



**Policy: University of Arkansas for Medical Sciences, Division of Academic Affairs**  
**Subject: Student Code of Conduct**  
**Number: 2.2.14**

**Date Approved (Council of Deans, Provost): July 27, 2023**  
**Date Effective: August 1, 2023**  
**Last Review/Revision: November 17, 2023**  
**Next Review/Revision: November 17, 2025**

## **PURPOSE**

The Student Code of Conduct sets forth behavioral standards for students to follow as they live, study, work, and pursue their educational goals in a safe and secure learning environment at the University of Arkansas for Medical Sciences (“the University”). The Code reflects expectations based on values essential to a flourishing academic environment, such as honesty, integrity, respect, and fairness.

## **DEFINITIONS**

All of the terms of this Student Code of Conduct have their common dictionary meaning unless otherwise specified. The following terms, however, should be interpreted to have the specific meanings listed below. Any question of interpretation will be determined at the sole discretion of the Provost or designee.

1. **“Academic Dishonesty”** means an action that violates a rule regarding academic work required to obtain an academic degree or certificate.<sup>1</sup> Examples include, but are not limited to, using unauthorized materials, information, study aids, or artificial-intelligence programs; cheating; plagiarism; forgery; falsification of information; receiving unauthorized assistance on coursework; providing false information to receive an extension to complete work; any violation of a campus, departmental, program, or faculty

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<sup>1</sup> The term “academic dishonesty” is used, but not defined, in Ark. Code Ann. § 6-60-1403(4)(B). The statutory scheme also distinguishes between “academic” and “nonacademic” rules without any definitions.

rules relating to an academic matter that may lead to an unfair academic advantage; or complicity with another individual who has engaged in an act of academic dishonesty.

2. **“Administrative File”** means all documents and evidence in the University’s possession or control that is relevant to an alleged violation of the Code and the University’s investigation into the alleged violation.<sup>2</sup>
  - a. The Administrative File does not include privileged documents, internal communications, or communications from non-parties that the University does not intend to introduce as evidence at a disciplinary proceeding.<sup>3</sup>
  - b. The Administrative File includes, without limitation, the following:<sup>4</sup>
    - i. Exculpatory evidence;
    - ii. Statements by an accuser or an accused Student or a Student organization;
    - iii. Third-Party witness statements;
    - iv. Electronically stored information;
    - v. Written communications;
    - vi. Social media posts;
    - vii. Demonstrative evidence;
    - viii. Documents submitted by any participant involved in disciplinary proceedings; and
    - ix. The University’s choice of a video recording, an audio recording, or a transcript of any disciplinary Hearing ultimately held on the matter.

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<sup>2</sup> Ark. Code Ann. § 6-60-1404(b)(1)

<sup>3</sup> Ark. Code Ann. § 6-60-1404(b)(3)

<sup>4</sup> Ark. Code Ann. § 6-60-1404(b)(2)

3. “**Campus**” means all land, building, facilities, and other real property owned by or leased to the University. This includes the residence hall.
4. “**Campus Community**” means all persons affiliated with the University, including Students, faculty, administrators, staff, and volunteers.
5. “**Chancellor**” means the chief executive officer of the University.
6. “**Code**” means this Student Code of Conduct.
7. “**Complainant**” means any member of the Campus Community who alleges that a Respondent violated the Code.
8. “**Complaint**” means an oral or written request for the University to initiate its procedures to address alleged violations of this Code.<sup>5</sup>
9. “**Day**” means a calendar day, unless otherwise specified. A “business day” excludes weekends, holidays, and other days when the Campus is closed.
10. “**Free Speech Rights**” means the expressive rights protected by the First Amendment to the U.S. Constitution, Section 2, Section 6 of the Arkansas Constitution, or an applicable statute.
11. “**Hearing**” means the forum in which the Respondent is given an opportunity to be heard, following adequate notice, and which results in a decision concerning responsibility and sanctions.
12. “**Hearing Officer**” means a single, impartial individual who conducts a Hearing, decides whether a Respondent is responsible for violating the Code, and imposes sanctions.
13. “**Hearing Panel**” means an impartial body of at least three members convened for the purpose of conducting a Hearing, deciding whether a Respondent is responsible for

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<sup>5</sup>Id.

violating the Code, and imposing sanctions. A Hearing Panel's determination of responsibility shall be made by majority vote.

14. **“Parties”** means the Complainant(s) and Respondent(s) in a case under the Code. The Complainant and Respondent shall have similar rights regarding the right to be present and participate in disciplinary proceedings, representation by an advisor, access to the Administrative File, and the right to appeal.<sup>6</sup>
15. **“Relevant”** means related to the allegations of a violation of this Code that are subject to an investigation. Questions are relevant when they seek evidence that may aid in showing whether the violation occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged violation occurred.<sup>7</sup>
16. **“Remedies”** means measures provided, as appropriate, to a Complainant or any other person the University identifies as having had equal access to the University's program or activity limited or denied by a violation of this Code.<sup>8</sup> The measures are provided to restore or preserve that person's access to the University's education program or activity after the University determines that a violation occurred.
17. **“Respondent”** means the Student or Student organization accused of violating the Code.<sup>9</sup> When a Complaint alleges that the University's policy or practice discriminates on an unlawful basis, the University is not considered a Respondent.<sup>10</sup>
18. **“Responsible Student”** means a Respondent determined to have violated this Code.
19. **“Retaliation”** means intimidation, threats, coercion, or discrimination against any person by a Student, employee, person authorized by the University to provide aid, benefit, or service under the University's program or activity, or the University for the purpose of interfering with any right or privilege secured by this Code or a state or federal law, or because the person has reported information, made a complaint, testified, assisted, or

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<sup>6</sup> Ark. Code Ann. § 6-60-1404(c)(1)(I)

<sup>7</sup> NPRM 34 C.F.R. § 106.2

<sup>8</sup> NPRM 34 C.F.R. § 106.2

<sup>9</sup> Id.

<sup>10</sup> NPRM 34 C.F.R. § 106.45(a)(1)

participated or refused to participate in any manner in an investigation, proceeding, or hearing, including an informal resolution process, grievance procedures, and in any other appropriate steps taken by a University in response to an allegation of a violation of this Code.<sup>11</sup>

20. **“Sanction”** means a consequence or action that is imposed on a Respondent following a determination that the Respondent violated the Code.<sup>12</sup> Sanctions are not designed to be punitive; rather, they are intended to be educational measures that hold Students accountable for their behavior and protect the Campus Community. Sanctions can range from a verbal warning to expulsion or suspension.
21. **“Student”** means a person who has gained admission to the University.<sup>13</sup>
22. **“Student Conduct Administrator”** means the Associate or Assistant Dean who is designated by the Dean to serve in that role.
23. **“Student Organization”** means any number of persons who have, as a group, engaged in a particular activity and have complied with the formal requirements for official University recognition.
24. **“University Official”** means any non-Student member of the University administration.
25. **“University-Sponsored Activity”** means any activity on University premises or at an off-campus location that is initiated or supervised by the University. This definition includes fraternity and sorority organizations, club events, study abroad experiences, sporting events, and riding in University-operated or contracted vehicles—even if such things occur somewhere other than university premises.

