

Article IV: Adjudication of Student Misconduct and Appeals Process

A. Filing Complaints

1. Any member of the University community may file a complaint against a student for alleged violations of the Student Code of Conduct.
2. Complaints alleging a violation of the Student Code of Conduct should be submitted as soon as possible after the incident.
3. Complaints shall be prepared in writing and directed to the Student Conduct Administrator. The Student Conduct Administrator is Amy N. Pennington, AVP/ Dean of Students and Title IX Coordinator, Doc Bryan Student Services Center, Suite 233, apennington@atu.edu. Complaints may also be made online by utilizing the incident report form on the Student Conduct website <https://cm.maxient.com/reportingform.php?ArkansasTechUniv>.
4. The Student Conduct Administrator or designee will assign the case to a conduct advisor to investigate and initiate the conduct process.
5. The respondent shall be presumed not responsible for a violation until the respondent acknowledges responsibility or is determined to be responsible by a preponderance of the evidence at the conclusion of a disciplinary proceeding.

B. Preliminary Conference

1. The conduct advisor will present all charges, supporting documentation and meeting notification to the respondent in written form sent to the address listed in OneTech, via Tech email, via hand-delivery by university employees or delivered to the residence hall room of the respondent. This shall constitute full and adequate notice. The failure of a student to provide an address change or forwarding address, or the refusal or inability to accept the mailed notice, shall not constitute good cause for failure to comply with the notification. A student or RSO alleged of a serious violation will be provided a copy of Act 470, the Arkansas Student Due Process and Protection Act, at the inception of the disciplinary matter in the Preliminary Conference Summons Letter and the preliminary conference will not be scheduled until at least twenty-four (24) hours after the receipt of the summons.
2. The respondent shall meet with the conduct advisor in a preliminary conference.
3. The conduct advisor will review the charges and supporting documentation, advise the respondent of due process rights, and explain the Student Code of Conduct adjudication process during the preliminary conference.
4. The conduct advisor shall offer the respondent an opportunity to informally resolve the alleged violation.
 - a. The informal resolution process involves a review of the incident and discussion of the possible sanction(s).
 - b. If the respondent acknowledges responsibility for the violation and the resolution offered by the conduct advisor, the respondent and the conduct advisor shall complete an informal resolution agreement, which shall include information regarding the violations for which the respondent has been found responsible, the resulting sanctions, and signature (when applicable) of both the respondent and conduct advisor.
 - c. When the respondent agrees to take responsibility for the violation and the sanction recommended by the conduct advisor, the case will be settled and there shall be no subsequent proceedings.
 - d. The respondent has three (3) business days from the date of signing the informal resolution agreement to reconsider the agreement and request a formal hearing.
 - e. If the respondent wishes to request a formal hearing, they shall file a request for a formal hearing by notifying the Conduct Advisor. A student or RSO alleged of a serious violation has the right to have a live hearing and be present at the hearing unless waived by the student or RSO. The signed waiver will be provided in writing by the student or RSO. The student or RSO will receive a copy of the completed waiver, and a copy will be maintained in the administrative file. If a student or RSO waives the right to be present, they forfeit the right to make an opening and closing statement, present relevant evidence, cross-examine adverse witnesses through an advisor, or appeal the decision of the Student Affairs Conduct Board. A respondent's failure to participate in the conduct process does not preclude the University from conducting the hearing in their absence.
 - f. The University shall maintain an administrative file of all disciplinary proceedings. The respondent and

complainant involved in alleged serious violations may have reasonable continuing access to the administrative file by contacting the Department of Student Conduct to schedule a reasonable date and time for review. Portions of the administrative file shall be redacted if confidentiality of the evidence is required. Each record of any disciplinary process or sanction imposed under the Student Code of Conduct involving a respondent and other students may constitute an educational record the release of which is governed by FERPA.

- g. The outcome of an informal resolution cannot be contested after three (3) business days.
 - h. The outcome of a formal hearing shall replace any agreements made during the informal resolution.
 - i. If the charges cannot be settled by mutual consent of the respondent and the conduct advisor, if the respondent maintains innocence, or the respondent fails to attend the preliminary conference, the case will be forwarded to the Student Conduct Administrator for referral to a conduct body for a formal hearing.
 - j. A formal hearing shall be set to occur no less than five (5) business days and no more than ten (10) business days after the Student Conduct Administrator refers the case for a formal hearing. Time limits for scheduling of formal hearings may be adjusted at the discretion of the Student Conduct Administrator. A formal hearing for a student or RSO alleged of a serious violation shall be set to occur no less than seven (7) business days after the Student Conduct Administrator refers the case for a formal hearing.
 - k. The conduct advisor may also determine that the respondent is not responsible or that insufficient evidence exists to reach a finding of responsible for the alleged violation(s). This determination does not prevent the Department of Student Conduct from pursuing a subsequent complaint should new evidence become available.
- 5. The conduct advisor may later serve in the same matter as a member of the conduct body.
 - 6. The respondent may request one change in the date and time of the preliminary conference by requesting the change 24 hours prior to the scheduled conference by contacting the Conduct Advisor.
 - 7. Failure of the respondent to attend the preliminary conference will result in a formal hearing being scheduled.

