. Even in the context of an ongoing relationship, Consent must be sought and freely given for each sexual act.
  6. Consent to engage in one form of sexual activity does not imply Consent to engage in any other sexual activity.
  7. Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with any other person.
  8. There is no Consent when the exchange involves unwanted physical force, coercion, intimidation and/or threats.
  9. If an individual is mentally or physically incapacitated such that one cannot understand the fact, nature, or extent of the sexual situation, and the Incapacitation or impairment is known or should be known to a Reasonable Person, there is no Consent. This includes conditions resulting from voluntary alcohol or drug consumption, being asleep, or unconscious. The assessment is based on objectively and reasonably apparent indications of Incapacitation when viewed from the perspective of a Reasonable Person.
  10. Consent is not valid if the person is too young to Consent to sexual activity under applicable law, even if the minor wanted to engage in the activity.
  11. In evaluating whether Consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to:

- a. the extent to which a Reporting Party affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion;
  - b. whether a Reasonable Person in the Responding Party's position would have understood such person's words and acts as an expression of Consent; and
  - c. whether there are any circumstances, known or reasonably apparent to the Responding Party, demonstrating Incapacitation or lack of Consent.
- H. Hearing Officer:** A University Official, including, and not limited to, a Conduct Officer or Hearing Board Chair, authorized to facilitate student conduct cases and determine whether a student or an organization has violated the Code and to impose sanctions when it has been determined that a violation has been committed.
- I. Incapacitation; Incapacitated:** An individual who is Incapacitated lacks the ability to make informed judgments. Incapacitation is the inability, temporarily or permanently, to give Consent because an individual is mentally and/or physically unable to understand the fact, nature, or extent of the sexual situation, helpless, asleep, unconscious, or unaware that sexual activity is occurring. Helpless means a person is incapable of appraising or controlling one's own conduct, unable to verbally or otherwise communicate Consent or unwillingness to an act.
1. Where alcohol or other drugs are involved, Incapacitation is a state beyond impairment or intoxication.
  2. Where alcohol or other drugs are involved, evaluating Incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness.
- J. Interim Measures or Actions:** Actions taken to promote the safety and well-being of the Parties or the University community, including, but not limited to, interim suspension from activities, University housing or the University, moving either Party to a new living, dining or working situation; issuing a no contact order; changing class or work schedules; changing transportation; financial aid accommodations; immigration assistance; and other academic and/or employment accommodations and support.
- K. Notice:** Official written communication from the University which is considered effective if hand delivered, mailed with signature confirmation of delivery at the person's or entity's last known address, delivered through the use of the student's University email account with confirmation of receipt, or at the University's discretion, another method requested by a Party. Students are expected to regularly monitor their official University email account.
- L. Party(ies):** May refer to the Reporting Party(ies), Responding Party(ies), or both Parties collectively.
- M. Preponderance of the Evidence:** A standard that requires a fact or event to have more likely than not occurred, e.g., a greater than fifty percent (50%) likelihood.
- N. Reasonable Person:** A representative individual under similar circumstances to the person in question, who exercises care, skill, and judgment.
- O. Reporting Party(ies):** Any person who alleges they, themselves, have been harmed by a student, or student organization and directly aggrieved by the incident. If a Reporting Party declines to participate, at the University's discretion, the University may move forward with the process under this Code.
- P. Responding Party(ies):** Any student or student organization that has been alleged to have violated this Code or has been charged with a violation of this Code.
- Q. Student Conduct Hearing Board ('Hearing Board'):** A body of trained University persons providing due process to students accused of violating this Code.
- R. Support Person:** A person who provides emotional or personal support or assistance to a Party during the investigative and hearing proceedings. Examples of a Support Person include, but are not limited to, family members, friends, or University employees.
- S. University of Maine System (the "University"):** Means either collectively or singularly, any of the of following campuses and/or centers: University of Maine at Augusta; University of Maine at Farmington; University of Maine at Fort Kent; University of Maine at Machias; University of Maine; University of Maine at Presque Isle; University of Southern Maine; University of Maine School of Law; and all University Property.

- T. University Official:** Any person employed or engaged by the University to perform assigned administrative or professional responsibilities, including campus police or security staff. University Officials may be full or part-time, or may be student staff members.
- U. University Property:** Includes, but is not limited to, any Real or Personal Property owned, held, rented, licensed, chartered, or used at the University's discretion, Real or Personal Property otherwise engaged by the University in any manner or by University employees or University organizations as a direct result of and in connection with their service to the University.
  - 1. Real Property: Land, buildings, fixtures, improvements, and any interests therein.
  - 2. Personal Property: All property, other than real property, and any interests therein.
- V. VAWA (Violence Against Women Act) Offenses:** Offenses of sexual assault (rape, fondling, incest or statutory rape), domestic violence, dating violence and/or stalking.
- W. Violent Crime:** One of a series of offenses described in the regulations of the Family Educational Rights and Privacy Act (FERPA) which includes, but is not limited to, arson, assault offenses, burglary, criminal homicide, destruction & vandalism, kidnapping, and sex offenses - <https://www.ecfr.gov/current/title-34/subtitle-A/part-99>
- X. Witness:** A person who has directly observed an incident, or has personal knowledge or experience of a possible violation of this Code.

### III. VIOLATIONS

Violations are actions that contravene this Code.

Disciplinary action taken under this Code is independent of the awarding of grades (an academic matter), and provisions of this Code cannot be used for changing awarded grades. The violations listed below are considered in the context of the student's responsibility as a member of the academic community; other violations may be defined by other documents, for example, residence hall contracts, student handbooks, academic integrity policies, or codes of conduct, ethics or professional responsibility, specific to certain courses of study or majors.

