



# **CLEMSON® UNIVERSITY STUDENT CODE OF CONDUCT**

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# CLEMSON UNIVERSITY STUDENT CODE OF CONDUCT

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## I. INTRODUCTION

### A. Purpose

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. A Clemson student is encouraged at all times to show respect for civility, community and the rights of others and to exemplify the Clemson University core values of integrity, respect, diversity, patriotism, excellence and self-reliance.

Clemson University supports the concept of education and due process. When a student is not a danger to the University community or when the repetition of misconduct is unlikely, the University will make an effort to educate the student through a sanction; but should the student demonstrate an unwillingness to obey the rules governing conduct, he/she may be separated from the University.

### B. Board of Trustees Policy

The Board of Trustees recognizes that there is a valid function performed by faculty, staff and the student body alike in considering and supporting any and all issues, controversial or noncontroversial, within the framework of orderly, peaceful and lawful decorum, demeanor and processes. The Board encourages freedom of speech, including constructive criticism, expression of grievances or petition for redress of wrongs, real or fancied, so long as those rights are exercised in a lawful and peaceful manner.

The Board of Trustees is charged by law with the responsibility of making rules and regulations for the University and establishing policy governing the conduct of the University, its employees and its student body. The president of the University is elected by the Board of Trustees to serve at its pleasure. The president is the chief executive officer entrusted by the Board of Trustees with the execution of its policies and the internal government and administration of the University. The Board of Trustees orders and directs the president of the University to administer and enforce its policies as herein announced. In carrying out this responsibility, the president is vested with authority to take such disciplinary action as in their judgment the circumstances warrant. The president has delegated this function to the vice president for Student Affairs.

## II. STATEMENTS OF AUTHORITY

### A. Authority of the Administration

The Board of Trustees delegates to Student Affairs any alleged conduct code violation involving students or recognized student organizations.

### B. Authority of the Student Body

The Board of Trustees delegates to the student body of Clemson University:

1. To recommend rules that regulate, control and dictate conduct of students attending Clemson University;
2. To enact procedural rules for student judicial and governmental activities;
3. To enact rules of evidence for the student judicial boards; and
4. As a part of the judicial board process recommend sanctions for students who violate conduct regulations.

### III. JURISDICTIONAL STATEMENTS AND STANDARD OF PROOF

#### A. Scope

The Student Code of Conduct (Code) applies to all students and student organizations as defined below. The Office of Community and Ethical Standards (OCES) may initiate disciplinary action and impose sanctions against a student or student organization for the violation of any conduct regulation that occurs on or off campus when the alleged conduct would, if true, impair, interfere with or obstruct the missions, processes or functions of the University or when the alleged conduct would, if true, endanger the health, safety or welfare of the student or others or would endanger any University property. Conduct associated with computer networks and online environments are included in OCES jurisdiction.

#### B. Standard of Proof

The University utilizes a standard of a preponderance of the evidence for the adjudication of alleged violations of the Code. This means that cases shall be determined on the basis of whether it is more likely than not that the Respondent violated the Code. "More likely than not" means that after assessing the quality of the evidence, the adjudicator will only find a Respondent responsible for the alleged policy violations if the evidence leaves them reasonably convinced that a finding of responsibility is justified.

#### C. Pending Civil or Criminal Action

For the protection of its interest as an academic community, the University must act promptly to address any issue of misconduct. Therefore, discipline proceedings and actions are not subject to challenge or postponement on the grounds that civil action or criminal charges involving the same incident have been dismissed, reduced or are pending in civil or criminal court.

### IV. DEFINITIONS

#### Administrative Hearing Board

A hearing body consisting of a Chief Hearing Board Chair and at least three voting members. The Administrative Hearing Board hears cases where the alleged conduct, if true, would warrant a Level I Sanction and cases meeting the threshold requirements of Title IX.

#### Advisor

A person who assists the parties during the conduct process. More on the role of the advisor can be found in Section VI.D.3.

#### Alleged Victim

Any person alleged to have experienced physical injury, harassment, sexual assault, domestic violence, dating violence, stalking, or other sexual misconduct; or the theft of or damage to personal property; or to have been the recipient of direct threats of such actions; committed by a student or student organization.

#### Business Days

Days when University offices on the main campus are open. This does not include weekends, holidays, or inclement weather days when University offices on the main campus are closed. Time periods referenced in these procedures do not include the day of the event triggering the beginning of a time period.

#### Chief Hearing Board Chair

The Chief Hearing Board Chair presides over the Administrative Hearing Board. The Chief Hearing Board Chair is a nonvoting member of the Administrative Hearing Board who shall, among other things, preserve order at the hearing; rule on all questions of evidence and procedure; may request the appearance of witnesses; and manage the hearing in accordance with University procedures.

**Complaint**

An allegation of a Code violation.

**Complainant**

An alleged victim who is also a reporting person. A University official may be the Complainant in certain cases, including cases where the alleged victim does not wish to file a complaint or cases where the Respondent is a student organization.

**Consent**

See Code Section VI.C.3.

**Disciplinary Conference**

A meeting between the accused student(s) or student organization and OCES officials or their designees to discuss alleged misconduct.

**Hearing Officer**

The Hearing Officer shall be appointed by the Director of OCES and shall be responsible for guiding the case through the disciplinary process. At any time during the disciplinary process, the Director of OCES may assume the duties of the Hearing Officer. Duties may include, scheduling and holding the Administrative Disciplinary Conference, appointing members of the Administrative Hearing Board, scheduling of the time, date and location of the hearing; transmitting and receiving communications and documents to and from the members of the hearing board, the parties, and other witnesses; making other necessary arrangements for the hearing; and responding to questions from the parties, alleged victims, hearing board members, advisors, and other witnesses.

**Investigator**

Refers to any person or persons authorized by the Director of OCES to conduct an investigation into an alleged Code violation.

**Level I Case**

The most severe category of cases investigated by the University for Code violations. May be heard by the Administrative Hearing Board. Potential Level I sanctions include eviction from University housing, suspension, or dismissal.

**Level II Case**

A lower level category of cases issued by the University for Code violations that excludes Level I sanctions and interim sanctions. May be heard by an OCES Hearing Officer, or at OCES's designation, the Student Judicial Board.

**Party**

The Complainant or Respondent.

**Registered Student Organization**

A group of students organized to perform a particular purpose and formally recognized by the University.

**Reporting Person**

A person who files an incident report and is not the victim and/or party to the complaint alleging a violation of the Code.

**Respondent**

A student or student organization alleged to have committed a violation of the Code.

**Student**

For the purpose of this policy a "student" is any person who is admitted, enrolled or registered for study at Clemson University for any academic period, irrespective of whether they are on campus or not. Persons who are not officially enrolled for

a particular term but who have a continuing student relationship with Clemson University are considered students. A person shall be considered a student during any period, which follows the end of either the spring or fall semester, which the student has completed until the last day for registration for the following semester. A person shall be considered a student during any period while the student is under suspension from the institution or when the person is attending or participating in any activity preparatory to the beginning of school including, but not limited to, the Bridge to Clemson program, fraternity or sorority rush, orientation, placement testing and residence hall check-in.

### **Witness**

A person called to meet with an investigator or a hearing officer or called upon to testify before a hearing board. Witnesses may include a reporting person, a Complainant, alleged victims, a Respondent, or other person that an investigator or the Chief Hearing Board Chair determines to be helpful to the investigation or adjudication process.

## **V. COMMUNITY AND ETHICAL STANDARDS**

### **A. Conduct Regulations<sup>1</sup>**

This section establishes the rules and regulations for all students and student organizations of Clemson University. Students and student organizations are expected to abide by these regulations, and administrators are expected to enforce them. Through the setting of high community and ethical standards and scholarship and through the regulation of the use of University facilities, these regulations are intended to protect the University's mission. Clemson University believes students are the product of their own experiences, and they should assume certain responsibilities for their own conduct and that of their fellow students. These regulations are not designed to define prohibited conduct in exhaustive terms and, therefore, should be interpreted broadly. Also, because Clemson University cannot foresee each and every circumstance that may arise, a student or student organization may be subject to disciplinary action for conduct not specifically delineated in the Code when such conduct is deemed detrimental or disruptive to the mission, purposes or goals of the University.

#### **1. Aiding, Abetting, being an Accessory, and/or in the presence of prohibited conduct**

No student shall aid, abet, or be an accessory, and/or be in the presence of prohibited conduct. Attempting, abetting or being an accessory to any act prohibited by these conduct regulations shall be considered the same as a completed violation.