C. Formal Hearing

If the charges cannot be settled by mutual consent of the respondent and the conduct advisor or if the respondent maintains they are not responsible of the alleged violation, the Student Conduct Administrator will refer case to the Student Affairs Conduct Board to adjudicate the case in a formal hearing.

Composition of the Student Affairs Conduct Board

This conduct body is assigned to conduct formal hearings involving alleged violations of the Student Code of Conduct that cannot be settled during a preliminary conference. The conduct board is composed of the following members, appointed by the Student Conduct Administrator: One (1) student representing membership from the following groups: Student Government Association, IFC/Panhellenic, Residence Hall Association, Gold Cabinet, or the Student Activities Board; One (1) Resident Assistant; Two (2) Students at-large; One (1) Residence Life staff member; One (1) Student Affairs staff member. The Student Conduct Administrator or designee will serve as the chairperson. The Student Affairs Conduct Board will hear the case and determine the appropriate sanction(s). All participants are bound to confidentiality in accordance with the federal Family Educational Rights and Privacy Act (FERPA). Students serving on the Student Affairs Conduct Board must be full-time, in good academic standing, and demonstrate satisfactory conduct history. In cases involving a serious violation, no individual will carry out more than one (1) of the following roles with respect to the disciplinary proceeding: investigator, adjudicator, or appellate adjudicator. However, if the matter is not resolved at a preliminary conference, the conduct advisor (adjudicator) is allowed to serve on or chair the Student Affairs Conduct Board.

Hearing Guidelines

- 1. Hearings shall normally be conducted in private.
- 2. The complainant, the respondent, and their advisors (if any), shall be allowed to attend the entire portion of the student conduct hearing at which information is received excluding deliberation. Admission of any person to the hearing who is not a party or potential witness shall be at the discretion of the conduct body and/or the chairperson of the conduct body.

3. In hearings involving more than one respondent, the Student Conduct Administrator or designee may at his or her sole discretion permit the hearings concerning each respondent to be conducted separately or jointly.
4. The complainant and the respondent have the right to be assisted by any advisor they choose, at their own expense. The complainant and/or respondent is responsible for presenting his or her own information. Advisors are not permitted to speak or to participate directly in any student conduct hearing. The complainant and respondent must notify the Student Conduct Administrator who they are bringing at least 72 hours prior to the hearing. A complainant and respondent should select as an advisor, a person whose schedule allows attendance at the scheduled date and time of the student conduct hearing; delays will not normally be allowed due to the scheduling conflicts of an advisor. A student or RSO alleged of a serious violation and the complainant alleging a serious violation has the right to be represented by any advisor they choose and the advisor may fully participate during the disciplinary proceeding and through the conclusion of any appellate process.
5. The complainant, the respondent, and the conduct body shall have the privilege of presenting witnesses, subject to the right of cross examination by the conduct body.
6. The complainant, the respondent, and the conduct body may arrange for witnesses to present pertinent information to the Student Affairs Conduct Board. Witnesses will provide information to and answer questions from the Student Affairs Conduct Board. The complainant and respondent will not be allowed to directly cross-examine each other or witnesses. Requested witnesses must be provided to the Student Conduct Administrator at least 72 hours prior to the hearing. A student or RSO alleged of a serious violation has the opportunity to cross-examine adverse witnesses through their advisor. A party who does not select an advisor forfeits the right to cross-examination during the hearing.
7. Pertinent records, exhibits, and written statements may be accepted as evidence for consideration by the conduct body at the discretion of the chairperson. This information must be provided to the Student Conduct Administrator at least 72 hours prior to the hearing. A student or RSO alleged of a serious violation has the opportunity to make an opening and closing statement.
8. All procedural questions are subject to the final decision of the chairperson of the conduct body or Student Conduct Administrator or designee.
9. After the portion of the hearing concludes in which all pertinent information has been received and the respondent, complainant, and witnesses are dismissed, the conduct body shall determine by majority vote whether the respondent has violated each section of the Student Code of Conduct in which the respondent is charged and determine the sanction(s), if any.
10. The determination of the conduct body shall be made on the preponderance of the evidence standard of proof, whether it is more likely than not that the respondent violated the Student Code of Conduct.
11. Formal rules of process, procedure, and/or technical rules of evidence, such as applied in criminal or civil court, are not used in the Student Affairs Conduct Board proceedings. However, a good faith effort to include only relevant evidence and exclude evidence that is neither relevant nor probative will be made.
12. There shall be a single verbatim record, such as a digital recording, of all hearings before the Student Affairs Conduct Board, not including deliberations. The recording shall be the property of the University.
13. If the respondent does not appear before the conduct body for the formal hearing, the information in support of the charges shall be presented and considered in absentia.
14. The conduct body may accommodate concerns for the personal safety, well-being, retaliation, and/or fears of the confrontation of the complainant, respondent, and/or other witnesses during the formal hearing by providing a visual screen and/or by permitting participation by telephone, video conferencing, or by other means at the discretion of the Student Conduct Administrator or designee.
15. After the formal hearing, the Student Conduct Administrator will advise the respondent in writing of the determination of the conduct body and any imposed sanction. Each record of any disciplinary process or sanction imposed under the Student Code of Conduct involving a respondent and any alleged victim may constitute an educational record the release of which is governed by FERPA.