#### A. Academic Misconduct

- 1. **Plagiarism:** The submission of another's work as one's own, without adequate attribution. Plagiarism is academic theft.
- 2. **Cheating:** The act or attempted act of deception by which a person, student, or student organization seeks to misrepresent that they have mastered information on an academic exercise that they have not mastered. Cheating is also the use or attempted use of unauthorized assistance in an examination, paper, homework assignment, or other project.
- 3. **Fabrication:** The use of invented information or the falsification of research or other findings in an academic exercise.
- 4. **Contributing to academic misconduct:** Assisting another person's, student's, or student organization's academic misconduct.
- 5. **Other forms of academic misconduct:** Any actions by which one seeks an unfair academic advantage over others, or violations of the Academic Integrity Policy as may be reported by a faculty member or other academic officer.

#### B. Disruption of University Operations

- 1. **Causing a Disturbance:** Conduct which causes interference with or results in substantial disruption of University activities.
- 2. **Failure to Comply with Sanction:** Failure to comply with a sanction imposed under this Code.
- 3. **Failure to Identify:** Failure to identify oneself accurately to a University employee performing their official duties.
- 4. **Interference with Code Enforcement:** Interference with a Reporting Party, Responding Party, witness, investigation or the carrying out of procedures defined in this Code.

5. **Interference with or Failure to Comply with a University Employee:** Direct interference with or failure to comply with a University employee in the performance of their official duties.
  6. **Supplying False Information:** Knowingly supplying false information to University employees in pursuit of their official duties or in the course of a disciplinary proceeding, or knowingly causing false information to be thus supplied.
  7. **Unauthorized Representation:** Unauthorized representation of the University or University employee(s).
  8. **Violation of Residence Hall Contract:** Violation of residence hall contracts, except when the residence hall contract specifically provides for an alternate procedure or remedy for the violation concerned.
  9. **Violation of Student Activity Rules:** Violation of a University rule, policy, procedure, standard of conduct, or code of ethics.
- C. Health & Safety Violations**
1. **Creating a Dangerous Condition:** Creation of a fire hazard or other dangerous condition, which may cause harm to any individual or to property.
  2. **False Reporting of Dangerous Conditions:** Giving or causing to be given false reports of fire or other dangerous conditions to the University or to local, state or federal authorities.
  3. **Endangering Health or Safety:** Conduct which threatens or endangers the health or safety of any individual.
  4. **Violation of Health or Safety Policies:** Violation of University health or safety regulations.
  5. **Illegal Possession, Use, or Sale of Drugs:** Possession, use, or sale of illegal drugs or drug paraphernalia. The misuse of legal prescription drugs. The University is required to follow federal law which classifies cannabis as an illegal drug.
  6. **Interference with Safety Equipment or Alarms:** Tampering with, or disabling, or causing the malfunction of fire and safety equipment or alarm systems.
  7. **Restricting Traffic Flow:** Restriction of normal traffic flow anywhere on University property, including entrances and exits.
  8. **Unauthorized Use or Possession of Chemicals or Explosives:** Unauthorized use or possession of explosive components, chemicals, etc., such as fireworks, explosives, gas, or compressed air.
  9. **Violation of Alcohol, Drug, or Tobacco and Smoke Free Policies or Regulations:** Violations of alcohol beverage, drug, or tobacco and smoke free policies, regulations, or laws.
  10. **Violation of Weapons Policies or Regulations:** Violation concerning possession or misuse of firearms or other dangerous weapons.
- D. Offenses Involving Other People**
1. **Assault:** Intentionally, knowingly, or recklessly causing bodily injury or offensive physical contact to another person.
  2. **Causing Fear of Physical Harm:** Intentionally or knowingly placing another person in fear of imminent bodily injury.
  3. **Dating Violence:** Violence committed against a person by an individual who is or has been in a social relationship of a romantic or intimate nature with that person. Whether a dating relationship exists is determined based on the Reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. All forms of dating violence prohibited by applicable law are also included (for example, Assault).

4. **Discrimination:** Discrimination based on actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national origin, citizenship status, age, disability, genetic information, or veterans status.
5. **Domestic Violence:** A felony or misdemeanor crime of violence committed by:
  - a. A current or former spouse or intimate partner of the victim; or
  - b. A person with whom the victim shares a child in common; or
  - c. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; or
  - d. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