#### **2. Alcohol**

- a. No student shall unlawfully manufacture, use, possess, distribute or dispense alcohol or misuse any legal substance for the purpose of intoxication.
- b. No student under legal age shall possess, sell, purchase or consume alcoholic liquor, beer or wine.
- c. No student of legal age shall purchase for or sell or provide to a person under legal age any alcoholic liquor, beer or wine.
- d. No student of legal age shall possess or consume alcoholic liquor, beer or wine except in areas designated by the University.
- e. No student shall violate any provisions of the University Drug and Alcohol Policy. See, [\*Clemson University's Drug and Alcohol Policy\*](#).
- f. No student shall alter or be in possession of an altered driver's license or other form of identification.
- g. No student shall violate applicable law by operating a motor vehicle while under the influence of alcohol.

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<sup>1</sup>The conduct regulations of Dating/Relationship Violence, Domestic Violence, Sexual Assault and/or Battery, Sexual Coercion, Sexual Harassment, Sexual Exploitation, Nonconsensual Sexual Contact, and Stalking are identical to the definitions found in the Policies and Procedures Related to Sexual Harassment and Sexual Violence (PPSHSV). If there is any inconsistency between the aforementioned conduct regulations and the definitions found in the PPSHSV, then the definition in the PPSHSV shall apply.

### **3. Arson and Fire Hazards**

No student shall start a fire or create a fire hazard on University-owned or -operated property. Willful damage to property by fire shall be prosecuted as arson when appropriate.

### **4. Computer Misuse**

- a. No student shall allow any person to use their ID and/or password; create access into the computing network in such a way that will bypass University security systems; attempt unauthorized access and use other computing resources or data; violate software licenses or copyrights while using University equipment; or use computing services in any way which may violate federal, state or local law.
- b. No student shall send messages by use of computing facilities and services that are not protected by the First Amendment of the United States Constitution, including but not limited to obscene or messages threatening imminent harm to others, or send, without official University authorization, for-profit messages.

### **5. Contempt**

No student shall fail to comply with sanctions, orders and rules set forth by the Office of Community and Ethical Standards, hearing or appeals officials, student judicial board or administrative hearing board without proper excuse or justification as deemed by University student conduct officials.

### **6. Damage to Property**

No student shall take any action, which willfully or accidentally damages or has the potential to damage public or private property.

### **7. Disorderly Conduct**

- a. No student shall take any action which is disorderly, lewd, or indecent, or be found in a grossly intoxicated condition.
- b. No student shall take any action that creates hazardous conditions including, but not limited to, actions such as dropping, throwing, or causing objects to fall from window, doors, ledges, balconies, or roofs.
- c. No student shall take any action which intentionally interferes with or disrupts normal University or University sponsored activities including, but not limited to teaching, service, research, or administration.

### **8. Disruption of Community and Ethical Standards Process**

- a. No student shall willfully provide false and/or misleading information to any University student conduct official, student judicial board, or administrative hearing board.
- b. No student shall disrupt the University student conduct process.

### **9. Domestic Violence**

An act of violence committed by:

- a. A current or former spouse or intimate partner of the victim;
- b. A person with whom the victim shares a child in common;
- c. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- 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. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence law of the jurisdiction in which the crime of violence occurred.

### **10. Drugs**

- a. No student shall unlawfully manufacture, use, possess, distribute, or dispense any controlled substance or illegal drug or misuse any legal substance for the purpose of intoxication.

- b. No student shall violate any provisions of the University Drug and Alcohol Policy. See, *Clemson University's Drug and Alcohol Policy*.
- c. No student shall violate applicable law by operating a motor vehicle while under the influence of any controlled substance or illegal drug.

#### **11. Failure to Comply with Health or Safety Directive**

Failure to comply with any directive of any Clemson University administrator/employee issued on behalf of the University, any Executive Order from the Governor of the State of South Carolina, or any local, state or federal law, regulation or mandate to address a health or safety concern including but not limited to natural disasters (e.g., tornado, earthquake, flood, hurricane, etc.), war, terrorist act, strike, public health outbreak (e.g., pandemic or widespread and/or infectious disease outbreak), fire, release of nuclear material or dangerous substance into the environment or other catastrophic event or major disruption of University operations.

#### **12. Failure to Comply with an Official Request**

- a. No student shall fail to comply with any reasonable and lawful request (verbal, written or other) of University officials including, but not limited to, police officers, fire or paramedic personnel, Department of Housing and Residence Life staff, maintenance personnel, security officers and other administrators or University officials acting in the performance of their official duties.
- b. No student shall fail to appear before any University student conduct official, student judicial board or administrative hearing board as summoned without proper excuse or justification as deemed appropriate by the University student conduct officials.

#### **13. Fire Alarms and Safety Equipment**

- a. No student shall make, or cause to be made, a false fire alarm, lock-down alarm, or emergency report of any kind.
- b. No student shall tamper with, damage, disable or misuse safety equipment including, but not limited to, fire safety equipment and lock-down alarms.

#### **14. Fraud**

- a. No student shall misrepresent themselves in, or with regard to, any transaction with the University, whether oral, written or by other means.
- b. No student shall alter, misuse or intend to misuse University documents, records, or identification cards.

#### **15. Harassment**

No student shall engage in discrimination or harassment as defined in the University's Non-Discrimination and Anti-Harassment Policy. See, *Clemson University's Anti-Harassment and Non-Discrimination Policy*.

#### **16. Harm to Person**

No student shall cause physical harm or threaten to cause physical harm to another person, nor shall any student take any action which creates a danger to any person's health, safety or personal well-being.

#### **17. Hazing**

No student shall engage in hazing. See, *Clemson University's Hazing Policy*.

#### **18. Intimate Partner Violence**

Violence committed by a person who is, or has been, in a social relationship of a romantic or intimate nature with the victim, where the existence of such relationship shall be based on a) the length of the relationship, b) the type of relationship and c) the frequency of interaction between the persons involved in the relationship. Includes sexual, physical, or threat of such abuse.



## **19. Non-Consensual Sexual Contact**

Any non-consensual conduct of a sexual nature (excluding Sexual Assault and/or Battery) including, but not limited to, touching, fondling, kissing, groping, and indecent exposure.

## **20. Retaliation**

No student shall retaliate against members of the University community who make reports regarding potential University-related violations of laws, regulations, or University policies. Retaliation is any conduct causing any interference, coercion, restraint, or reprisal against a person making a complaint or against a person assisting in any way in the investigation and resolution of the complaint.

## **21. Registered Student Organization: Alcohol**

- a. No University funds, including those raised by a registered student organization, may be used either directly or indirectly for the purchase of alcoholic beverages.
- b. No registered student organization may sell alcoholic beverages.
- c. At an event sponsored by a registered student organization involving alcoholic beverages, the registered student organization is responsible for verification of the ages of guests and will be held responsible for ensuring that any alcoholic beverages are legally dispensed.
- d. At an event sponsored by a registered student organization involving alcoholic beverages, the cost of the alcoholic beverages may not be included in any admission, meal or entertainment charge.
- e. No registered student organization may collect a cover charge, donation or admission fee, which entitles a guest to alcoholic beverages.
- f. No registered student organization may utilize alcoholic beverages as contest prizes.
- g. No registered student organization may participate in any activity or promotion with an establishment whose primary business function is the selling of alcoholic beverages.
- h. No registered student organization may enter into an agreement with said establishment with regard to the sale or distribution of alcoholic beverages. This shall include, but is not limited to, any of the following arrangements:
  1. The registered student organization sells or otherwise shares a profit from the sale of alcohol or serves as a cosponsor of an event involving alcohol with an establishment whose primary business is the selling of alcoholic beverages;
  2. The registered student organization advertises or distributes advertising for programs or activities sponsored by an establishment whose primary business function is the selling of alcoholic beverages;
  3. The registered student organization receives free or discounted room rental rates or other goods or services in exchange for holding an event with alcohol or meeting a bar receipt minimum.

## **22. Registered Student Organization: Conduct**

- a. No unregistered student organization may use the rights and privileges of registered groups as defined in the Student Handbook or in the Registered Student Organization Policy and Related Procedures.
- b. No registered student organization shall act in a manner that does not promote or uphold the core values of Clemson University as defined by the vice president for Student Affairs or the vice president's designee(s).
- c. All registered student organizations which sponsor a period of new member education, prior to full admittance into membership, must adhere to the following provisions:
  1. All new member education programs must be completed two weeks prior to the beginning of the final examination period as listed in the Academic Calendar each semester;
  2. New member education may not be carried over to the following semester;
  3. With prior written permission from the Department of Student Involvement & Leadership or the Department

of Fraternity and Sorority Life (for NPHC, CPA, IFC, and MGC Organizations Only), the formal initiation ceremony may be held the following semester;

4. New member education includes, but is not limited to: new member education classes/activities, final votes, final initiation preparation weeks and any and all activities that could cause a new member to be released and not initiated into full membership.

### **23. Sexual Assault and/or Sexual Battery**

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. Consent of the victim cannot be obtained by force, coercion and/or incapacitation.