## POLICY

### Section 1: Interpretive Principles

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> NPRM 34 C.F.R. § 106.2

1. The Board of Trustees of the University of Arkansas has designated the Chancellor as the chief executive of the University. The Chancellor is responsible for ensuring that the University applies this Code in an impartial and consistent manner. Student Conduct Administrators are responsible for overseeing the disciplinary proceedings and imposing sanctions for violations of the Code.
2. Nothing in this Code shall be interpreted to abridge the constitutional or statutory rights of any person. To the extent that a provision in this Code is inconsistent with a constitutional or statutory provision, the legal provision will control.
3. This Code and related policies and procedures are not intended to create contractual rights, property rights, or liberty interests.

## **Section 2: Applicability of the Code of Conduct**

1. Students must follow the Code during the time they are enrolled in the University. The Code shall apply to a Student's conduct while enrolled in the University, even if the Student withdraws while a disciplinary matter is pending.
2. The Code shall apply to the following:
  - a. Conduct that occurs on Campus including the residence hall;
  - b. Conduct that occurs at a University-Sponsored Activity;
  - c. Conduct that occurs off-campus under one of the following conditions:
    - i. The University exercises substantial control over both the location and the Respondent (including any building owned or controlled by a Student organization that is officially recognized by the University); or
    - ii. The conduct adversely affects the Campus Community or the pursuit of the University's objectives; and

3. If necessary to protect the rights and safety of the Campus Community, the University may suspend any Student charged with a felony in any jurisdiction until the charges are dropped, the case is dismissed, or a judgment of conviction or acquittal is secured. The University must provide an administrative Hearing under Section 9.2 before taking this action, where the issue to be decided is the existence and nature of the charges.
4. If necessary to protect the rights and safety of the campus community, the University may expel any Student who has been convicted of a felony while enrolled. If the Student's conviction is overturned on appeal, the University shall allow the Student to re-enroll. The University must provide an administrative Hearing under Section 9.2 before taking this action, where the issue to be decided is the existence and nature of the conviction.
5. The University may discipline Students for the violation of any law involving drugs or alcohol on its property or as part of its activities. A Student who tests positive for a controlled substance while representing the University may be subject to disciplinary action under this Code.
6. The University's separate Title IX grievance procedures shall apply to alleged conduct that constitutes Sex-based Harassment (including sexual assault) and that falls within the scope of the University's Title IX jurisdiction.

### **Section 3: Application of the Code of Conduct to Student Organizations**

Student organizations and their officers and members, in their capacity as such, are subject to sanctions only upon a showing of actual participation in, or actual authorization or ratification of, a violation of the Code. In making this determination, the University shall consider whether the organization's members were acting in accord with its practices and policies, or with the knowledge or approval of a substantial number of its members or leadership.

### **Section 4: Prohibited Conduct**

1. **Abuse of Campus Access:** Students shall not abuse their access to Campus by engaging in any of the following:

- a. Unauthorized entry to, or use of, University facilities, property, or resources; or
  - b. Misuse of University or personal property to create a safety hazard, or unauthorized use of safety equipment.
2. **Abuse of computer facilities:** Abuse of computer facilities and resources is prohibited, namely:
- a. Unauthorized access or transfer of an electronic file or files;
  - b. Unauthorized use of another individual's identification or password;
  - c. Use of computing facilities and resources to materially interfere with the work of another Student, faculty member, or University Official;
  - d. Sending a large volume of unsolicited emails and other data with the intent to severely impair the functionality of the University's computer network;
  - e. Repeated use of the University network to send unsolicited emails with the primary purpose of proposing a commercial transaction;
  - f. Use of computing facilities and resources to knowingly share copyrighted materials in violation of state or federal law;
  - g. Use of computing facilities and resources to transmit unlawful obscenity or abusive messages; or
  - h. Any violation of the University's policy on using technology resources.
3. **Abuse of Student Conduct System:** Failure to participate in the proceedings in good faith, including misrepresentations to a Student Conduct Administrator; interference with an orderly Hearing or other proceeding; attempting to discourage another individual from participating in the Student conduct system; attempting to influence the impartiality of a Hearing Officer or panelist prior to, and/or during the course of, a proceeding;



influencing or attempting another person to abuse the Student conduct system; and failure to comply with sanctions imposed under the Code.

4. **Alcohol Use:** Consumption, possession, distribution, manufacture, sale, and serving alcoholic beverages on University premises or at University-Sponsored Activities is prohibited, regardless of age, unless permitted by a University policy.
5. **Deception:** Deception is deliberately deceiving any University official, faculty member, or administrative officer by knowingly providing false information in connection with the discharge of the person's duties. Deception includes filing false reports or giving false information in connection with a misconduct proceeding. However, a determination regarding responsibility, alone, is not sufficient to conclude that any Party has made a materially false statement in bad faith.
6. **Discrimination:** Discrimination is taking a materially adverse action against any member of the Campus Community or visitor, or in connection with any University-Sponsored Activity, through behavior of a biased or prejudicial nature related to an individual's legally protected status or characteristic (such as race, color, national origin, sex, marital or parental status, religion, disability, age, genetic information, or veteran status). Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.<sup>14</sup> Discrimination occurs when the adverse action results in an individual suffering less favorable treatment than others because of the protected status or characteristic.
7. **Discriminatory Harassment:** Discriminatory harassment on the basis of a legally protected status or characteristic (such as race, color, national origin, sex, marital or parental status, religion, disability, age, genetic information, or veteran status) is prohibited. Sex-based harassment (including sexual assault) is a particular type of discrimination that is covered by the University's separate Title IX grievance procedures. Discriminatory harassment includes unwelcome conduct based on an individual's legally protected status or characteristic that is sufficiently severe or pervasive that—based on the totality of the circumstances and evaluated subjectively and objectively—denies or limits a person's ability to participate in or benefit from the University's education

