

## 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](mailto: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.

## D. Sanctions

1. The following sanctions may be imposed singularly or in combination upon any student found to have violated the Student Code Conduct:
  - a. **Warning.** A formal statement that the conduct was unacceptable and a warning that further violation of any ATU policy, procedure, or directive will result in more severe sanctions/responsive actions.
  - b. **Probation.** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated
  - c. **Loss of Privileges.** Suspension or denial of rights and privileges for a designated period of time, and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact directives, and/or other measures deemed appropriate.
  - d. **Monetary Fines.** A penalty imposed involving the collection of fees from the student.
  - e. **Restitution.** Compensation for loss, injury, damage to or misappropriation of ATU property. This may take the form of appropriate service and/or monetary or material replacement.
  - f. **Educational Sanctions.** Educational sanctions may be assigned that promote learning and understanding. These sanctions may be developed as necessary by a conduct body including, but not limited to:
    - i. Sponsorship of an educational program;
    - ii. Attendance at educational programs;
    - iii. Requirement of members to complete educational training programs;
    - iv. Attendance in conflict management training;
    - v. Educational service hours;
    - vi. Attendance in ethics workshop/training;
    - vii. Reflective exercises;
    - viii. Research exercises.
  - g. **Discretionary Sanctions.** Work assignments, service to ATU for other related sanctions. Students who violate the alcohol/drug policies may be subject to completion of alcohol and other drug education programs.
  - h. **Holds.** Withholding of grades, right to register for classes, official transcript, and/or degree.
  - i. **Loss of Scholarship.** Scholarships awarded by the University or University-related programs may be partially or fully revoked.
  - j. **Housing Suspension.** Separation of the student from ATU housing for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
  - k. **Housing Expulsion.** Permanent separation of the student from ATU housing.
  - l. **University Suspension.** Termination of student status for a definite period of time and revocation of rights to be on campus for any reason or to attend ATU-sponsored events. Conditions for readmission may be specified. Students who return from suspension are automatically placed on probation for a definite period of time.
  - m. **University Expulsion.** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend ATU-sponsored events.
  - n. **Revocation of Admission and/or Degree.** ATU reserves the right to revoke admission or a degree previously awarded from ATU for fraud, misrepresentation, and/or other violation of ATU policies, procedures, or directives in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation.

2. Tech may withhold awarding a degree otherwise earned until the completion of the process set forth in the

Student Code of Conduct, including the completion of all sanctions imposed, if any. Students who fail to complete the assigned sanction(s) will have a disciplinary hold placed on their student account which may prevent registration activities. The hold is removed when sanctions are complete.

3. A disciplinary sanction becomes part of the student's permanent academic record as set forth. A student's permanent academic record includes any disciplinary sanction that comprises:
  - a. University Suspension
  - b. Expulsion
  - c. Any revocation of degree
4. Other than University suspension, University expulsion, and revocation of degree, disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's conduct record. Upon graduation and application to the Student Conduct Administrator, the student's confidential record may be expunged of disciplinary actions other than University housing expulsion, University suspension, University expulsion, or revocation of degree. Requests for expungement should be made in writing to the Student Conduct Administrator.
5. More than one of the sanctions listed above may be imposed for any single violation.
6. Additional sanctions beyond those listed in this section of the Student Code of Conduct may be imposed upon RSOs. Please see Article III, Section 9.

## **E. Interim Suspension**

In certain circumstances, the Student Conduct Administrator or designee, may impose a University and/or residence hall suspension prior to the conclusion of the conduct process.

1. Interim suspension may be imposed only:
  - a. to ensure the safety and well-being of members of the University community or preservation of University property;
  - b. to ensure the student's own physical or emotional safety and well-being;
  - c. if the student poses a definite threat of disruption of, or interference with, the normal operations of the University after an individualized safety and risk analysis;
  - d. if the respondent is provided with notice and an opportunity to challenge the decision immediately following the interim suspension;
  - e. if the respondent is provided with written notice within twenty-four (24) hours of the interim suspension explaining the reasons for the removal;
  - f. and within three (3) business days of the written notice noted above, unless waived by the respondent, convene an interim hearing to determine whether there is substantial evidence that the respondent poses a risk to the health or safety of any student or other individual and that the interim suspension is appropriate to mitigate that risk.
2. During the interim suspension the respondent shall be denied access to University housing and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible, as the Student Conduct Administrator or designee may determine to be appropriate.
3. The interim suspension does not replace the outlined conduct process, which shall proceed on the normal schedule, up to and through a formal hearing, if required.

## **F. Appeals**

Appeal of the decision of the Student Affairs Conduct Board may be made in writing to Dr. Keegan Nichols, Vice President for Student Affairs, located in Student Affairs, Doc Bryan Student Affairs Center, Suite 202, (479) 968-0238, [knichols@atu.edu](mailto:knichols@atu.edu) within five (5) business days of notification of the decision. A student or RSO appealing a serious violation has up to twenty-five (25) days to appeal. Simultaneous notification of procedures to appeal the result of a disciplinary hearing will be made to both parties. The only basis for appeal shall be:

1. Alleged failure of the Student Affairs Conduct Board to follow procedures set forth in the Student Code of Conduct; or
2. Consideration of new evidence that was not reasonably available at the time of the hearing before the Student Affairs Conduct Board.

If an appeal is upheld, the review of the case may result in a modified sanction or the case may be remanded to the Student Affairs Conduct Board for a new hearing. If the appeal is denied, the sanction imposed by the Student Affairs Conduct Board shall be immediately implemented.

Sanctions issued following the Student Affairs Conduct Board hearing shall not be implemented until all appeals have been either exhausted or voluntarily waived.

### **G. Vice President for Student Affairs Certification**

At the conclusion of a disciplinary proceeding or an appeal that involves a serious violation, the Vice President for Student Affairs will certify that the substantial rights of student complainants and respondents established in the Arkansas Student Due Process and Protection Act have been followed. The certification will be maintained in the administrative file.