### **24. Sexual Harassment**

See, *Clemson University's Policy and Procedures Related to Sexual Harassment and Sexual Violence*.

### **25. Sexual Coercion**

The act of using pressure through threats, force, or alcohol or drugs in an attempt to have sexual contact with someone against their will. Pressure is more than an effort to persuade, entice or attract another person to have sex.

### **26. Sexual Exploitation**

Sex-based cyber-harassment, peeping or other voyeurism, forcing others to view sexual activity, and/or the nonconsensual photography, video or audio taping of sexual activity.

### **27. Skateboards/Bicycles/Motorcycles/Rollerblades/Micro-Mobility Devices**

No student shall utilize skateboards, bicycles, rollerblades or any motor vehicle, or micro-mobility device in unauthorized areas or in a manner that threatens physical safety, damages University or personal property, disrupts University classes or activities or disrupts normal pedestrian or vehicular traffic flow.

### **28. Smoking and Vaping**

All forms of tobacco and smoke-related products, including but not limited to cigarettes, cigars, water pipes (hookah), kreteks, bidis, electronic cigarettes (vaping/JUUL), smokeless tobacco, chewing tobacco, snuff, and any non-FDA approved nicotine delivery device are prohibited on University property/housing.

### **29. Stalking**

A course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others and/or per the policy, suffer substantial emotional distress.

### **30. Stealing**

- a. No student may steal or attempt to steal public or private property.
- b. No student may be in possession of stolen property.
- c. No student may appropriate or attempt to appropriate public or private property without the consent of the owner or the person legally responsible.
- d. No student may steal or attempt to steal the intellectual property of any person or the University.
- e. No student may knowingly give assistance or information to aid in the action of theft.

### **31. Student Housing**

- a. No student shall violate the terms of the Student Housing Contract.
- b. No student shall violate any residence hall regulations. Students living in residence halls shall be held responsible for the actions of their guests.

### **32. Trespassing/Unauthorized Entry**

- a. No student shall gain access to any University facility in a forcible or unauthorized manner.
- b. No student shall occupy any University facility that has not been reserved through the appropriate University offices.

### **33. University Facilities**

No student shall take any action that violates the rules relating to the use of University-operated, -owned and/or approved grounds, properties, facilities and services.

### **34. University ID Card**

- a. No student shall fail to present their student identification to a University official upon request.
- b. Clemson University ID cards are nontransferable, and students may not lend their ID cards or use the ID cards of other students.
- c. No student shall fail to carry their student identification at all times when within reason.

### **35. University Keys**

- a. No student shall use or possess any University key without proper authorization.
- b. No student is allowed under any condition to have a University key duplicated.

### **36. University Policies**

No student shall take any action that violates any published University policies or procedures.

### **37. University Posting**

No student or student organization shall post flyers, posters, banners or any other material in violation of paragraph 5.0 of the Facility Use policy which addresses Bulletin Boards and Other Postings.

### **38. Vandalism**

No student shall engage in willful or malicious destruction or defacement of property owned or operated by the University, students, faculty, staff or administration. This includes, but is not limited to, physical destruction using paint or sidewalk chalk or damage created by skateboards or rollerblades.

### **39. Violation of Federal, State or Local Law**

No student shall violate any federal, state or local law wherein the conduct in question impairs, interferes with or obstructs the missions, processes or functions of the University.

### **40. Weapons, Firearms and Explosive Materials**

- a. No student shall unlawfully possess or use firearms, explosive devices or weapons of any kind. Such weapons may include, but are not limited to: guns, BB guns, air pistols, rifles, knives with at least a 2 1/2-inch blade, martial art devices, bows, weapon components and/or ammunition.
- b. No student shall use a weapon or instrument to simulate a weapon in acts that endanger or threaten any person.

## **B. Sanctions for Student Conduct**

A student admitted, enrolled or registered at Clemson University accepts the responsibility to uphold all Clemson University rules and regulations. Failure to meet this obligation will justify appropriate disciplinary sanctions. Failure to satisfactorily complete a disciplinary sanction may result in more severe sanctions. In Title IX cases, the Title IX Coordinator is responsible for effective implementation of any disciplinary sanction and OCES conducts any necessary follow-up. The sanctions are listed in ascending order of severity. The following sanction(s) (or any combination thereof) may be imposed upon any student found to have violated any conduct regulation:

### **1. Adjudication Withheld**

An OCES finding for eligible students with eligible conduct violations upon the completion of required programs, outcomes, and/or sanctions;

### **2. Written Reprimand**

An official written statement to the student stating that conduct regulations have been violated. It is intended to strongly communicate both the disapproval and the reprimand of the University community;

### **3. Restitution**

An order may be issued requiring a student to make restitution when the student has engaged in conduct, including, but not limited to: physical harm to any person resulting in injury; damage to or destruction of University property or property of any person; the theft or misappropriation of property; or fraudulent behavior.

Restitution may be in the form of financial payment, appropriate service to the University, relocation of the student within University Housing facilities, required attendance of the student to the appropriate educational programs based on the circumstances of the case or other special activities designated by the hearing officer;

### **4. Restriction of Privileges**

The restriction of University privileges for a specified period of time. These restrictions may include, but are not limited to, the following:

- a. Denial of the privilege to live in University Housing;
- b. Denial of the privilege to attend or participate in nonacademic University functions and activities, including regular priority in obtaining tickets to athletic events;
- c. Denial of the privilege to participate, be elected or appointed as a member or officer of Undergraduate or Graduate Student Government or any registered student organization;
- d. Denial of parking privileges;
- e. Denial of the use of University facilities;
- f. Denial of the privilege to represent the University to anyone outside the University community in any way, including representing the University at any official function;
- g. Denial of residence hall visitation;
- h. Restriction of room and/or roommate choice in room assignment within University Housing;
- i. Denial of the use of University funds allocated by the Undergraduate or Graduate Student Government;
- j. Denial of the use of University vehicles;
- k. Denial of the privilege to vote in University-held elections.

### **5. No Contact Order**

An order of no contact with any individuals who are Complainants, victims or witnesses in the student conduct process. This includes, but is not limited to, verbal, written, electronic, cellular, physical or social contact, contact with second or third parties, or allowing others to make any contacts on the Respondent's behalf. This can also be issued as an interim sanction prior to the completion of the disciplinary process;

### **6. Disciplinary Probation**

A specified period of review and adjustment during which a student is under an official warning that their violation was very serious. While on disciplinary probation, a student will be considered to be "not in good standing" with the University and may face specific restrictions on their behavior and/or University privileges. Students involved in similar or additional disciplinary incidents while on probation may be recommended for immediate suspension or dismissal;

## **7. Eviction**

Eviction from University Housing without a refund if the student is currently residing in a residence hall or an on-campus apartment;

## **8. Suspension**

The denial of enrollment, attendance and other privileges at the University for a specified period of time. Permission to apply for readmission upon the termination of the period may be granted with or without conditions/restrictions. The student must receive clearance for re-enrollment from OCES. A student who has been issued a suspension sanction is deemed “not eligible to return” to the University during the suspension period;

## **9. Dismissal**

The dismissal of a student from the University without the ability to apply for re-enrollment. A student who has been dismissed is deemed “not eligible to return” to the University;

## **10. Interim Actions<sup>2</sup>**

Interim actions may be imposed by OCES in order to protect the parties or witnesses. Interim actions may include, but are not limited to, separating the parties, no-contact directives, reassignment, removal from University housing, suspension, alternative academic work, student housing arrangements, provision of escorts, and/or restriction of other privileges.

Any imposition of interim actions shall be an individualized determination based on the circumstances of each case. Interim measures may be vacated, modified, or retained upon final adjudication or prior thereto, as appropriate to the circumstances;

## **11. Emergency Removal**

On an emergency basis, the University may remove a Respondent from an educational program or activity, if after an individualized safety and risk analysis, the University determines that the Respondent presents an immediate threat to the physical health or safety of any student or individual arising from the alleged conduct.

During emergency removal, a student may be denied access to the residence halls and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible, as OCES may determine to be appropriate. Emergency removals become effective on the date and time specified in the notice of emergency removal.

A student shall be notified in writing of an emergency removal, its restrictions, and the reasons for it, and shall also be notified of the time, date, and place of a subsequent meeting with the Associate Vice President for Student Affairs or designee at which the student may contest the grounds for the emergency removal, including the reliability of the information concerning the alleged actions and the identification of the student. Except in the case of exigent circumstances or other good cause, this meeting shall occur no more than three business days following the notice of emergency removal, and may occur prior to the effective date of the emergency removal. Following such meeting, OCES may lift, modify, or continue the interim removal while the disciplinary process continues.

A student may, upon any grounds, appeal the decision of the Associate Vice President or designee regarding the emergency removal to the Chief Hearing Board Chair. The appeal must be submitted in writing to OCES within five business days.