All forms of domestic violence prohibited by applicable law are also included (for example, Domestic Violence Assault, Domestic Violence Criminal Threatening, Domestic Violence Terrorizing, Domestic Violence Stalking, and Domestic Violence Reckless Conduct).
6. **Gender Discrimination:** Discriminating against an individual on the basis of that individual's sex, gender, sexual orientation, gender identity, or gender expression.
7. **Harassment:** Severe or pervasive unwelcome conduct, including but not limited to: comments; jokes; acts; other verbal or physical conduct or bullying, that may be based on race, color, religion, sex (including pregnancy), sexual orientation, gender identity, gender expression, national origin, citizenship status, age, disability, genetic information, or veterans status.
8. **Hazing:** Any action or situation, including harassing behavior, that recklessly or intentionally endangers the mental or physical health of any University employee or a person, student, or student organization or any activity expected of a person, student, or student organization as a condition of joining or maintaining membership in a group that humiliates, degrades, abuses or endangers the student, regardless of the student's willingness to participate in the activity.
9. **Interference with Residential Life:** Significant interference with the normal residential life of others.
10. **Intimidation:** The improper use of authority, coercion, or threat for the purpose of compelling or deterring action against that person's will. Intimidation violates this Code when it threatens substantial harm to the other person's membership or status in the community; personal, professional, or academic reputation or opportunities; extracurricular opportunities; or financial security. Intimidation may include, but is not limited to, threatening to accuse someone of illegal activity; threatening to expose a secret that could subject the person to hatred, contempt, or ridicule or otherwise compromise that person's standing in the community; threatening to disseminate sexual images of the other person; or use of a position of authority to take or withhold action against the other person.
11. **Invasion of Privacy:** The violation of another individual's reasonable expectation of privacy where the circumstances justify that expectation.
12. **Indecent Conduct:** Exhibition, including by electronic means, of the genitals, anus, or pubic area of a person other than for legitimate academic purposes. Simulation of a sexual act, sex act in public with or without private parts showing, or public masturbation are also included.
13. **Retaliation:** Action taken by an individual(s) or group or organization against any person or group for any action taken in furtherance of this Code including but not limited to: filing a complaint, testifying, assisting, or participating in an investigation or proceeding under this Code.
14. **Sexual Assault:** An offense that meets the definition of rape, fondling, incest, or statutory rape, as follows:

- a. Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.
  - b. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental incapacity.
  - c. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. Statutory rape is sexual intercourse with a person who is under the statutory age of Consent under applicable law.
  - e. All forms of sexual assault and sexual contact prohibited by applicable law are also included (for example, gross sexual assault, unlawful sexual contact, incest, sexual abuse of minors).
- 15. Sexual Harassment:** Includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including sexual assault, sexual violence, and any sexual act prohibited by applicable law. Sexual harassment, including Sexual Assault, can involve persons of the same or opposite sex, or any sex.

Consistent with the law, this policy prohibits two types of sexual harassment:

- a. Tangible Employment or Educational Action (quid pro quo): This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity are made an explicit or implicit condition of submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting an individual's employment, education, living environment, or participation in a University program or activity. Generally, a person who engages in this type of sexual harassment is an agent or employee with some authority conferred by the University.
- b. Hostile Environment: Sexual harassment that creates a hostile environment is based on sex and exists when the harassment:
  - i. Is subjectively and objectively offensive; and
  - ii. Is so severe or pervasive as to alter the conditions of a person's employment, education or living situation that it creates an abusive working, educational or living environment.

A hostile environment can be created by anyone involved in a University program or activity, such as an administrator, faculty or staff member, student, or University guest. Offensiveness alone is not enough to create a hostile environment. Although repeated incidents increase the likelihood that a hostile environment has been created, a single serious incident, such as a Sexual Assault, can be sufficient.

Determining whether conduct creates a hostile environment depends not only on whether the conduct was unwelcome to the person who feels harassed, but also whether a Reasonable Person in a similar situation would have perceived the conduct as objectively offensive. The following factors will also be considered:

- i. The degree to which the conduct affected one or more students' education or individual's employment; and
- ii. The nature, scope, frequency, duration, and location of the incident(s); and
- iii. The identity, number, and relationships of persons involved; and
- iv. The nature of higher education; and
- v. Whether the conduct arose in the context of other discriminatory conduct; and



- vi. Whether the conduct altered the conditions of the Complainant's educational or work performance and/or UMS programs or activities; and
- vii. Whether the conduct implicates academic freedom or protected speech; and
- viii. Other relevant factors that may arise from consideration of the reported facts and circumstances.

- 16. Sexual Misconduct:** Includes, but is not limited to, prostituting another person, watching or taking pictures, videos, or audio recordings of another person in a state of undress without their Consent or of another person engaging in a sexual act without the Consent of all parties, disseminating, streaming, or posting images, pictures or video of another in a state of undress or of a sexual nature without the person's Consent; letting others watch you have sex without the knowledge and Consent of your sexual partner, possession of child pornography, voyeurism, and knowingly transmitting an STD or HIV to another person; and any sexual act prohibited by applicable law. Sexual misconduct may constitute Sexual Harassment. All forms of sexual misconduct prohibited by applicable law are also included. (For example, Violation of Privacy, Possession of Sexually Explicit Material, Image-Based Sexual Abuse and Sex Trafficking).
- 17. Stalking:** Engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to:
- a. Fear for the person's safety or the safety of others; or
  - b. Suffer substantial emotional distress.
- For the purposes of this definition:
- a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - b. Reasonable person as defined in Section II.N.
  - c. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- All forms of stalking prohibited by applicable law are also included.
- 18. Unauthorized Recording:** In general, the unauthorized recording of overall course content, classroom sessions, meetings held under this Code, and confidential university meetings is prohibited and considered a violation of this Code. However, exceptions will be considered on a case-by-case basis where a recording is made for the purpose of documenting inappropriate behavior.

#### E. Offenses Involving Property

- 1. Defacement, Destruction, or Misuse of Property:** Intentionally, knowingly, or recklessly misusing, tampering with, damaging, destroying, or defacing University Property or the property of others without appropriate authorization.
- 2. Misuse of University Computer Network or Computers:** Misuse of the University computer network or computers including, but not limited to, theft of computer files or data, e-mail, or other electronically stored information, hacking or unauthorized probing, sharing of personal sign on information, spamming, sending out computer viruses, or uploading or downloading copyrighted material for personal use or distribution without appropriate authorization or prohibited by state or federal law, including but not limited to possession or distribution of child pornography.
- 3. Tampering, Destruction, or Falsification of Official Records:** Intentionally or knowingly altering or destroying official documents, or presenting false official documents or information from such documents, to the University, any individual, or to a local, state, or federal agency.