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<sup>14</sup> NPRM 34 C.F.R. § 106.10

program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:<sup>15</sup>

- i. The degree to which the conduct affected the Complainant's ability to access the University's education program or activity;
  - ii. The type, frequency, and duration of the conduct;
  - iii. The Parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
  - iv. The location of the conduct, the context in which the conduct occurred, and the control the University has over the Respondent; and
  - v. Other discriminatory harassment in the University's education program or activity.
8. **Disorderly Conduct:** Conduct that is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on campus or at a University-Sponsored Activity. Disorderly conduct includes (but is not limited to) the unauthorized use of electronic or other devices to make an audio or video recording when such a recording is likely to cause injury or distress; large gatherings or excessive noise that disturbs the peace of campus residences or off-campus neighborhoods; and surreptitiously taking pictures of another person in a gym, locker room, or restroom and any violation of Ark. Code Ann. § 5-71-207.
9. **Disruption of University Operations:** Disrupting the normal operations of the University, or inciting others to do so, is prohibited. Students shall not intentionally disrupt any of the following activities:
- a. Teaching or research;
  - b. Administrative functions;

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<sup>15</sup> NPRM 34 C.F.R. § 106.4 (definition of "hostile environment harassment")

- c. Disciplinary proceedings;
  - d. Other University-Sponsored Activities (on or off Campus); or
  - e. Other authorized or permissible activities that take place on Campus.
10. **Drug Use:** The act or intent to illegally use, possess, sell, distribute, cultivate, or manufacture any state or federally controlled substance or paraphernalia. Inhaling or ingesting any substance that will alter a Student’s mental state is also prohibited, unless done pursuant to a valid prescription. The possession and/or use of marijuana (even for medicinal purposes) on campus is prohibited.<sup>16</sup>
11. **Endangering Health, Safety, or Privacy:** Intentionally endangering the health, safety, or privacy of others is prohibited, including:
- a. Illegal or unauthorized possession of firearms, explosives, other weapons, or dangerous chemicals;
  - b. Unnecessarily placing oneself or others in danger of physical harm; or
  - c. Physical assault of another person.
12. **Failure to Comply:** Students shall comply with lawful directions from University Officials or law enforcement officers acting in the good faith performance of their duties and shall identify themselves to these persons when requested to do so.
13. **False Reports:** Deliberately giving a false report of a crime or emergency to a University Official, including a campus law-enforcement officer.
14. **Fire Safety Violation:** Misuse or unauthorized use of fire extinguishers, safety equipment, warning devices (including fire alarms, fire equipment, fire chairs, or escape mechanisms and elevators).<sup>17</sup>

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<sup>16</sup> Ark. Const., amend. 98, § 6(a)(2)(B)

<sup>17</sup> Ark. Code Ann. § 5-38-301; Ark. Code Ann. § 5-38-302

15. **Forgery:** Forgery is the false making or material alteration of a University document, record, or form of identification.

16. **Gambling:** Gambling for money or other things of value on campus or at University-Sponsored Activity except as permitted by law.

17. **Hazing:** Students may not engage in hazing or encourage, aid, or assist any person in hazing.<sup>18</sup> In addition, Students shall not knowingly acquiesce in the commission of hazing or fail to report promptly his or her reasonable knowledge or any reasonable information within his or her knowledge of the presence and practice of hazing to an appropriate University Official. Hazing means:<sup>19</sup>

- a. A willful act on or off the property of the University by one Student, alumnus, or volunteer or employee of a fraternal organization if the volunteer or employee is acting on behalf of, or in the name of, the fraternal organization, acting alone, or acting with others when the conduct is directed against any other Student and done for the purpose of intimidating the Student attacked by threatening him or her with social or other ostracism or of submitting such Student to ignominy, shame, or disgrace among his or her fellow Students, and acts calculated to produce such results;
- b. The playing of abusive or truculent tricks on or off the property of the University by one Student, alumnus, or volunteer or employee of a fraternal organization if the volunteer or employee is acting on behalf of, or in the name of, the fraternal organization, acting alone, or acting with others, upon another Student to frighten or scare him or her;
- c. A willful act on or off the property of the University by one Student, alumnus, or volunteer or employee of a fraternal organization if the volunteer or employee is acting on behalf of, or in the name of, the fraternal organization, acting alone, or acting with others which is directed against any other Student done for the purpose of humbling the pride, stifling the ambition, or impairing the courage of

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<sup>18</sup> Ark. Code Ann. §6-5-202

<sup>19</sup> Ark. Code Ann. §6-5-201

the Student attacked or to discourage him or her from remaining in that school, college, university, or other educational institution, or reasonably to cause him or her to leave the institution rather than submit to such acts; or

- d. A willful act on or off the property of the University by one Student, alumnus, or volunteer or employee of a fraternal organization if the volunteer or employee is acting on behalf of, or in the name of, the fraternal organization, acting alone, or acting with others in striking, beating, bruising, or maiming; or seriously offering, threatening, or attempting to strike, beat, bruise, or maim; or to do or seriously offer, threaten, or attempt to do physical violence to any Student of any such educational institution; or any assault upon any such Student made for the purpose of committing any of the acts, or producing any of the results, to such Student as defined in this section.
  - e. The term “hazing”
    - i. Does not include customary athletic events or similar contests or competitions; and
    - ii. Is limited to those actions taken and situations created in connection with initiation into or affiliation with an organization, extracurricular activity, or sports program.
18. **Intimidation:** Intimidation is physical conduct threatening specific individual(s) with the intent to place those individuals in fear of bodily harm or death and would be so construed by a reasonable person.
19. **Obstruction:** Impeding the free flow of pedestrian or vehicular traffic on University premises or at University-Sponsored Activities.
20. **Stalking (other than stalking as a form of sex-based harassment covered under Title IX):** Stalking is (1) a course of conduct committed with an intent to kill, injure, harass, or intimidate another person that (2) places that person in reasonable fear of death of, or serious bodily injury to (3) that person, an immediate family member, a spouse, or an

intimate partner of that person or (4) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person listed above.