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<sup>2</sup>Note that in Title IX cases the Title IX Coordinator will implement supportive measures.

## **VI. STUDENT DISCIPLINE PROCEDURES**

### **A. Purpose**

Clemson University has a duty to develop policies and procedures which provide an environment that is conducive to learning and promotes a sense of community. These policies and procedures are developed within the framework of general standards of conduct with the broadest possible participation of the members of the University community and are consistent with the principles of due process of the law applicable to state land grant universities. The time requirements and deadlines stated in this Code and the enabling procedures are intended to ensure the prompt resolution of situations involving student conduct. Notwithstanding the provisions of the Code, including any of its time requirements or deadlines, the University reserves the right to convene special hearing boards and/or to waive or extend any deadline, or take any other action provided such action does not unduly prejudice the affected student.

### **B. Administration of Cases**

The Director of OCES is responsible for the coordination of discipline programs and proceedings. The director and their designee have the authority to determine the appropriateness of a referral, issue any notices referenced in this Code, accept a student's admission(s) to a violation(s) and impose sanction(s) and hear cases involving alleged violations of the general student regulations as well as alleged violations by registered student organizations. The director and their designee may present the facts, circumstances and evidence on behalf of the University. Further, students who have been suspended from the University must petition for readmission through the director or their designee. Readmission may be granted with conditions or restrictions and a period of disciplinary probation may be imposed at the time of return.

### **C. Cases Involving Claims of Sex Based Harassment and/or Assault**

#### **1. Generally**

Title IX prohibits sex-based discrimination in education programs or activities that receive federal financial assistance. Specifically, Title IX states that, "No person in the United States shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Clemson University is committed to responding promptly and effectively when it learns of complaints of possible discrimination based on sex.

#### **2. Formal Complaint**

Any student who believes he or she has experienced sexual harassment, including sexual assault or other forms of sex-based violence, should contact the Title IX coordinator to inquire about filing a formal complaint. If the formal complaint is against a student and meets the requirements of Title IX, then the complaint will be referred to OCES, and the matter will proceed according to this Code's procedures for Level I Cases. If it is determined that the complaint does not meet the requirements of Title IX, the Title IX coordinator will dismiss the matter for the purposes of Title IX. However, the alleged conduct may still be addressed by OCES pursuant to this Code.

#### **3. Consent**

##### **a. Definition of Consent**

Consent requires speech or conduct indicating a freely given, uncoerced by means of threats or force, agreement to engage in sexual contact. The person giving consent must be able to:

1. Understand the circumstances and implication of the sexual act;
2. Make a reasoned decision concerning the sexual act; and
3. Communicate that decision in an unambiguous manner.

## **b. Evaluating Consent**

Consent is determined by evaluating the relevant facts and circumstances. For example, in the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity, to make sure that he or she has the consent from their partner(s) prior to initiating sexual activity. A current or previous sexual relationship, or a previous sexual experience, are not sufficient, in themselves, to imply or constitute consent. A person may withdraw consent at any time prior to or during a specific sexual act by another person. Silence, passivity, or lack of physical resistance alone do not constitute consent.

## **c. Inability to Consent**

Various factors may limit or negate a person's ability to consent to a sexual act. These include, but are not limited to, age, incapacitation (defined below) intellectual or other disability, or fear due to threats or force.

In order to find a lack of consent under one of these circumstances, there must be both a finding that the Complainant was unable to consent and a finding that the Respondent knew or had reason to know the Complainant was unable to consent.

Incapacitation: Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. It may be permanent or temporary. Someone who is asleep or unconscious is incapacitated. Someone can also be incapacitated by alcohol or other substances. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Incapacitation is a state beyond intoxication, and a person is not incapacitated merely because of drinking or drug use.

Mutual Incapacitation: If there is evidence or an assertion that both participants in a specific sexual act may have been incapacitated at the time it occurred, the university will examine the conduct of both persons in its investigation. If either or both persons initiated and engaged in sexual activity with someone who was incapacitated, the University will impose sanctions based on all circumstances. The gender of any person will not be a factor in the selection of sanctions. Once the University has completed its investigation and adjudication of an incident (including appeals), no participant may later raise a claim of their own incapacitation.

## **D. Rights and Responsibilities of the Complainant and Respondent**

### **1. Generally**

- a. The Complainant and the Respondent will be listened to and treated with respect, and shall be granted the opportunity to participate in any hearing regarding the alleged conduct.
- b. The Complainant and the Respondent have the right to be informed of the discipline process prior to any disciplinary action involving the incident. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the conduct process.
- c. In investigating alleged violations of conduct regulations, University hearing officials, student judicial board members or administrative hearing board members shall respect the right of the Respondent to remain silent.
- d. Pending action on alleged violations of conduct regulations or pending final disposition of any appeal, the status of a student shall not be altered, nor shall the right to be present on the campus to attend classes be suspended, except when an interim suspension or other interim measure has been imposed.
- e. In cases of alleged violations of conduct regulations, the Respondent is required to meet with a University hearing official, the student judicial board, or an administrative hearing board to facilitate the resolution of the case. Failure to meet with a University official will result in an additional charge of Failure to Comply and may result in forfeiture of certain procedural rights.
- f. In cases where a live hearing is required, either party may request that the hearing occur in separate rooms with



technology enabling the administrative hearing board and parties to simultaneously see and hear the other party or witnesses answering questions.

- g. Prior cases of discipline cannot be used against a student in determining whether the action is a violation of a conduct regulation; however, prior discipline can be used in determining the sanction if found in violation of a conduct violation.

## **2. Access to Information**

- a. To the extent permitted by law, both the Respondent and the Alleged Victim in Title IX cases or other cases where violence is alleged shall be informed in writing of the outcome of the disciplinary hearing and any appeal.
- b. For more information on access to information, see Section VI.E.2.c regarding the investigative reports and Section VIII regarding student records.

## **3. Right to and Role of the Advisor**

In all OCES cases, the Complainant and the Respondent may have the assistance of an advisor. An advisor is any person willing to serve as an advisor. A party may, at their own expense, choose an attorney to be their advisor. It is not required that an advisor be an attorney.

In Level I cases, either Party, with the exception of a registered student organizations, may request that OCES provide an advisor. An OCES provided advisor will provide guidance throughout the conduct process, including through any investigation, adjudication, or appeal. Whether a party chooses their own advisor or whether OCES provides an advisor, each party must have an advisor present during a Level I Administrative Hearing.

Advisors, in a Level I case, are permitted to ask the other party and any witnesses all relevant questions and follow up questions, including those challenging credibility during an administrative hearing. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

Advisors, in a Level II case, are not permitted to address the parties and/or witnesses, but are permitted to communicate directly with their advisee. In Level II cases, OCES will not provide advisors and any party wishing to have the assistance of an advisor must provide their own.

## **4. Informal Resolution for Non-Title IX Cases**

Except in Title IX cases, accused students may voluntarily waive any right to a disciplinary conference or hearing under this policy and elect to proceed with informal resolution. A waiver of a student's right to a hearing or conference on the factual allegations does not prohibit the student from proceeding under this policy as to a conference or hearing on the appropriate sanction. Alternatively, a student may waive their right to hearing on both the underlying facts and on the determination of an appropriate sanction. In such cases, the student will then accept any such sanction issued by OCES. All waivers shall be submitted to OCES in writing.

# **E. Student Conduct Procedures**

## **1. Receipt of Complaint and Initial Review**

### **a. Complaint**

Individuals seeking to pursue charges for Dating Violence, Domestic Violence, Sexual Assault, Sexual Harassment and Stalking as defined by Title IX must contact the Title IX coordinator. All other Complaints alleging violation of the Code shall be filed with OCES. A complaint may be filed by any person, to be designated the "reporting person." A reporting person may or may not be an alleged victim. In cases alleging a violation of a student housing regulation or occurring in the residence halls or apartment areas, the initial incident report shall be submitted to OCES. OCES shall provide a standard form for complaints, which will include the date, time, and location of the alleged



misconduct, names of any alleged victim, the alleged perpetrator, a statement describing what is alleged to have occurred, and the names of any other persons who saw or heard of the alleged misconduct.

In Level I cases, OCES will attempt to complete review, investigation, and adjudication of a complaint within a reasonable time period, generally not more than 75 business days from receipt of the complaint.

Factors including, but not limited to, academic term breaks, criminal investigations, case complexity and access to witnesses may result in investigation and adjudication extending beyond 75 business days. In that event, OCES will notify the parties of the need to extend the period of investigation and adjudication and the reasons therefore.

## **b. Review of Complaint**

Within five business days of receipt of a complaint, OCES will, if possible, interview the reporting person (and the alleged victim if different from the reporting person). OCES will then determine the appropriate case level designation after consideration of a number of variables including, but not limited to: the type of alleged offense, the accused student's prior conduct record and/or the location of the incident. The following section delineates the adjudication process.