4. **Theft or Unauthorized Use:** Theft, attempted theft, or unauthorized acquisition, removal, distribution, or use of University Property or the property of another.
5. **Trespassing:** Trespassing or unauthorized presence on University Property or the property of another.
6. **Motor Vehicle Violations:** Violation of applicable University motor vehicle policies and/or state, local, or federal laws and ordinances.

**F. General Infractions**

1. **Aiding Infraction:** Knowingly assisting in a Code violation.
2. **Continued Infraction:** Continued infractions of this Code.
3. **Conviction of a Crime:** Conviction of any crime that threatens: (a) any educational process or legitimate function of the University, or (b) the health or safety of any individual.
4. **Interference with or Failure to Comply with Public Safety Personnel:** Direct interference with or failure to comply with any public safety personnel in the performance of their official duties.
5. **Other Illegal Activity:** Violating any applicable law (e.g., local, state, or federal).

**IV. SANCTIONS**

If a Responding Party admits to a violation of this Code to the Investigator, Conduct Officer, Hearing Board, or Appeal Panel; or upon determination by the Conduct Officer, Hearing Board, or Appeal Panel that a Responding Party has been found in violation of this Code, one or more sanctions may be imposed:

- A. **Assigned Educational Project(s):** This may include educational programming, research projects, reflective essays, presentations, health and safety assessments, or other related assignments intended to promote learning.
- B. **Community Service:** A type of voluntary service that benefits people, a community, an organization, or the University.
- C. **Deferred Sanction:** A specified period of time during which a sanction has been imposed, but stayed. Any further violation of this Code during that time may, at a minimum, result in the imposition of the deferred sanction, and any new or additional sanction(s) deemed necessary.
- D. **Disciplinary Dismissal:** Permanent separation (subject to a right of review after five years) from the University.
  1. Responding Parties who are dismissed will not be permitted to attend any of the University campuses or centers or to attend any University functions.
  2. **Readmission:** After five (5) years from the date of the Disciplinary Dismissal, the Responding Party may submit a written request to the UMS Coordinator of Student Conduct to be considered for readmission to attend any of the University campuses or centers. The UMS Coordinator of Student Conduct will convene a committee. This committee may draw on the membership of existing committees (such as the Justice Education Development Implementation team); and include representation from any involved University campuses or centers.
  3. **Requests for the removal of letter attached to official transcript:** Responding Parties who have been found responsible for a Violent Crime, including VAWA Offenses, and who request an official transcript from the University, will have a letter attached to their official transcript describing the Disciplinary Dismissal. After five (5) years from the date of the Disciplinary Dismissal, the Responding Party may submit a written request to the UMS Coordinator of Student Conduct to have the letter attached to their official transcript removed. The UMS Coordinator of Student Conduct will convene a committee. This committee may draw on the membership of existing committees, such as the Justice Education Development Implementation team; and shall include representation from any involved University campus or center.

- E. Disciplinary Probation:** A specified period of time when any further violation may result in additional sanctions, up to and including Disciplinary Dismissal from the University.
- F. Disciplinary Suspension:** Separation from the University for a specific period of time and until any stated condition(s) is met.
  - 1. Responding Parties who are suspended will not be permitted to attend any of the University campuses or centers or attend any University functions until all conditions of the Disciplinary Suspension are met and the Disciplinary Suspension period has ended.
  - 2. Official Transcript Letter: Responding Parties subject to Disciplinary Suspension who have been found responsible for a Violent Crime, including VAWA Offenses, and who request an official transcript for the University, will have a letter attached to their official transcript describing the Disciplinary Suspension. After all conditions of the Disciplinary Suspension are met and the Disciplinary Suspension period has ended, the letter describing the Disciplinary Suspension will no longer be attached to the official transcript.
- G. No Contact Order:** A Party may not initiate direct or indirect contact with a specified person(s), as outlined in the Order.
- H. Loss of Visitation Privileges:** May not visit specified area(s) of any University Property.
- I. Official Warning:** Formal acknowledgment of a violation and the expectation that it will not be repeated.
- J. Reassignment, Suspension, or Removal from University Housing.** Removal from a particular hall or all campus housing buildings on one or more University campuses.
- K. Restitution:** Reimbursement to the owner of the property up to the replacement value of the property damaged, stolen, removed, or used without authority.
- L. Other action(s)** as the Conduct Officer, Hearing Board, or Appeal Panel, may reasonably deem appropriate, examples include but are not limited to:
  - 1. Suspension of an organization's official University recognition.
  - 2. Suspension of a student from extracurricular activity(ies).
  - 3. Suspension of guest privileges.
  - 4. Termination from student employment.
  - 5. Academic degree revocation.
  - 6. Loss of visitation privileges to designated area(s) of any University Property.
  - 7. Monetary fine for recognized student organizations only. Individual Responsible Parties are not subject to monetary assessments.

**NOTE:** The University may impose a more severe sanction on a Responding Party when the Conduct Officer, Hearing Board, or Appeal Panel, determines that a Responding Party intentionally selected the person or organization against whom the violation was committed, or selected the property damaged or stolen, because of the race, color, religion, sex, sexual orientation, gender identity, gender expression, national origin, citizenship status, age, disability, genetic information, or veterans status of that person, or the persons in the organization or the owner of the property.

## V. RESOLUTION PROCEDURES

**NOTE:** For any alleged violation that is within the jurisdiction of and involves matters covered by Board of Trustees Policy 402, the regulations and procedures provided in Board of Trustees Policy 402 and the UMS Title IX Procedures are required to be followed.