21. **Theft, vandalism, and destruction:** Theft, attempted theft, unauthorized possession of University property, vandalism, and destruction of property owned by the University or any other person or group are prohibited.
22. **Tobacco Use:** The use of any tobacco product is prohibited on campus is prohibited.<sup>20</sup> The tobacco-free environment includes all University property.<sup>21</sup> Electronic cigarettes are also prohibited.
23. **True Threats:** A true threat is (1) a serious expression of intent to commit an act of unlawful violence against a particular individual or identifiable group, if (2) the individual or group would reasonably fear the threatened violence.
24. **Weapons:** Possessing, using, or storing firearms, explosives (including fireworks), weapons, or dangerous chemicals on University property or in the course of any University-Sponsored Activity is prohibited. This prohibition extends to stun guns, tasers, brass knuckles, and pocketknives longer than four inches. Exceptions include:
  - a. Weapons possessed by a licensed law enforcement officer and directly related to their current professional position;
  - b. Weapons, replicas, or related items for educational or ceremonial purposes, approved in advance of the event by the Chancellor or Provost;
  - c. Weapons possessed or used for purposes of authorized firearms competitions sponsored or hosted by the University;
  - d. Firearms locked inside a vehicle;<sup>22</sup> and

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<sup>20</sup> Ark. Code Ann. §§ 6-60-701 to 6-60-705

<sup>21</sup> Ark. Code Ann. § 25-17-301

<sup>22</sup> Ark. Code Ann. § 5-73-119(e)(12)(A)

- e. Weapons possessed lawfully under Ark. Code Ann. § 5-73-322 regarding the carrying of concealed handguns on university campuses.
25. **Violation of Law:** A violation of any Arkansas state and/or federal criminal law is prohibited.
26. **Misconduct Abroad:** Any Student who undertakes study or represents the University in any foreign country remains subject to this Code. The University retains discretion as it considers appropriate to apply disciplinary action under the Code if a Student violates any law, rule, or regulation in that country or any institution where that Student undertakes study.
27. **Retaliation:** The University prohibits retaliation as defined in Definitions. Prohibited retaliation includes (but is not limited to):<sup>23</sup>
- a. Initiating a disciplinary process against a person for a violation that does not involve sex discrimination but arises out of the same facts and circumstances as a Complaint or information reported about possible sex discrimination, for the purpose of interfering with the exercise of any right or privilege secured by Title IX; or
  - b. Peer retaliation, which is retaliation by a Student against another Student.
28. **Incorporation of Other Rules:** This Code incorporates all other rules regarding Student conduct contained in University policies. A violation of the rule constitutes a violation of this Code.

### **Section 5: Academic Dishonesty and Classroom Misbehavior**

1. Classroom management and behaviors not otherwise in violation of published behavioral rules are under the jurisdiction and responsibility of the faculty member.
2. Violations of University policies on classroom behavior and academic dishonesty are addressed by the Associate Dean of Academic Affairs or designee in each college, often in

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<sup>23</sup> NPRM 34 C.F.R. § 106.71(b)

conjunction with the particular department and academic department in which the specific class resides. Further information on such policies and procedures may be reviewed by contacting the appropriate Associate Dean.

3. Academic Dishonesty in any form is prohibited, and students will follow the academic rules of their college.

## **Section 6: Selection of Decision makers**

The Student Conduct Administrator shall undertake reasonable efforts to ensure that Hearing Officers and members of a Hearing Panel have received adequate training on conducting a fair Hearing under this Code, free of bias and inappropriate presumptions.

## **Section 7: Administrative Actions**

### **1. Supportive Measures<sup>24</sup>**

- a. The University may, at any time, provide one or more individualized services to a Party that is non-disciplinary, nonpunitive, reasonably available, and without fee or charge to the Party.
- b. An individualized service offered to a Party shall be designed to restore or preserve equal access to the University's education programs or activities without unreasonably burdening the other Party.<sup>25</sup>
- c. An individualized service offered to a Party may be designed to protect the safety of all involved Parties or the University's educational environment, which may include without limitation:<sup>26</sup>
  - i. Counseling;

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<sup>24</sup> Ark. Code Ann. § 6-60-1405(a)(1); NPRM 34 C.F.R. § 106.2. The Arkansas statute uses the term "interim measures," whereas the federal regulation uses the term "supportive measures" to describe the same concept.

<sup>25</sup> Ark. Code Ann. § 6-60-1405(a)(2)(A)

<sup>26</sup> Ark. Code Ann. § 6-60-1405(a)(2)(B)



- ii. Extension of deadlines or other course-related adjustments;
  - iii. Campus escort services;
  - iv. Mutual restrictions on contact between the Parties;
  - v. Modification of class schedules or housing locations;
  - vi. Increased security and monitoring of areas of the University's campus;  
and
  - vii. Other similar services.
- d. Supportive Measures that burden a Respondent may be imposed only during the pendency of the disciplinary proceedings under this Code, and they must be terminated at the conclusion of those proceedings. These measures must be no more restrictive of the Respondent than is necessary to restore or preserve the Complainant's access to the University's education program or activity. The University shall not impose such measures for punitive or disciplinary reasons.<sup>27</sup>
- e. For Supportive Measures other than those that burden a Respondent, the University may, as appropriate, modify or terminate Supportive Measures at the conclusion of the disciplinary proceedings or at the conclusion of the informal resolution process, or the University may continue them beyond that point.<sup>28</sup>
- f. A Complainant or Respondent affected by a decision to provide, deny, modify, or terminate Supportive Measures may seek modification or reversal of the decision by appealing the matter to the Provost or designee within **3 business days** of the Student Conduct Administrator's decision. If the supportive measure burdens the Respondent, the initial opportunity to seek modification or reversal of the University's decision must be provided before the measure is imposed or, if necessary under the circumstances, as soon as possible after the measure has

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<sup>27</sup> NPRM 34 C.F.R. § 106.44(g)(2)

<sup>28</sup> NPRM 34 C.F.R. § 106.44(g)(3)

taken effect. The Complainant and Respondent affected by a supportive measure may also seek additional modification or termination of such supportive measure if the circumstances changed materially.<sup>29</sup>

- g. The University will not disclose information about any supportive measure to persons other than the Complainant or Respondent unless necessary to provide the supportive measure. The University may inform a Party of Supportive Measures provided to or imposed on another Party only if necessary to restore or preserve that Party's access to the education program or activity.<sup>30</sup>

## 2. Emergency Removal

- a. The University may remove a Respondent from its programs or activities and residence hall on an emergency basis if the University:<sup>31</sup>
  - i. Undertakes an individualized safety and risk analysis;
  - ii. Determines that an immediate threat to the safety of a Student or another individual arising from the allegations of misconduct justifies removal of the accused Student; and
  - iii. Provides the accused Student with notice and an opportunity to challenge the decision immediately following his or her removal.
- b. Within 24 hours of the emergency removal, the University shall provide written notice to the accused Student that explains the University's reasons for removing the accused Student on an emergency basis.<sup>32</sup>
- c. Within **3 business days** of the written notice, unless otherwise waived by the removed Student, the University shall convene an interim Hearing before a Student Conduct Administrator to determine whether there is substantial evidence

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<sup>29</sup> NPRM 34 C.F.R. § 106.44(g)(4)

<sup>30</sup> NPRM 34 C.F.R. § 106.44(g)(5)

<sup>31</sup> Ark. Code Ann. § 6-60-1405(b)(1); NPRM 34 C.F.R. § 106.44(h)

<sup>32</sup> Ark. Code Ann. § 6-60-1405(b)(2)(A)

that the removed Respondent poses a risk to the health or safety of any Student or other individual and that the emergency removal of the accused Student is appropriate to mitigate the risk.<sup>33</sup>

- d. At the interim Hearing, the removed Student and the accusing Student may be represented by an attorney or a non-attorney advocate who may fully participate to the same extent as in a Hearing to determine responsibility.<sup>34</sup>
- e. An accused Student's waiver of his or her right to be represented by an attorney or a non-attorney advocate shall not constitute an admission of guilt or waive of additional rights under the Code.<sup>35</sup>
- f. The decision following the interim Hearing is subject to appeal to the Provost or designee within **3 business days** after the decision. The decision may remain in effect during the pendency of the appeal.
- g. The emergency-removal decision shall remain in effect until a final decision has been made on the pending Complaint or until the Student Conduct Administrator determines that the reason for imposing the emergency-removal decision no longer exists. The decision shall be immediately withdrawn if the Respondent is found not responsible for the charged offense in a final, unappealable decision.