### **1. Complaints Originating in or Referred to OCES**

For Formal Complaints submitted to the Title IX Coordinator, if the Title IX Coordinator or designee determines that a Formal Complaint meets the threshold requirements for Title IX, then the matter will be referred to OCES for investigation and adjudication. OCES will issue a notice of investigation to the Respondent and to the alleged victim and follow the procedures under this Code for Level I Cases. For all other cases, the Director of OCES or their designee will determine the proper procedures for adjudication in accordance with the following:

- i. If the Director of OCES or their designee determines that the allegations in the complaint, if true, would constitute a violation of the Code and may also merit a sanction of eviction from University housing, suspension, or dismissal, then OCES will issue a notice of investigation to the Respondent and to the alleged victim and follow the procedures under this Code for Level I Cases;
- ii. If the Director of OCES or their designee determines the allegations, if true, would constitute a violation of the Code but would not merit a sanction of eviction from University housing, suspension, or dismissal, then OCES will follow the procedures under this Code for Level II Cases, except in cases where the Director of OCES or their designee refers the matter to the Student Judicial Boards;
- iii. If the Director of OCES or their designee determines that the allegations in the complaint, if true, would not constitute a violation of the Code, then OCES will issue a notice of dismissal to the alleged victim, but may refer the matter to the Dean of Students or other appropriate University officer for additional response. A notice of dismissal or of investigation shall be issued not less than five business days following the OCES interview with the reporting person and/or the alleged victim, whichever is later. Following a notice of a dismissal, an amended complaint alleging additional facts may be filed for review by OCES.

### **2. Cases Originating in University Housing**

Upon receipt of an incident report OCES or their designee will review the report. Depending upon the severity of the incident and the prior conduct report of the alleged student, OCES will either retain or assign the case to Residential Life staff members and/or University Housing Hearing Officers. If University Housing refers the matter to OCES they will review the matter as set forth in Section VI.E.1.b.1.

### **3. Cases Referred to Student Judicial Boards**

The Director of OCES or their designee will determine whether a case will be referred to the Student Judicial Boards, and the Student Judicial Board shall follow the procedures set forth in Section VI.E.3.c of this Code. OCES shall supervise all Student Judicial Board cases.

## 2. Adjudication of Alleged Level I Cases

### a. Notice of Investigations

In adjudicating an allegation that, if true, would likely warrant an eviction from University housing, suspension, or dismissal, OCES shall issue a Notice of Investigation. Notices of investigation shall be in writing and shall include the following: the names of the Alleged Victim and Respondent; a description of the alleged misconduct; the date, time, and location of the alleged misconduct; the specific sections of the Code and any other applicable University policies alleged to have been violated; links to the Code and other policies alleged to have been violated; notice of the right of parties to be accompanied by an OCES provided advisor or other advisor of their choice (who may, at their own expense, be an attorney) to any meetings related to the investigation; a description of the possible sanctions if a student is ultimately found responsible for the alleged policy violations; if applicable an explanation of the procedures for University disciplinary action in cases of sexual misconduct; and a notice of non-retaliation.

### b. Conduct of Investigation

Investigations will be prompt, thorough, fair, impartial, and conducted by trained investigators. Investigators may be OCES or other University personnel, or external investigators appointed by OCES.

The purpose of the investigation is to gather relevant facts so that the Administrative Hearing Board can make a determination of responsibility or non-responsibility of the respondent. Generally investigations and the investigator's final report will be concluded within 35 business days of the issuance of a notice of investigation. The investigator will notify OCES who will then notify the Complainant, and Respondent if circumstances, such as academic breaks or witness availability, will require an investigation to extend beyond 35 business days, and provide an estimate of the additional time that will be required.

During the investigation, the investigator will, to the extent reasonably possible, meet separately with the reporting party, any alleged victims, the Respondent, and other witnesses. All meetings shall be preceded by written notice allowing sufficient time for preparation, and the advisor shall be permitted to attend. The investigator will impartially seek both inculpatory and exculpatory evidence from all parties and witnesses. Parties will have an equal opportunity to provide evidence and present witnesses, including fact and expert witnesses.

Further, the parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that directly relate to the Complainant's allegations, including any inculpatory or exculpatory evidence so that the parties will have meaningful opportunity to respond to the evidence prior to the conclusion of the investigation.

During the investigation, the investigator may discover evidence of additional Code violations. The investigator may choose to address the evidence of those additional violations in the investigative report.

Throughout the investigation and adjudication of any allegation of misconduct under this Code, each party will be provided written notice in advance of any initial or subsequent interviews, meetings, or hearings that allows sufficient time for the party to prepare for meaningful participation.

Except as authorized by OCES, video, audio, stenographic, photographic or other recording of meetings with investigators is prohibited.

### c. Investigative Report

After gathering the evidence, the investigator will prepare a draft report, summarizing all of the evidence collected, both inculpatory and exculpatory, including contested and uncontested facts, and identifying any suggested witnesses that were not interviewed and the reason they were not interviewed. To the extent permitted by law, the

Investigator will send to each party and the party's advisor the draft investigative report and any evidence collected that relates to the Complainant's allegations, regardless of whether such evidence will be relied upon at the hearing or in the report.

Parties will then have five business days to review and clarify their statements in the draft report and submit a written response along with their reasons for the same to OCES and the investigator. The investigator will then consider the parties' responses, if any, in preparing the final report.

At least five business days prior to the hearing, the investigator will send their final report to OCES. OCES will send the final report (including any supporting documents or evidence referenced in the report) to the parties and the parties' advisors.

If the Director of OCES or designee finds that pertinent information is missing from the report or that the report is otherwise incomplete, then the investigative report may be referred back to the investigator for further inquiry. If the Director of OCES or designee determines that the investigative report is complete or that further investigation would not be constructive, then the report shall be submitted to the Chief Hearing Board Chair.

Except in Title IX cases, the Chief Hearing Board Chair will convene a meeting of the Administrative Hearing Board to determine whether there is sufficient cause to conduct an administrative hearing regarding the violations alleged in the notice of investigation or regarding any additional potential violations discovered in the course of the investigation.

In evaluating sufficient cause, the Administrative Hearing Board will determine, in consideration of all of the evidence, whether it could reasonably conclude, consistent with the standard of proof set forth in Section III.B, that the Respondent committed the alleged violations of the Code or other applicable policies.

If the Administrative Hearing Board determines that there is insufficient cause to convene a hearing, then OCES will issue a notice of dismissal.

#### **d. Informal Resolution**

At any stage in the investigative process, if deemed appropriate by OCES, an informal resolution process may be initiated and an informal resolution agreed upon. Informal resolution will only be initiated after all parties have been provided a notice of investigation, advised of their right to decline informal resolution and pursue formal resolution through the investigation and adjudication process, and voluntarily agreed to participate in informal resolution. The parties must be informed that they can withdraw from the informal resolution process at any time at which point the formal investigation and adjudication process will resume.

Either party may make a request for an informal resolution in writing to the Director of OCES. The director will consider the seriousness of the allegations, any prior violations or complaints against the Respondent, and any other relevant factors to determine if an informal resolution is appropriate. If the director determines that informal resolution is not appropriate he or she will notify the requestor in writing. If the director determines an informal resolution is appropriate, he or she will meet with the Complainant and Respondent to determine whether an informal resolution can be negotiated and agreed upon by the parties.

Informal resolution does not mean that Respondent does not have to accept responsibility or will have adjudication of their conduct case withheld or deferred, though it may if OCES and both parties are in agreement.

#### **e. Notice of Hearing and Charges**

Written notice of the hearing and the final charges alleged against the Respondent will be sent to the parties by the Hearing Officer. The notice will include the following: the date, time, and location of the hearing; a description

of the alleged misconduct; the date, time, and location of the alleged misconduct; the specific sections of the Code and other applicable policies alleged to have been violated; links to the Code and any other policies alleged to have been violated; notice of the right to be accompanied at the hearing by an advisor as set forth in Section VI.D.3; a description of the possible sanctions if a student is ultimately found responsible for the alleged policy violations; if applicable an explanation of the procedures for University disciplinary action in cases of sexual misconduct; and a notice of non-retaliation.

Except in Title IX cases, following receipt of a notice of investigation, a Respondent may elect to accept responsibility for the misconduct alleged and for the violations and forego an Administrative Hearing, in which case the Respondent may agree to the sanctions suggested by the Hearing Officer or request an administrative hearing to determine the appropriate sanction. Sanctions imposed following acceptance of responsibility may be appealed only on grounds of arbitrariness or gross disproportionality pursuant to Section VII.