**NOTE Regarding VAWA Offenses:** If any of the alleged violations reported to the University under this Code is a VAWA Offense, all of the rights and responsibilities which this Code provides to a Responding Party must be provided simultaneously to the individual allegedly harmed by the violation.

**NOTE Regarding Violent Crimes:** If any of the alleged violations reported to the University under this Code is a Violent Crime, the final results of any disciplinary proceeding or appeal conducted by the University with respect to that alleged crime, regardless of whether the Responding Party was found in violation or not, shall be disclosed to the individual who was the subject of the Crime of Violence. “Final results” is limited to the name of the Responding Party, the violation alleged or committed, and any sanction imposed by the University against the Responding Party.

**NOTE Regarding Gender Discrimination and Sexual Harassment:** If any of the alleged violations reported to the University under this Code is Gender Discrimination or Sexual Harassment and any interim measure(s) or action(s) and/or sanction(s) is imposed on the Responding Party, the individual harmed by the Gender Discrimination or Sexual Harassment shall be notified of any such interim measure(s) or action(s) and/or sanction(s) that affects such individual.

#### A. Reporting Violations

1. Alleged violations of this Code may be brought to the attention of the University by University employees, students, or members of the general public and will result in the initiation of a Preliminary Inquiry.
2. Reports may be made anonymously, however anonymous reporting may limit the University’s ability to investigate and respond.
3. In accordance with Title IX, reports of Sexual Harassment, as defined by Title IX and which fall within the jurisdiction of Title IX, are required to follow the Title IX Procedures which implement University of Maine System Board of Trustees Policy 402.

#### B. Preliminary Inquiry

1. The purpose of the Preliminary Inquiry is to determine whether the circumstances alleged warrant further review.
2. A Preliminary Inquiry will be conducted by a Conduct Officer.
3. Following the Preliminary Inquiry and a determination that there is sufficient information to proceed, and before interviewing or questioning of the Responding Party occurs, Notice must be provided to the Responding Party and copied to the Reporting Party, unless doing so would likely jeopardize the health or safety of any person, or the integrity of the investigation, or lead to the destruction of evidence. Notice will include:
  - i. Reporting Party(ies);
  - ii. Date(s) of alleged occurrence(s); and
  - iii. Description of the alleged conduct; and
  - iv. Maximum possible sanctions which may be imposed; and
  - v. Right to have an Advisor and a Support Person of their choice present; and
  - vi. Right to review the information to be used in the determination; and
  - vii. Any Interim Measure(s) and Action(s), if applicable; and
  - viii. The procedures that will be used to resolve the matter.
4. If there is no reasonable cause to conclude that the Code has been violated, the disciplinary process will end and Notice will be provided to the Parties.

#### C. Conflict of Interest

1. Any Party has the right, for demonstrated bias and conflict of interest, to request the removal of an Investigator, Conduct Officer, Hearing Board member, or Appeal Panel member. Requests for removal must be submitted to the UMS Coordinator of Student Conduct stating the grounds for the removal at least three (3) days prior to the first date of the scheduled resolution process.
2. Removal of an Investigator, Conduct Officer, Hearing Board member, or Appeal Panel member, for demonstrated bias or conflict of interest, will be within the authority and at the discretion of the UMS Coordinator of Student Conduct with an alternative(s) appointment provided, as necessary.
3. All Investigators and decision makers are required to avoid both apparent and real conflicts of interest and decline assignments to serve. Each is required to affirm no existing or future interest or association conflicts with their role or responsibility, or bias, prior to participating in each matter.

#### **D. Interim Measures or Actions**

1. An Interim Measure may be assigned to any Party.
2. A Responding Party may have privileges revoked or may be suspended from the University pending the outcome of a disciplinary process if, in the judgment of the Conduct Officer, the Responding Party's continued presence or use of privileges at the University is likely to pose:
  - i. A substantial threat to the Reporting Party or other people; or
  - ii. Significant risk of property damage; or
  - iii. Significant risk of disruption to or interference with the normal operations of the University.
3. Interim Measure(s) or Action(s), including but not limited to: interim suspensions; University Property usage restrictions; University account holds; and academic degree holds, will be implemented immediately with the goal of mitigating negative impact on the Parties while maintaining the safety of the University community and integrity of the conduct process.
4. A Responding Party who has been issued an Interim Measure(s) or Action(s) may request a review of that decision within five (5) business days of notification.
5. The review of Interim Measures will be conducted by a University Official appointed by the UMS Coordinator of Student Conduct and a meeting will be scheduled within five (5) business days of receipt of the request.
6. The review will include an opportunity for a Party to provide information and for the University Official to ask questions and seek clarification of the information used in the initial decision.
7. A written determination will be promptly provided to a Party. The decision of the reviewer is final and may not be appealed.
8. Interim Measures or Actions are to remain in place until all University hearings and appeals are final or all University appeal periods have ended unless indicated otherwise in writing.