## **Section 8: Student Rights and Responsibilities in Misconduct Proceedings**

1. **Equal Treatment.** The University shall treat the Complainant and Respondent equitably.<sup>36</sup>

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<sup>33</sup> Ark. Code Ann. § 6-60-1405(b)(2)(B)(i)

<sup>34</sup> Ark. Code Ann. § 6-60-1405(b)(2)(B)(ii)(a)

<sup>35</sup> Ark. Code Ann. § 6-60-1405(b)(2)(B)(ii)(b)

<sup>36</sup> NPRM 34 C.F.R. § 106.45(b)(1)

2. **Notice.** A Party whose participation is invited or expected shall receive written notice of the date, time, location, participants, and purpose of all meetings, investigative interviews, or Hearings with sufficient time for the Party to prepare to participate.<sup>37</sup>

**3. Access to Administrative File**

- a. The University shall maintain an Administrative File of all disciplinary proceedings.<sup>38</sup>
- b. The Parties may have reasonable continuing access to the Administrative File and the ability to review all documents and evidence in the Administrative File<sup>39</sup> by contacting the Student Conduct Administrator to schedule a reasonable date and time for the inspection.
- c. Individual portions of the Administrative File shall be redacted if confidentiality of the evidence is required by law.<sup>40</sup>

4. **Presumption of Innocence.** Respondents are presumed innocent. They shall not be deemed guilty of a violation of the Code until (1) a Student or Student organization acknowledges responsibility of a violation of the Code or (2) the conclusion of all disciplinary proceedings during which an institution has established every element of an alleged violation by the Student or Student organization.<sup>41</sup>

3. **Notice of allegations.** The Respondent shall be afforded sufficient notice of the allegations to enable a meaningful response. The specific notice requirements are described in Section 9.

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<sup>37</sup> NPRM 34 C.F.R. § 106.46(e)(1)

<sup>38</sup> Ark. Code Ann. § 6-60-1404(b)(1); NPRM 34 C.F.R. § 106.46(e)(6)(i)-(ii)

<sup>39</sup> Ark Code Ann. § 6-60-1404(c)(1)(G). The statute requires “reasonable continuing access” and the “ability to review all evidence or documents in the administrative file beginning at least seven (7) business days before a disciplinary Hearing, or sooner if otherwise specified by federal law.” Neither Title IX nor FERPA contain a provision that would limit a Student’s access to the seven-day period prior to a Hearing with regard to his or her own educational records.

<sup>40</sup> Ark. Code Ann. § 6-60-1404(c)(1)(G)

<sup>41</sup> Ark. Code Ann. § 6-60-1404(c)(1)(C); NPRM 34 C.F.R. § 106.45(b)(3)

4. **Consideration of Evidence.** The University shall make good-faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative.<sup>42</sup> The University will not, however, follow formal rules of evidence or other rules of court.<sup>43</sup> An objective evaluation of the evidence must include both inculpatory and exculpatory evidence, and credibility determinations must not be based on a person's status as a Complainant, Respondent, or witness.<sup>44</sup> However, all evidence (including relevant evidence) of the following types will be excluded, and evidence seeking that evidence will be disallowed as impermissible (i.e., not accessed, considered, disclosed, or otherwise used):<sup>45</sup>
- a. Evidence that is protected under a privilege as recognized by federal or state law, unless the person holding such a privilege has waived the privilege voluntarily in a manner permitted in Arkansas;
  - b. The University's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party, unless the University obtains the Party's voluntary, written consent for use in the University's disciplinary proceedings;
  - c. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is offered to prove consent with evidence concerning specific incidents of the Complainant's prior sexual conduct with the Respondent. The fact of prior consensual sexual conduct between the Complainant and Respondent does not demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

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<sup>42</sup> Ark. Code Ann. § 6-60-1403(2)(B)(i)

<sup>43</sup> Id.

<sup>44</sup> NPRM 34 C.F.R. § 106.45(b)(6); NPRM 34 C.F.R. § 406.45(f)

<sup>45</sup> 45 NPRM 34 C.F.R. § 106.45(b)(7)

5. **Right to Appeal.** A Party may appeal an adverse decision regarding a finding of responsibility to the Provost or designee,<sup>46</sup> and the decision on appeal shall serve as the final institutional decision on the matter.<sup>47</sup>
6. **Standard and Burden of Proof.** The burden is on the University—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether a violation occurred.<sup>48</sup> The decisionmaker shall not find the Respondent responsible unless the preponderance of the evidence establishes each element of the offense.<sup>49</sup> The decisionmaker shall evaluate relevant evidence for its persuasiveness; if the decisionmaker is not persuaded under the foregoing standard by the evidence that a violation occurred, whatever the quantity the evidence is, the decisionmaker should not determine that a violation occurred.<sup>50</sup>
7. **Admission of Responsibility.** The Respondent may admit in writing to violating this Code at any time. A Hearing will then be held to determine an appropriate sanction, unless the Respondent waives such a Hearing and accepts a punishment determined by the Student Conduct Administrator.
8. **Nonappearance.** The University will not make any negative inferences against a Party solely for the Party's failure to answer questions or otherwise participate in the Student conduct process. However, a Party's failure to participate does not preclude the University from conducting the disciplinary process in that Party's absence.
9. **Obligation to Provide Truthful Information.** Parties and witnesses shall, to the best of their abilities, provide truthful and accurate information in their written submissions and during investigatory interviews and Hearings.
10. **No Retaliation.** A Party shall not be subjected to retaliation because he or she exercised the Party's rights under the Code.