Notices will allow sufficient time for the parties to reasonably prepare for the hearing and the completion of all prehearing procedures. Absent extenuating circumstances or the agreement of the Complainant and Respondent, in no case will a hearing be scheduled less than 10 business days after the date of the Notice of Hearing.

## **f. Prehearing Procedures**

### **1. Appointment of Administrative Hearing Board**

The Chief Hearing Board Chair shall preside at and preserve order at the hearing; rule on all questions of evidence and procedure during the prehearing process and during the hearing; may request the appearance of witnesses; and manage the hearing in accordance with University procedures.

In addition to the Chief Hearing Board Chair, OCES will also appoint at least three additional members to the hearing board. The hearing board may be comprised of individuals external to the University. All hearing board members will have received appropriate training in University disciplinary and hearing board procedures. Upon appointment, hearing board members will also be provided with a copy of the notice of hearing, names of the parties and the investigative report.

### **2. Challenge/Recusal of Administrative Hearing Board Members**

If the Director of OCES or Chief Hearing Board Chair determines that the Chief Hearing Board Chair has a conflict or is unavailable, then the director will appoint another individual to chair the hearing board in the Chief Hearing Board Chair's absence.

The Chief Hearing Board Chair and hearing board members will promptly disclose to the Hearing Officer any prior interactions they may have had with the parties or other potential witnesses, prior knowledge of the details of the case, or any other circumstances that lead the Chief Hearing Board Chair or hearing board member to believe they would not be able to render an impartial assessment of the evidence or determination of responsibility, in which case the Chief Hearing Board Chair or the hearing board member shall be recused and a replacement Chief Hearing Board Chair or hearing board member appointed.

At least five business days prior to the Administrative Hearing date, the parties will be notified of the identities of the Chief Hearing Board Chair and hearing board members. The parties will each have three business days to file written requests for recusal of the Chief Hearing Board Chair or hearing board members based on their prior interaction. If the Hearing Officer determines, after reviewing the written requests for recusal or upon their own volition, that the nature of the prior interaction is such that a reasonable person would conclude that the Chief Hearing Board Chair or the hearing board member would be unable to render an impartial assessment

of the evidence or determination of responsibility, the Hearing Officer shall recuse the Chief Hearing Board Chair or the hearing board member and a replacement shall be appointed.

### **3. Notice of Proposed Witnesses**

At least 10 business days prior to the hearing, the Chief Hearing Board Chair and the parties shall provide the Hearing Officer with a list of the witnesses they would like called to the hearing. The Chief Hearing Board Chair, in consultation with the Hearing Officer, will review the lists submitted and approve a final consolidated list of all witnesses, which may or may not include all of the witnesses requested by the parties. The Hearing Officer will within three business days share the consolidated list of all witnesses and the person requesting them with the parties along with notice of the University's non-retaliation policy. Testimony supporting the character of either party will take the form of written statements of no more than two pages in length, and limited to no more than three per party. Character witness statements may be provided to the Chief Hearing Board Chair at the time of the hearing.

### **4. Notification of Witnesses**

At least three business days prior to the hearing the Hearing Officer will contact the named witnesses. Students who are named as witnesses will be required to attend the hearing. The Hearing Officer will also ask any witnesses not affiliated with the University to appear. However, the University cannot guarantee the appearance or participation of unaffiliated witnesses.

### **5. Notification of Additional Evidence**

Simultaneously with their notices of proposed witnesses above, the parties shall provide the Hearing Officer with copies of documents or other evidence they intend to introduce at the hearing. The Chief Hearing Board Chair, in consultation with the Hearing Officer will review the proposed documents and additional evidence and approve a list of documents and additional evidence that can be introduced at the hearing. The Hearing Officer will share the approved documents and additional evidence and the person requesting them with the parties along with the notification of witnesses.

### **6. Objections to Witnesses, Documents, or Additional Evidence**

Within three business days of receipt of the consolidated list of witnesses and evidence, the parties may file a written objection with the Hearing Officer to the appearance of any witnesses, or the introduction of any documents or additional evidence, based on considerations of relevance, redundancy, or unjustified failure of a party to identify and disclose a witness, document or other evidence earlier in the investigation. The Hearing Officer will forward any such objections and responses to the Chief Hearing Board Chair and, if applicable, the other party. The hearing board chair may rule in advance of the hearing whether to allow or exclude witnesses, documents, or additional evidence; or may reserve ruling until the hearing. The Hearing Officer will inform the parties of the decision of the Chief Hearing Board Chair, and also confirm with any challenged witnesses whether they should or should not appear at the hearing.

## **g. Hearing Procedures**

### **1. Closed to the Public**

All Administrative Hearing Board meetings are closed to the public. Only hearing board members, the parties, their advisors, witnesses and authorized University personnel may be present.

### **2. Recording**

Except as authorized by OCES, video, audio, stenographic, photographic, or other recording of hearing

proceedings are prohibited. The Hearing Officer will make arrangements for one authorized recording, whether audio or audiovisual or transcript, and make it available for the parties to inspect and review.

### **3. Sequestration of Witnesses**

The parties and their advisors have the right to be present throughout the hearing. Normally, subject to the discretion of the Chief Hearing Board Chair, other witnesses will be allowed in the hearing room only during the time they are being questioned.

### **4. Participation by the Parties**

Neither the Complainant nor the Respondent is required to be present at the hearing. If they are present, they may elect not to testify, but may nonetheless question their own and other witnesses. In addition, in their discretion, the Chief Hearing Board Chair may direct that questioning of the Complainant or Respondent take place remotely by means of available technology, provided the party or the witness answering questions may be seen by the hearing board and the other party throughout their testimony. Refusal of the Complainant or Respondent to testify or submit a written statement will not be the basis of a finding of responsibility.

### **5. Participation by Witnesses**

Other than Complainants and Respondents, University students and employees are required to attend and provide testimony unless compliance would result in unavoidable hardship or substantial interference with University operations. If for good cause a witness is unable to be present at the hearing, the Chief Hearing Board Chair may allow testimony and questioning via available technology, provided the witness may be seen by the hearing board and the parties throughout their testimony.

In Title IX cases, a party must be present at the hearing and subject to cross-examination for their signed witness statement to be submitted into evidence. In all other cases, signed written statements may be received into evidence only in extenuating circumstances. If a witness statement is important for establishing whether the alleged misconduct occurred, then if possible that witness should appear in person for testimony and questioning. Although neither a Complainant or the Respondent is required to testify or otherwise participate, absent persuasive corroborating evidence, the hearing board will not consider either party's personal statement concerning the alleged misconduct unless that party is available for questioning by the hearing board and the other party.

### **6. Written Statements (in Title IX Cases)**

If a party or witness does not submit to cross-examination at the live hearing, the hearing board must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

### **7. Questioning of Parties and Witnesses**

Advisors, in Level I case, are required to ask the other party and any witnesses all relevant questions and follow up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Members of the hearing board may directly question the parties and all other witnesses. Only relevant cross-examination and other questions may be asked of a party or a witness. Before a Complainant, Respondent or Witness answers a cross-examination or other question, the Chief Hearing Board Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and



evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **8. Order of Proceedings**

Subject to the discretion of the Chief Hearing Board Chair, the hearing shall be conducted as follows:

- i. Call to order and introduction of hearing board members, the Complainant, Respondent, and others in the room;
- ii. Brief summary of purpose and rules of hearing;
- iii. Any procedural rulings (for example, any new or pending objections regarding witnesses, evidence or composition of the hearing board);
- iv. Reading of the alleged misconduct and policy violations;
- v. Reference to all procedural notices given to the parties and to the dates the notice was sent;
- vi. Reading by Chief Hearing Board Chair of all uncontested and relevant facts as set forth in the investigator's report;
- vii. Invitation to the Complainant, and then the Respondent, to make opening remarks;
- viii. Questioning of witnesses called by the Chief Hearing Board Chair (these may include but are not limited to the Complainant, the Respondent, and the investigator). Hearing board witnesses will be questioned first by the complainant, then by the respondent, and then by hearing board members;
- ix. Questioning of any additional witnesses called by the Complainant and approved by the Chief Hearing Board Chair. Complainant's witnesses will be questioned first by the Complainant, then by the Respondent, and then by the hearing board members. Hearing board members may then pose follow-up questions;
- x. Questioning of any additional witnesses called by the Respondent and approved by the Chief Hearing Board Chair. Respondent's witnesses will be questioned first by the Respondent, then by the Complainant, and then by the hearing board members. Hearing board members may then pose follow-up questions;
- xi. Questioning of any additional witnesses deemed necessary by the Chief Hearing Board Chair in light of the evidence presented. (This may be of the Complainant, the Respondent, prior witnesses, or additional witnesses, as deemed necessary by the Chief Hearing Board Chair. In some instances this may require an adjournment of the hearing in order to secure the attendance of the witnesses);
- xii. Invitation for any closing remarks, first by the Complainant, then by the Respondent;
- xiii. Adjournment of the hearing for deliberation and adjudication by the hearing board.