#### **E. Formal Investigation**

1. For more serious or complex cases, the Conduct Officer, at their discretion, may initiate a Formal Investigation and identify a trained investigator, as soon as reasonably practicable.
2. The University may, where appropriate, temporarily delay the Formal Investigation when criminal charges on the basis of the same conduct are being investigated. The University may move forward with the conduct process and does not have to wait for the resolution of the criminal case.
3. Prior to commencement of a Formal Investigation, the Conduct Officer will provide written Notice to the Responding Party. Notice will include the following:
  - i. Alleged Code violation(s) and a description of the alleged conduct constituting each alleged violation; and
  - ii. Reporting Party(ies); and
  - iii. Date(s) of alleged conduct; and
  - iv. Right to have an Advisor and Support Person; and

- v. Maximum possible sanction(s) which may be imposed; and
  - vi. The name of the investigator; and
  - vii. The procedures that will be used to address the alleged Code violation(s).
4. Investigation Process
- i. Will follow applicable standards for objectivity, reliability, thoroughness, impartiality, timeliness, and fairness.
  - ii. Will entail recorded interviews with relevant Parties and witnesses, obtaining and reviewing available evidence, and identifying other sources of reliable and relevant information, as applicable or otherwise deemed necessary.
  - iii. Will, at the discretion of the investigator, be summarized in a written report by the investigator that identifies the relevant evidence, both inculpatory and exculpatory, gathered through the Formal Investigation.
  - iv. Will not make determinations as to whether the Responding Party is responsible for any Code violation(s).
5. While Formal Investigation times may vary, in general, an investigation is completed within ninety (90) calendar days. If a Formal Investigation is going to take longer than ninety (90) calendar days, an update will be provided to relevant Parties indicating the estimated timeframe for completion.
6. Upon the conclusion of the Formal Investigation, the Responding Party will be provided Notice of whether any charge(s) will be filed; and if so, the resolution format that will be used to proceed under the Code.

#### F. Resolution Formats

There are many ways to resolve an alleged violation of the Conduct Code. The resolution format is determined by the Conduct Officer and based on the seriousness of the matter, the impact to the Parties and the community, the severity of likely sanctions, and other relevant circumstances.

1. **Alternative Resolution** is a voluntary agreement process between the involved Parties which allow the individuals involved in a conflict to have significant influence over the resolution process. An Alternative Resolution will be considered when:
  - i. At the discretion of the Conduct Officer, the facts in the case are determined to be suitable for the alternative processes, such as conflict coaching, mediation, facilitated dialogue or restorative practices. The nature of some conduct matters, for instance, those involving VAWA Offenses and Violent Crimes, may not be suitable for an Alternative Resolution; and
  - ii. The Parties voluntarily agree to pursue participation and engagement willingly, freely, and openly.
  - iii. If determined to be an appropriate format, the Conduct Officer will make arrangements for the resolution process that best fits the circumstances of the matter and may appoint a facilitator.
  - iv. If and when, a mutually satisfactory resolution is reached by the Parties and the Conduct Officer, and an Alternative Resolution agreement is entered into by the Parties, the case is resolved.
  - v. Alternative Resolutions may not be appealed.
  - vi. Violations of the Alternative Resolution agreement are a violation of this Code.
  - vii. If a resolution is not achieved through an attempt at an Alternative Resolution process, the Conduct Officer and the Parties retain their right to pursue formal resolution through processes outlined elsewhere in this Code.
2. **Administrative Resolution** is an official meeting involving a Responding Party and a Hearing Officer to resolve less complex or serious matters, and matters not likely to result in a sanction of suspension,

dismissal, removal from housing, academic degree revocation, or loss of recognition of a campus organization.

- i. An Administrative Resolution will be considered when:
  - a) There is sufficient evidence to charge a Code violation that has not been disposed of through an Alternative Resolution process; and
  - b) The facts are not in dispute; or
  - c) The facts are less complex or serious; or
  - d) A University employee directly observed the conduct violation.
- ii. All the procedures set forth below in G, H, and J, shall apply to Administrative Resolution.

**3. Student Conduct Hearing Board ('Hearing Board')** is a fact-finding and decision making body designated to adjudicate cases involving more serious violations of this Code.

- i. A Hearing Board may be appointed to hear a case when:
  - a) Facts are serious or more complex; or
  - b) Alleged violation(s) are anticipated to have higher impact to the Parties and the community. For example, cases which could reasonably result in suspension, dismissal, or removal from housing; or
  - c) Alleged violation(s) involve serious physical, emotional, or psychological harm or the threat thereof; or
  - d) A VAWA Offense, Gender Discrimination or Violent Crime is alleged.
- ii. Composition of the Hearing Board:
  - a) The UMS Coordinator of Student Conduct is responsible for appointing the Hearing Board for each matter.
  - b) The Hearing Board is composed of five (5) individuals consisting of:
    - (1) A chair, who is either a faculty or staff member; and
    - (2) At least one (1) enrolled student; and
    - (3) At least one (1) additional faculty or staff member.
  - c) The composition of the Hearing Board will represent the diversity of the University community whenever reasonably practicable.
  - d) Alternate Hearing Board member(s) will be appointed as applicable and appropriate.

#### **G. Timing and Attendance**

- 1. The Party(ies) must receive Notice of the resolution format to be used, as identified above, within five (5) business days of the scheduled hearing or resolution format. A hearing or resolution is typically held within twenty (20) business days of the completion of the preliminary inquiry or formal investigation, if any. If extenuating circumstances exist that preclude holding the meeting within 20 business days, a scheduling update will be provided.
  - i. Notice will include the following:
    - a) Alleged Code violation(s); and
    - b) Reporting Party(ies); and
    - c) Date(s) of alleged conduct; and
    - d) Maximum possible sanction(s) which may be imposed; and
    - e) Names of witnesses requested to appear, if applicable; and
    - f) Right to have an Advisor and a Support Person of their choice present; and
    - g) Right to review the evidence; and
    - h) Date and time of the scheduled proceeding; and