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<sup>46</sup> Ark. Code Ann. § 6-60-1404(c)(1)(F)(i)

<sup>47</sup> Ark. Code Ann. § 6-60-1404(c)(1)(F)(iii)

<sup>48</sup> NPRM 34 C.F.R. § 106.45(f)

<sup>49</sup> NPRM 34 C.F.R. § 106.45(g)

<sup>50</sup> NPRM 34 C.F.R. § 106.45(h)(1)

11. **Weapons.** All UAMS property and locations are designated as firearms-sensitive pursuant to Arkansas law. Accordingly, possession of firearms and weapons is illegal on UAMS property
12. **No Conflicts or Bias.** The Student Conduct Administrator shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.<sup>51</sup> A Party may raise a concern regarding a potential conflict or bias with the Provost.
13. **Extensions of Time.** The Parties may obtain reasonable extensions of timeframes on a case-by-cases basis for good cause with written notice to the Parties that includes the reasons for the delay.<sup>52</sup>
14. **Role of University Counsel.** At all stages of the proceedings, a Student Conduct Administrator, Hearing Officer, member of a Hearing Panel, or other administrators may seek advice from the University's Office of General Counsel on questions of law, policy, and procedure. An attorney from the General Counsel's Office may attend proceedings for the purpose of giving such advice.
15. **Additional Rights in Cases Involving Non-Academic Violations with the Possibility of Expulsion or Suspension from the University.** In cases in which a sanction of expulsion or suspension from the University may be imposed for a violation of the Code, the Parties shall have the following additional rights:
  - a. The Parties shall have an equal opportunity to present relevant fact witnesses and other inculpatory and exculpatory evidence.<sup>53</sup> The process shall enable the decisionmaker to adequately assess the credibility of the Parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations.<sup>54</sup>
  - b. A Party shall have a right to be present and advised by an attorney or non-attorney advisor during the Party's investigatory interview, the Hearing to determine

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<sup>51</sup> NPRM 34 C.F.R. § 106.45(b)(2)

<sup>52</sup> NPRM 34 C.F.R. § 106.46(e)(5)

<sup>53</sup> NPRM 34 C.F.R. § 106.45(f)(2)

<sup>54</sup> NPRM 34 C.F.R. § 406.45(g)

responsibility,<sup>55</sup> and the appeal.<sup>56</sup> The advisor may fully participate in the proceedings.<sup>57</sup> A Party may be represented by an advisor until the conclusion of the appellate process.<sup>58</sup> The following principles also apply to advisors:

- i. An advisor may provide discreet advice to the represented Party during an investigatory interview but may not interfere with the information-gathering process.
  - ii. In cases that do not involve allegations of Sex-based Harassment, the University is not responsible for selecting, training, or arranging for the participation of advisors or for paying a Party's advising costs.<sup>59</sup>
  - iii. The Hearing Officer or Chair of the Hearing Panel may disallow the attendance of a particular advisor if, in the discretion of the Hearing Officer or Chair, such person's presence becomes disruptive or obstructive to the process. Advisors will not be permitted to question a witness in an abusive or threatening manner.
- c. Both Parties shall receive a written notification of the decision within a reasonable period of time after the Hearing.
- d. The Parties shall have the right for the disciplinary proceedings to be carried out free from conflicts of interest by ensuring that there is no comingling of administrative or adjudicative roles.<sup>60</sup> During the disciplinary proceedings, there shall be no commingling of the roles of (1) attorney or non-attorney advisor, (2) investigator, (3) adjudicator, and (4) appellate adjudicator.<sup>61</sup> The investigator may, however, present evidence at a Hearing.<sup>62</sup>

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<sup>55</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)

<sup>56</sup> Ark. Code Ann. §§ 6-60-1403(1) to 60-60-1403(2); Ark. Code Ann. § 6-60-1404(c)(1)(B)

<sup>57</sup> Ark. Code Ann. § 6-60-1404(c)(1)(B)(ii)

<sup>58</sup> Ark. Code Ann. § 6-60-1404(c)(1)(B)(iii)

<sup>59</sup> Ark. Code Ann. § 6-60-1404(c)(1)(B)(iv)

<sup>60</sup> Ark. Code Ann. § 6-60-1404(c)(1)(H)(i)

<sup>61</sup> Ark. Code Ann. § 6-60-1404(c)(1)(H)(ii)

<sup>62</sup> Id.



## **Section 9: Procedures in Disciplinary Proceedings**

### **1. Procedures that apply to all cases involving an alleged violation of the Code of Conduct (other than acts of Academic Dishonesty)**

#### **a. Preliminary Procedures**

- i. **General Requirements.** Upon being notified of conduct that may constitute a violation of the Code, the Student Conduct Administrator shall:<sup>63</sup>
  1. Notify the Parties of the procedures set forth in this Code;
  2. Notify the Parties of the informal resolution process under this Code if available and appropriate;
  3. Offer and coordinate Supportive Measures under this Code, as appropriate, to restore or preserve a Party's access to the University's education program or activity;
  4. In response to a Complaint, initiate the disciplinary proceedings or informal resolution process set forth in this Code;
  5. In the absence of Complaint or informal resolution process, determine whether to initiate a Complaint that complies with the procedures set forth in this Code if necessary to address conduct that may constitute a violation; and
  6. Take other appropriate, prompt, and effective steps to ensure that the violation of this Code does not continue or recur within the University's education program or activity, in addition to the remedies provided to an individual Complainant.

#### **ii. Written Complaint**

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<sup>63</sup> NPRM 34 C.F.R. § 106.44(f) (Title IX Coordinator requirements)

1. A form for a written Complaint is set forth in **Appendix B**.
2. The following persons have the right to make a Complaint under this Code, requesting that the University initiate disciplinary proceedings:<sup>64</sup>
  - a. A Complainant;
  - b. A person who has a right to make a Complaint on behalf of a Complainant, such as an authorized legal representative; or
  - c. A third party participating or attempting to participate in the University's education program or activity when the alleged violation of this Code occurred.
3. Complaints submitted orally or submitted by the Student Conduct Administrator shall be memorialized in writing at the time of submission.
4. The Complaint should be submitted as soon as practicable. Unreasonable filing delays could result in the dulling of memories and a loss of relevant evidence and witness testimony. Delays in filing shall not, however, affect the Complainant's eligibility for Supportive Measures from the University.
5. Because the University is bound by its obligation to provide a fundamentally fair process, anonymous Complaints may be filed, but anonymity may limit the University's ability to respond and may preclude disciplinary action.