Throughout the hearing, rulings concerning procedure, the appearance and questioning of the parties and witnesses, continuances, and the introduction of evidence are the responsibility of and at the discretion of the Chief Hearing Board Chair. The Hearing Officer or other University personnel or their designees may advise the Chief Hearing Board Chair on questions of procedure, witnesses, and evidence.

## **9. Adjudication**

### **i. Assessment of Evidence Presented**

The hearing board should first evaluate the relative quality of the evidence without regard to who provided it. Any evidence the hearing board determines to be of high quality should be given more weight than evidence it determines to be of low quality. Quality may or may not be identical with quantity, and sheer quantity alone should not be the basis of a finding of responsibility. The testimony of a single party or witness may be sufficient to establish a fact. In assessing any testimony and written statements, the hearing board members must evaluate the credibility of witnesses.

## **ii. Determination of Responsibility, Sanctions, and Rational**

If after assessing the evidence and applying the standard of proof, the hearing board determines that no policy violation occurred or that the Respondent was not responsible for the conduct constituting the policy violation, the hearing board must issue a determination of non-responsibility. If after assessing the evidence and applying the standard of proof, the hearing board determines that a policy violation occurred and the Respondent was responsible for the conduct constituting the policy violation, the hearing board must issue a determination of responsibility. The hearing board must then determine the appropriate sanction.

A particular sanction is neither presumed nor required. An appropriate sanction should be decided on an individualized basis taking into account the facts and circumstances, including any mitigating or aggravating factors, the nature and seriousness of the offense, the Respondent's prior disciplinary history, and the effect on the victim or the University community. The determination of responsibility and of an appropriate sanction is made by a majority vote of the voting hearing board members.

After reaching a determination of non-responsibility, or a determination of responsibility and the appropriate sanction, the hearing board, within five business days of the adjournment of the hearing, must issue a written decision setting forth its conclusions and including the rationale for both its determination of responsibility or nonresponsibility, and, if applicable, for the sanction imposed. The hearing board's written determination must include:

- a. Identification of the allegations potentially constituting violations of the Code;
- b. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the Code to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and, in Title IX cases, whether remedies designed to restore or preserve Complainant's equal access to the University's education program or activity will be provided;
- f. The procedures and permissible bases for appeal.

## **3. Adjudication of Alleged Level II Cases**

### **a. Disciplinary Conference**

1. OCES will contact the Respondent(s) to schedule an Disciplinary Conference.
2. During the Disciplinary Conference, the Hearing Officer will explain the disciplinary process and present all relevant evidence regarding the alleged violation(s). Respondent(s) will be given an opportunity to respond to the allegations.
3. If the facts and/or sanctions concerning the alleged violation(s) cannot be agreed upon by the Hearing Officer and Respondent(s), the Hearing Officer shall issue a written decision setting forth their conclusions, including a rationale for their determination and for the sanction imposed. The Respondent(s) will then have the option to either:
  - i. Accept the Hearing Officer's findings and sanctions; or
  - ii. Appeal the Hearing Officer's decision to the Director of OCES or their designee. (Note: Such appeals must be in writing and submitted to OCES within five business days of the Hearing Officer's decision.)



#### **b. Procedures of Adjudicating University Housing Cases**

1. A discipline conference will be scheduled to discuss the alleged violation(s) of student regulation(s) and the disciplinary process.
2. During the discipline conference, the Hearing Officer will review with the student the allegation and any supporting evidence.
3. If the facts and/or sanctions concerning the alleged violation(s) can be agreed upon by the Hearing Officer and the Respondent, the Hearing Officer will enter a written finding and a sanction(s) may be imposed.
4. If the Respondent(s) and the Hearing Officer do not agree with the facts or the sanction(s), then the case may be appealed to the Director of OCES within five business days of the Hearing Officer's finding.

#### **c. Student Judicial Board Procedures**

In cases delegated to Student Judicial Boards for alleged violations of the Code, the following procedures will be initiated:

1. An OCES staff member will notify the Respondent(s) within a minimum of three business days prior to the hearing unless the student waives this right in writing. Such notice shall be in writing and include the following:
  - i. A brief description of the alleged conduct and the student regulation allegedly violated; and
  - ii. The time, date, and location of the hearing.
2. The hearing shall be considered closed. All statements, information, or comments given during hearings shall be held in the strictest confidence by Student Judicial Board members in keeping with the Family Educational Rights and Privacy Act (FERPA);
3. A recording shall be maintained by the OCES for appeal purposes. Recordings will be erased after time for appeals has elapsed;
4. On behalf of the University, OCES staff will contact and request the presence of witnesses deemed necessary to appear. University students and employees contacted by OCES are required to attend hearings unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. The Respondent(s) are responsible for contacting and requesting witnesses to attend the hearing on their behalf and witnesses serving as character references are limited to three people;
5. The Respondent(s) shall have the opportunity to present and examine statements, facts and any relevant information regarding the case. The Respondent(s) shall have the privilege of presenting any questions for witnesses to the Student Judicial Board when appropriate;
6. After all the information has been presented, the Student Judicial Board members will go into closed session to determine whether the student has violated the conduct regulations referenced in the notice;
7. OCES will render the Student Judicial Board's decision in writing to the Respondent(s) as soon as practicable. The Respondent(s) may submit a written appeal to the Student Supreme Court with a copy to OCES within five days of receiving the Student Judicial Board's decision.

### **VII. THE APPEALS PROCESS**

#### **A. Appeal Criteria**

An appeal can be made only on the following grounds and must state which ground is being alleged:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Administrative Hearing Board, investigator, or, if applicable, the Title IX Coordinator, had a conflict of interest or

bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;

4. The sanction was arbitrary or grossly disproportionate to the offense; and/or
5. The decision was not supported by substantial evidence.

Dissatisfaction with a decision is not by itself, grounds for appeal.

### **B. Appeal of Administrative Hearing Board Decisions**

Administrative Hearing Board decisions covered in these procedures may be appealed by any Party in Title IX cases and by the Respondent in all other cases. Appeals must be submitted to the Vice President for Student Affairs or their designee within five business days of the receipt of the decision of the Administrative Hearing Board. Such appeals must be in writing and delivered electronically by email to the Office of the Vice President for Student Affairs with a copy to the OCES. The other party will receive written notification when an appeal is filed. If the appeal is not submitted within the allotted time to the Office of the Vice President for Student Affairs, the decision of the Administrative Hearing Board becomes the final decision.

An appeal must state the Appeal Criteria upon which it is based. Upon receipt of a properly filed appeal, the Vice President for Student Affairs or their designee may do one or more of the following:

1. Review the record and render a written decision to the parties;
2. Solicit statements from the parties orally or in writing and then render a written decision to the parties;
3. Request that the administrative hearing board clarify the original decision and then render a written decision to the parties;
4. Remand the case to the Administrative Hearing Board for a rehearing; or
5. Take any other action deemed appropriate in order to render a decision on the appeal.

Appeals decisions of the Vice Appeals decisions of the Vice President for Student Affairs or their designee, shall include a rationale for the determination to uphold or revise the decision of the hearing board. The decision of the Vice President for Student Affairs or their designee shall be final except in Title IX Cases or where the decision is dismissal from the University. In such cases where the sanction of dismissal is either issued or upheld by the Vice President for Student Affairs, the Respondent may appeal to the President of the University or their designee. In Title IX cases, either party may appeal the decision of the Vice President for Student Affairs to the President of the University or their designee. Appeals to the President must be in writing, based on the above criteria for appeal and delivered to the Office of the President within five business days of the decision of the Vice President for Student Affairs. The President or their designee will render a written decision and that decision shall be final.

### **C. Appeal of a Decision from a Disciplinary Conference**

The Director of OCES or designee will hear appeals of decisions rendered during the Disciplinary Conference. Such appeals must be in writing and delivered to OCES within five days of the Hearing Officer's decision during the Disciplinary Conference. The director's decision is final.

### **D. Student Judiciary Board Appeals**

1. Disciplinary hearing decisions by the Student Judicial Boards may be appealed by the Respondent to the Student Supreme Court with a copy to OCES within five business days of notification of the decision. Such appeals must be in writing and delivered electronically by email to OCES.
2. The Student Attorney General, under the supervision of OCES, will determine if the appeal meets one of the five criteria.
3. The Student Supreme Court may make one of the following decisions as the result of an appeal:
  - a. The appeal may be denied;
  - b. Sustain the decision of the Student Judicial Board, but alter the sanction;

- c. Remand the case to the original Student Judicial Board for further consideration on the specific issues; or
- d. Reverse the decision of the Student Judicial Board.

Decisions of the Student Supreme Court are final.