- i) Name(s) of the appointed presiding Officer(s).
2. If a relevant Party is unable to attend due to the constraints of a legal process (for example, a protective order) or is unable to attend related to concerns about trauma or future violence, then the Party may be provided alternative means of participation consistent with applicable law and due process.
3. If any relevant Party is not present as scheduled, the presiding Officer, taking into account the reason for the absence, concerns with health and safety, timeliness of the process, and taking into account the totality of the circumstances, may, within their sole discretion:
  - i. Proceed in a normal manner without a Party's attendance; or
  - ii. Hear only a portion of the testimony and adjourn to a later date; or
  - iii. Postpone the entire hearing to a later date.
4. A Hearing Officer may not rely solely on the absence of any Party in determining the outcome of the matter.
5. The Responding Party and the Reporting Party may be accompanied by an Advisor and a Support Person of their choice. Questioning by any Advisor or Support Person will not be permitted, and they may only speak with their advisee, unless otherwise permitted by the Hearing Officer.

#### H. Evidence and Recording

1. Any relevant information may be considered as evidence.
2. A Responding Party has the right to remain silent, if a criminal prosecution relating to the same violation(s) is being conducted, or such action appears likely. The Hearing Officer(s) will not draw any negative inference from the Responding Party's silence, including the refusal to give information or consent to a search.
3. Only the University is permitted to video or audio record any disciplinary proceeding and the Conduct Officer will make arrangements for the recording, as needed. Disciplinary matters are considered confidential unless otherwise indicated by law, and the record will be the property of the University.
4. A Party, generally, shall have the opportunity to present information or evidence to be considered in the resolution of the matter.
5. The name(s) of any witnesses requested, written statements, or other information from a Party should be submitted to the Hearing Officer at least two (2) business days prior to the hearing for inclusion in the materials presented to the Hearing Board.
6. The Parties may submit additional names of witnesses, written statements, or other information, at the time of the hearing, at the discretion of the presiding Officer.

#### I. Student Conduct Hearing Board Procedures

1. Responsibility for recognizing and permitting persons to speak is the exclusive purview of the Hearing Board Chair.
2. At the discretion of the Chair, persons disruptive at any stage of the hearing may be asked to leave.
3. Each Party will be permitted to make an opening statement.
4. The available evidence to be considered will be presented, including the results of any Formal Investigation report and shall be provided by the investigator, if feasible.
5. The Hearing Officer(s) may ask questions of any Witness and/or Party.
6. The Parties may pose questions to each other and to any witnesses through the Hearing Board Chair. The Chair will ask the witness or a Party the question posed, if determined to be relevant and appropriate.
7. Questioning by any Advisor or Support Person is not permitted.



8. A Party will have the opportunity to make a closing statement, which may include recommendations regarding appropriate sanctions.
9. After the closing statements, the Hearing Board will go into a closed session to determine if the Responding Party, by the Preponderance of the Evidence standard, has violated this Code. This closed session is not recorded.

**J. Determination and Finding(s)**

1. Using the Preponderance of the Evidence standard, the Hearing Officer(s) will determine if the Responding Party is responsible or not responsible for each allegation.
2. If the Responding Party is found not to have violated this Code, the case will be dismissed. Such dismissal will not affect any appeal rights of any Party.
3. If the Responding Party is found to have violated this Code, the appropriate sanction(s) will be imposed.
4. Upon completion of the deliberative process, the Responding Party will receive Notice of the determination and outcome. Notice will include:
  - i. The finding outcome; and
  - ii. The reasoning and facts that support the finding; and
  - iii. Any sanction(s) imposed; and
  - iv. The reasoning and facts that support the sanctions; and
  - v. Any specific right of appeal.
5. In a case of a Violent Crime, the University may disclose the final results of the disciplinary proceeding to a Reporting Party.
6. If the case involves an alleged VAWA Offense, simultaneous Notice will be provided to the Reporting Party and the Responding Party.
7. If the case involves alleged Gender Discrimination, the Reporting Party will be notified of any sanctions impacting the Reporting Party.

**K. Appeals**

**1. Right of Appeal**

In the event a Hearing Officer imposes a sanction of Disciplinary Suspension, Disciplinary Dismissal, removal from University Housing, academic degree revocation, or loss of recognition of a University organizations, the Responding Party has a right to appeal any finding(s) or sanction(s) to an Appeal Panel.

**2. Grounds for Appeal**

- i. The Appeal Panel is not intended to be a full rehearing of the allegation(s) and will be limited to the following grounds:
  - a) An alleged substantive error, including a procedural error or omission that substantially impacted the investigation or the outcome of the Administrative Resolution, or Hearing Board, (for example, bias or failure to follow applicable procedures); or
  - b) To consider new evidence, not reasonably available during the investigation, Administrative Resolution, or Hearing Board that could impact the finding(s) or sanction(s). A summary of this new evidence and its potential impact must be included in the request for appeal; or
  - c) The sanction imposed is disproportionate to the severity of the violation, considering the totality of circumstances.
- ii. Appeals must be submitted in writing to the UMS Coordinator of Student Conduct within five (5) business days after the appealing Party has received written Notice of the determination and findings.

- iii. Appeals must clearly state the issue(s) to be reviewed based on at least one of the grounds identified; and be no longer than ten (10) pages in length, plus attachments, unless granted a timely request for additional pages.
- iv. Appeals by Multiple Parties: Appeal requests will be shared with all Parties. Such other Parties may file a response with the Appeal Panel within five (5) business days; this response will be shared with all Parties.
- v. Absent extenuating circumstances, the finding(s) and sanction(s) will stand if the request for appeal is not submitted within five (5) business days or is not based on permissible grounds. Extenuating circumstances are at the discretion of the University Official and in consultation with the Office of General Counsel.