**iii. Notice of Allegations and Initial Communications to the Parties**

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<sup>64</sup> NPRM 34 C.F.R. § 106.45(a)(2)

1. Upon initiation of the procedures set forth in this Code, the University shall provide written notice to the Parties whose identities are known.<sup>65</sup> This notice shall include:
  - a. A copy of this Code, along with the appendices (which will include Act 470 of 2023 as set forth in **Appendix A**);<sup>66</sup>
  - b. Sufficient information, available at the time, to allow the Parties to respond to the allegations. Sufficient information includes:<sup>67</sup>
    - i. The identity of the Parties involved in the incident;
    - ii. The date and location of the alleged incident; and
    - iii. The conduct allegedly constituting a violation of the Code, with sufficient time for the Parties to prepare a response before any initial interview;<sup>68</sup>
  - c. A statement that the Respondent is presumed not responsible for the alleged conduct until a determination of whether a violation of the Code occurred is made at the conclusion of the disciplinary proceedings under this Code;<sup>69</sup>
  - d. A statement that, in cases involving allegations of conduct for which a sanction of expulsion or suspension from the University may be imposed, the Parties are entitled to an advisor of their choice during the disciplinary proceedings (*i.e.*, investigatory interview, Hearing, and appeal), and the

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<sup>65</sup> NPRM 34 C.F.R. § 106.45(c)

<sup>66</sup> Ark. Code Ann. § 6-60-1404(c)(1)A); NPRM 34 C.F.R. § 106.45(c)(1)(i)

<sup>67</sup> NPRM 34 C.F.R. § 106.45(c)(1)

<sup>68</sup> NPRM 34 C.F.R. § 106.46(c)(1)(ii)

<sup>69</sup> NPRM 34 C.F.R. § 106.46(c)(2)(i)

advisor may be (but is not required to be) an attorney.<sup>70</sup> The statement must be provided no later than **24 hours** before the Respondent may be questioned regarding an alleged violation.<sup>71</sup> The statement shall further explain that:

- i. In non-Title IX cases in which a sanction of expulsion or suspension from the University may be imposed, the Party will be responsible for securing an advisor at the Party's own expense;<sup>72</sup>
  - e. A statement that the Party is entitled to receive access to the Administrative File;<sup>73</sup>
  - f. A statement that the Code prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure;<sup>74</sup> and
  - g. A statement that retaliation is prohibited.
2. If, in the course of an investigation, the Student Conduct Administrator decides to investigate additional allegations about the Respondent's conduct toward the Complainant that are not included in the original notice or that are included in a Complaint that is consolidated as set forth in this Code, the Student Conduct Administrator must provide notice of the additional allegations of the Parties whose identities are known.<sup>75</sup>

#### **iv. Student Conduct Administrator's Screening and Dismissal Decision**

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<sup>70</sup> NPRM 34 C.F.R. § 106.46(c)(2)(ii)

<sup>71</sup> Ark. Code Ann. § 6-60-1404(c)(1)(E)(ii)

<sup>72</sup> Ark. Code Ann. § 6-60-1404(c)(1)(E)(ii)

<sup>73</sup> NPRM 34 C.F.R. § 106.46(c)(2)(iii)

<sup>74</sup> NPRM 34 C.F.R. § 106.46(c)(2)(iv)

<sup>75</sup> NPRM 34 C.F.R. § 106.45(c)(2)

1. After receiving a Complaint, the Student Conduct Administrator shall promptly decide two threshold issues: (1) whether the Complaint should be dismissed and (2) whether, in the Student Conduct Administrator’s discretion, the allegations could result in a sanction of expulsion or suspension from the University. The Student Conduct Administrator’s discretionary decision should be guided by factors such as the severity of the alleged conduct, prior offenses, the impermissible possession of weapons, and the negative impact on the Campus Community. The Student Conduct Administrator shall make this initial determination within **10 business days** after the Complaint is filed or as soon as practicable thereafter.<sup>76</sup>
2. The Student Conduct Administrator shall dismiss a Complaint if:
  - a. The Student Conduct Administrator determines the conduct alleged in the Complaint, even if proven, would not constitute a violation of the Code; provided, however, that before dismissing the Complaint under this paragraph, the Student Conduct Administrator shall make reasonable efforts to clarify the allegations with the Complainant;<sup>77</sup>
  - b. The Code does not apply to the alleged facts under Section 2 (pertaining to applicability of the Code); or
  - c. The alleged conduct constitutes a protected exercise of the Student’s Free Speech Rights.
3. The Student Conduct Administrator may dismiss a Complaint if:<sup>78</sup>

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<sup>76</sup> NPRM 34 C.F.R. § 106.45(b)(4) (requiring “reasonably prompt time frames for the major stages of the grievance procedure”)

<sup>77</sup> NPRM 34 C.F.R. § 106.45(d)

<sup>78</sup> Id.

- a. The University is unable to identify the Respondent after taking reasonable steps to do so;
  - b. The Respondent is not participating in the University's education program or activity; or
  - c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Student Conduct Administrator determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute a violation of the Code even if proven.<sup>79</sup>
4. If the Student Conduct Administrator dismisses the Complaint, the investigation shall end immediately. The Student Conduct Administrator shall promptly communicate the basis for the dismissal to the Parties simultaneously.<sup>80</sup> If the dismissal occurs after the Respondent has been notified of the allegations, then the Student Conduct Administrator must also notify the Respondent of the dismissal and the basis for the dismissal promptly following a notification to the Complainant, or simultaneously if notification is in writing.<sup>81</sup>
  5. The Student Conduct Administrator shall notify all Parties that a dismissal may be appealed.<sup>82</sup> Each Party may appeal the matter to the Provost or designee within **5 business days** after the Student Conduct Administrator's dismissal decision. During the appeal of a dismissal decision:
    - a. Each Party shall be notified when an appeal is filed, and the procedures shall be implemented equally for the Parties;

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<sup>79</sup> NPRM 34 C.F.R. § 106.46(d)(2)

<sup>80</sup> NPRM 34 C.F.R. § 106.46(d)(1)

<sup>81</sup> NPRM 34 C.F.R. § 106.45(d)(2)

<sup>82</sup> NPRM 34 C.F.R. § 106.45(d)(3)

- b. The University shall ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
  - c. The University shall ensure that the decisionmaker for the appeal has been appropriately trained;
  - d. The University shall provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome as follows:
    - i. The appealing Party's submission shall consist of a concise written statement as to why the dismissal decision should be reversed; and
    - ii. The other Party may submit a concise counterstatement within **5 business days** of receiving the appealing Party's submission; and
  - e. The University shall simultaneously notify the Parties of the result of the appeal and the rationale for the result.
6. Notwithstanding a decision to dismiss the Complaint, the University shall provide Supportive Measures to the Complainant and Respondent as appropriate.<sup>83</sup>
7. If the Student Conduct Administrator decides that the Complaint should not be dismissed but the sanctions will not be expulsion or a suspension from the University, then the Parties shall be notified that the matter will be handled under the procedures set forth in Section 9.3.