#### **E. Withdrawals/Completion of Semester with Pending Disciplinary Action**

1. Should a Respondent be academically dismissed or withdraw from Clemson University before pending disciplinary charges have been resolved, the director or their designee may proceed with disciplinary action in accordance with the procedures above. A disciplinary hold on the student's records, including future registration and the granting of a degree may be imposed until the case is resolved.
2. A student who has a disciplinary charge pending at the end of an academic semester term may have a disciplinary hold placed on their records, including the posting of grades and the granting of a degree until the disciplinary charge has been resolved and/or sanctions completed.
3. Furthermore, a student who has a disciplinary charge brought against him/her after the end of an academic semester or term, but prior to graduation, will have a disciplinary hold placed on their records, including the posting of grades and the granting of a degree until the disciplinary charge has been resolved and/or sanctions completed.

### **VIII. STUDENT CONDUCT RECORDS**

#### **A. Confidentiality of Disciplinary Process Records**

Generally, under federal law protecting the privacy of student records, all documents prepared by the University in connection with a student misconduct complaint, investigation, adjudication, and appeal are confidential and may not legally be disclosed to persons not involved in the process. Federal law allows certain limited exceptions, on which OCES can provide guidance on request.

#### **B. Disclosure to an Alleged Victim**

To the extent permitted by law, the University reserves the right to disclose the final results of student disciplinary proceedings involving a crime of violence or a non-forcible sex offense to the alleged victim and to others the University deems to be appropriate recipients of that information.

#### **C. Transcript Notation of Disciplinary Action**

In the case of suspension or dismissal, notification is sent to several University departments. In the case of suspension for any period of time or dismissal, a notation is placed on the student's official transcript describing the suspension period or dismissal. Suspension for any period of time, or dismissal, are considered a permanent part of the student's record after graduation or leaving Clemson University for other reasons.

Clemson University's student conduct system is intended to be educational rather than punitive in nature. Therefore, it is the University's policy that when responding to requests from other institutions for disciplinary records, Clemson University only comments if a student is either currently on disciplinary probation or received at any time more than one semester of disciplinary probation, suspension for any period of time or dismissal.

### **IX. CONDUCT OF STUDENT ORGANIZATIONS**

This policy sets forth the rules governing the conduct of registered student organizations and also sets forth the sanctions that may be imposed on registered student organizations for violations of University rules and regulations.

The registered organization must ensure that members acting individually or as a group reflect the Clemson Core Values to all members of the community in addition to all other outlined expectations within the Code and within the registered organization's bylaws.

Leaders of a registered student organization bear a special responsibility for ensuring that constituents recognize and embrace these values in carrying out the mission of a registered student organization.

As a guiding principle, registered student organizations will be held responsible for the acts of their members when those acts grow out of or are in any way related to the registered student organization. Isolated violations of individuals should not be chargeable to the registered student organization, but evidence of organizational conduct exists when:

1. Members of the registered student organization are acting together in violating a conduct regulation;
2. A violation of a conduct regulation arises out of an registered student organization's-sponsored, financed or endorsed event;
3. A registered student organization's leader(s) has knowledge of the potential for a violation of conduct regulations before it occurs and fails to take corrective action;
4. A violation of a conduct regulation occurs on the premises owned, leased or operated by the registered student organization;
5. A pattern of individual violations of conduct regulations is found to have existed without proper and appropriate organizational control, remedy or sanction; and/or
6. The registered student organization, or members of the registered student organization, provides the impetus for a violation of conduct regulations.

Cases involving registered student organizations are not considered confidential under the Family Educational Rights and Privacy Act (FERPA); therefore, the University does not protect the confidentiality of the disciplinary records regarding the conduct of registered student organizations. Registered student organizations are not afforded the same rights and responsibilities as individual students. Processes and procedures may differ.

### **A. Sanctions for Registered Student Organizations**

The following disciplinary sanctions may be imposed upon registered student organizations when they have been found in violation of the Code. All sanctions may be imposed individually or in combination. Disciplinary sanctions are imposed for the purpose of holding registered student organizations accountable for their actions and the actions of their guest(s), whether on campus or at any organizational event. Failure to satisfactorily complete a disciplinary sanction may result in more severe sanctions.

#### **1. Reprimand**

An official statement to the registered student organization explaining that they have violated a University regulation. Any further misconduct could result in additional disciplinary action.

#### **2. Restitution**

When a registered student organization has damaged or destroyed University or personally owned property the organization may be required to make restitution, or receive additional educational sanctions.

#### **3. Restriction of Privileges**

Restrictions may be placed upon a registered student organization which limits the organization's access to certain University privileges for a specified period of time. These limitations may include, but are not limited to, the following:

- a. Prohibition from participating in University events;
- b. Denial to maintain an office or other assigned space on University property;

- c. Denial to receive or retain University funds;
- d. Denial to participate in intramural sports;
- e. Denial to sponsor, co-sponsor and/or participate in any social event or other activity;
- f. Denial to sponsor any speaker or guest on campus;
- g. Denial of rush or membership recruitment activities;
- h. Denial of the request for block seating at University events;
- i. Denial of the use of University vehicles;
- j. Denial of the use of University facilities;
- k. Denial of advertising on campus for organizational activities; and/or
- l. Denial of soliciting and/or selling any items on campus.

#### **4. Disciplinary Probation**

A specified period of review, observation and/or restrictions during which a registered student organization is under official warning that its misconduct was very serious. Subsequent violations of University rules, regulations, or policies could result in more severe sanctions, including suspension or dismissal of recognition of the registered student organization. During the probationary period, a registered student organization is deemed “not in good standing” with the University and may be subject to specific limitations upon its behavior or University privileges.

#### **5. Suspension of Organizational Registration**

The denial of privileges of a registered student organization for a designated period of time, which will be no less than one semester. Any registered student organization whose recognition is suspended must:

- a. Cease all registered student organizational activities;
- b. Vacate any appointed or elected office with that registered student organization’s governing body for the duration of the registered student organization’s period of suspension;
- c. Surrender balances of all registered student organizational funds granted by the University, Student Government or the Student Funding Board;
- d. Vacate office or housing space assigned by the University from the date of the notice of suspension. Space vacated due to suspension may be reassigned to other eligible University registered student organizations. In the case of housing, individual members will be reassigned provided space is available. There will be no University Housing contract cancellations.

#### **6. Dismissal of Organizational Registration**

Permanently excludes the registered student organization from the University without any recourse to reapply for registration. Any registered student organization whose registration is permanently revoked must:

- a. Cease all registered student organizational activities;
- b. Vacate any appointed or elected office;
- c. Surrender balances of all registered student organizational funds granted by the Student Funding Board;
- d. Vacate office or housing space assigned by the University from the date of the notice of dismissal. Space vacated due to dismissal may be reassigned to other eligible University registered student organizations. In the case of housing, individual members will be reassigned provided space is available. There will be no University Housing contract cancellations.

#### **7. Interim Suspension of Organizational Registration**

An interim suspension may be imposed, by the Vice President for Student Affairs or their designee, prior to the beginning of the administrative process. The interim suspension may be imposed in cases where:

- a. The alleged action of the registered student organization may pose a threat to the well-being of the University or any of its members, or to preserve University property;
- b. The registered student organization poses a threat of disruption or interference with the normal operations of the University.

During any interim suspension, the registered student organization shall be required to discontinue all organizational activities and will be denied access to all University activities and privileges. In certain circumstances, organizational leadership may be restricted from communication with the organizational membership or students may be required to vacate organizational housing units.

A registered student organization shall be notified in writing of an interim suspension, its restrictions, and the reasons for it, and shall also be notified of the time, date, and place of a subsequent meeting with the Vice President of Student Affairs or their designee at which the registered student organization may contest the grounds for the interim suspension.

Except in the case of exigent circumstances or other good cause, this meeting shall occur no more than five business days following the notice of interim suspension and may occur prior to the effective date of the interim suspension. Following such meeting, OCES may lift, modify, or continue the interim suspension while the disciplinary process continues.

### **B. Student Organization Discipline Procedures**

The Director of OCES or their designee will investigate all allegations of registered student organization misconduct. The investigation will include interviewing those individuals with information about the incident and meeting with the appropriate officers of the registered student organization. The director shall have the authority to do the following:

1. Institute all sanctions except suspension or dismissal;
2. Designate an incident as a Level I Case and refer the registered student organization to an administrative hearing;
3. Schedule an administrative hearing for the referred registered student organization in cases where the contemplated sanction is suspension or dismissal of recognition, unless the registered student organization waives its right to a hearing. The notice of an administrative hearing, the procedure during an administrative hearing and the appeal process of an administrative hearing will follow the same format as described in the Section VI.E.2. If the registered student organization waives its right to a hearing, the recommended sanction will be imposed.