**NOTE:** Absent a substantial threat to health, safety, or well-being of the University, University community, or individuals on University Property, sanctions will take effect only after all University appeals are final or all University appeal periods have ended. Applicable threat assessment procedures will be used as appropriate. Interim Measures or Actions are to remain in place until all University appeals are final or all University appeal periods have ended unless indicated otherwise in writing by the Hearing Officer.

### 3. Composition of the Appeal Panel

- i. The UMS Coordinator of Student Conduct is responsible for appointing the Appeal Panel.
- ii. The Appeal Panel is composed of three (3) officials, not previously directly involved in any way, with the matter. The Appeal Panel is composed of:
  - a) A chair who is either a faculty or staff member; and
  - b) At least one (1) enrolled student; and
  - c) At least one (1) additional faculty or staff member; and
  - d) Alternate official(s), as applicable and appropriate.
  - e) The composition of the Appeal Panel will represent the diversity of the University community whenever reasonably practicable.

### 4. Function of the Appeal Panel

- i. Conduct an initial review for stated grounds.
- ii. Review the conduct matter file including but not limited to: the investigative report; Conduct Officer or Hearing Board files and recordings; and
- iii. Review any new information provided; and
- iv. Ask written clarifying questions as applicable, including but not limited to, as appropriate, asking questions of: the investigator; Conduct Officer; Hearing Board member; individuals who presented information to the Conduct Officer or Hearing Board; and other individuals who have information relevant to the process; and
- v. Make a determination based on the information reviewed. Determinations are based on majority vote.

### 5. Timing and Attendance

- i. If a request for an appeal is submitted consistent with the parameters identified, the UMS Coordinator of Student Conduct will provide written Notice within five (5) business days from the submitted request. Notice will include:
  - a) The issue(s) to be reviewed and the ground(s) for appeal; and
  - b) Right to review the information that will be used by the Appeal Panel; and
  - c) Date and time of the initial Appeal Panel meeting; and
  - d) Names of the Appeal Panel officials.

- ii. The Appeal Panel will have an initial meeting not earlier than five (5) business days and not later than ten (10) business days after issuance of the Notice of Appeal. If extenuating circumstances exist that preclude the initial Appeal Panel meeting from occurring within ten (10) business days, an update will be provided indicating the estimated timeframe for the hearing.

#### 6. Determinations

- i. The Appeal Panel may make the following determinations:
  - a) Determine if the stated grounds of the appeal meet the requirements, as outlined above.
    - (1) if grounds are not met, the appeal will be dismissed;
  - b) Uphold or change the findings of the Conduct Officer or Hearing Board; or
  - c) Uphold or change the sanctions of the Conduct Officer or Hearing Board; or
  - d) Remand for a new or additional Formal Investigation with a new or same investigator; or
  - e) Remand to the same Conduct Officer or Hearing Board for a new hearing; or
  - f) Remand to a different Conduct Officer or Hearing Board for a new hearing.
- ii. The Appeal Panel's decision, including a decision to remand to the same or a different Hearing Officer or Hearing Board is final (as to the remand decision only and not to the substance of the underlying claim) and not subject to appeal. The decision in a remanded case, can not be appealed.
- iii. The Appeal Panel will provide Notice to the Parties of the determination(s) within a timely manner. Notice will include:
  - a) The decision; and
  - b) The reasoning and facts that support the decision; and
  - c) Any modifications to the sanction(s), including the reasoning and facts that support the modification(s), if applicable.
- iv. If the alleged conduct is a VAWA Offense, the Parties will receive simultaneous written Notice of:
  - a) The decision; and
  - b) The reasoning and facts that support the decision.
- v. If the alleged violation is Gender Discrimination, Sexual Harassment, Discrimination or Harassment, the Reporting Party shall receive written Notice of any sanction that affects the Reporting Party.
- vi. In a case of a Violent Crime, the University may disclose the final results of the disciplinary proceeding to the victim(s), regardless of whether the University concluded a violation was committed.

#### VI. TRAINING

- A. All persons responsible for the oversight or administration of the Student Conduct Code shall receive annual training relevant to their role and responsibility.
- B. The Conduct Officer(s) and the UMS Coordinator of Student Conduct will identify and invite all persons representing the University community, including enrolled students, faculty and staff to receive training.
- C. Annual training will include understanding the processes and procedures that protects the safety of individuals involved and promotes accountability. In addition, training on issues related to Dating Violence, Domestic Violence, Gender Discrimination, Sexual Assault, Sexual Harassment, Stalking, Discrimination, or Harassment; trauma informed practices, and how to conduct an investigation will be provided.

#### VII. STUDENT CONDUCT CODE INTERPRETATION AND REVISIONS

Under the authority of the Chancellor, any question of interpretation or application of the Student Conduct Code will be referred to the UMS Coordinator of Student Conduct for final determination.

**Student Conduct Code Review**

The Student Conduct Code shall be reviewed a minimum of every two years under the direction of the UMS Coordinator of Student Conduct, and in consultation with the University Conduct Officers, Office of the General Counsel, and including representation from the student body and other stakeholders, as appropriate. The UMS Coordinator of Student Conduct will inform the Chair of the Board of Trustees Academic and Student Affairs Committee of any recommendations for major changes. Final approval of the Student Conduct Code will be the responsibility of the Chancellor, in consultation with the Office of the General Counsel.

Effective Date: August 1, 2022