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<sup>83</sup> NPRM 34 C.F.R. 106.45(d)(3)(iii)

b. **Consolidation of Complaints.** The Student Conduct Administrator may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations arise out of the same facts or circumstances.<sup>84</sup>

c. **Informal Resolution**

- i. At any time prior to determining whether a violation of this Code occurred, the University may offer to a Complainant and Respondent an informal resolution process, unless such a process would conflict with federal, state, or local law.<sup>85</sup>
  1. The Student Conduct Administrator has discretion to determine whether it is appropriate to offer an informal resolution process and may decline to offer informal resolution despite one or more of the Parties' wishes.<sup>86</sup>
  2. Circumstances when the Student Conduct Administrator may decline to allow informal resolution include but are not limited to when the University determines that the alleged conduct would present a risk of future harm to others.<sup>87</sup>
- ii. The University will not require or pressure the Parties to participate in an informal resolution process. The Student Conduct Administrator must obtain the Parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and adjudication of a Complaint as a condition of enrollment or continuing enrollment or exercise of any other right.<sup>88</sup>

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<sup>84</sup> NPRM 34 C.F.R. § 106.45(e)

<sup>85</sup> NPRM 34 C.F.R. § 106.44(k)(1)

<sup>86</sup> NPRM 34 C.F.R. § 106.44(k)(1)(i)

<sup>87</sup> NPRM 34 C.F.R. § 106.44(k)(1)(ii)

<sup>88</sup> NPRM 34 C.F.R. § 106.44(k)(2)



- iii. Before initiation of an informal resolution process, the Student Conduct Administrator must provide the Parties written notice<sup>89</sup> that explains:<sup>90</sup>
  1. The allegations;
  2. The requirements of the informal resolution process;
  3. That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume the University's grievance procedures under this Code;
  4. That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming grievance procedures arising from the same allegations;
  5. The potential terms that may be requested or offered in an informal resolution agreement, where such potential terms include (but are not limited to):<sup>91</sup>
    - a. Restrictions on contact; and
    - b. Restrictions on the Respondent's participation in one or more of the University's programs or activities or attendance of specific events, including restrictions the University could have imposed as remedies or disciplinary sanctions had the University determined that a violation of this Code occurred;
  6. Which records will be maintained and could be shared;

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<sup>89</sup> NPRM 34 C.F.R. § 106.46(j)

<sup>90</sup> NPRM 34 C.F.R. § 106.44(k)(3)

<sup>91</sup> NPRM 34 C.F.R. § 106.44(k)(5)

7. That if the University initiates or resumes the procedures under this Code, the University or a Party must not access, consider, disclose, or otherwise use information, including records, obtained solely through an informal resolution process as part of the investigation or determination of the outcome of the Complaint; and
  8. That, when applicable, and if the University resumes the disciplinary proceedings under this Code, the informal resolution facilitator could serve as a witness for purposes other than providing information obtained solely through the informal resolution process.
- iv. The facilitator for the informal resolution process must not be the same person as the investigator or decisionmaker in the University's procedures under this Code. Any person designated by the University to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant and Respondent.<sup>92</sup>
  - v. In order to encourage an open exchange of views and maximize the chances of agreement, mediation sessions may not be recorded, unless the Parties agree to a different arrangement.
  - vi. Any informal resolution shall be in writing and shall represent the final resolution of the case, unless one of the Parties fails to adhere to the terms of the agreement.
  - vii. If the Parties do not agree to an informal resolution, the process is unsuccessful, or informal resolution is not appropriate due to the nature of the Complaint, then the formal disciplinary proceedings will commence or resume.

#### **d. Investigation**

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<sup>92</sup> NPRM 34 C.F.R. § 106.44(k)(4)

- i. After the Student Conduct Administrator provides the Parties with the information described above, the Student Conduct Administrator shall promptly meet with the Complainant and Respondent separately to discuss the following:
  1. The allegations in the Complaint, including the Party's version of events, the nature and location of evidence, and the identity of witnesses;
  2. Supportive Measures; and
  3. The Party's interest in resolving the matter through informal resolution, unless the Student Conduct Administrator determines that informal resolution would be inappropriate under the circumstances.
- ii. A Party and his or her advisor are not permitted to attend interviews other than his or her own interview.
- iii. In addition to meeting with the Parties, the Student Conduct Administrator shall take other investigatory steps, as necessary. Such steps may include:
  1. Interviewing witnesses (including expert witnesses, if any) and summarizing such interviews in writing;
  2. Visiting, inspecting, and taking photographs of relevant sites;
  3. Collecting and preserving relevant evidence (potentially in coordination with law-enforcement agencies); and
  4. Obtaining any relevant medical records, provided that the subject of the records has voluntarily authorized the release of the records in writing.

iv. The investigation shall ordinarily be completed within **30 calendar days** after the Complaint is filed or as soon as practicable thereafter.<sup>93</sup>

e. **Investigation by Law Enforcement:** Nothing in this Code should be construed as restricting the ability of campus law enforcement to investigate a possible criminal violation.<sup>94</sup> If a law enforcement investigation has been initiated, the University will take reasonable measures to avoid undue interference with the law enforcement investigation. In most cases, the University's investigation will not be halted due to the fact that a parallel law-enforcement investigation has commenced.

**2. Additional procedures in cases involving allegations that could result in a sanction of expulsion or suspension from the University.**

**a. Administrative File**

- i. At the conclusion of the investigation and at least **7 business days** before the Hearing, the Student Conduct Administrator shall remind the Parties of their right to review the Administrative File to the extent allowed by law.<sup>95</sup>
- ii. The Parties shall have an opportunity to respond to the evidence contained in the Administrative File at a live Hearing.<sup>96</sup>

**b. Hearing Officer or Hearing Panel**

- i. At least **3 business days** before the Hearing date, the Student Conduct Administrator shall select a Hearing Officer or Hearing Panel and disclose the individuals' identities to the Parties.

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<sup>93</sup> NPRM 34 C.F.R. § 106.45(b)(4) (requiring "reasonably prompt time frames for the major stages of the grievance procedure")

<sup>94</sup> Ark. Code Ann. 6-60-1404(c)(1)(E)(ii)

<sup>95</sup> Ark. Code Ann. § 6-60-1404(c)(1)(G)(i) (requiring an ability to "review" the Administrative File "beginning at least seven (7) business days before a disciplinary Hearing")

<sup>96</sup> NPRM 34 C.F.R. § 106.46(e)(6)(ii)

- ii. A Party may challenge a Hearing Officer or Hearing Panelist for bias or any conflicts of interest with the potential to undermine the integrity of the disciplinary process. The Provost or a designee who is not a factfinder in the case shall promptly resolve the challenge and designate a substitute as appropriate.
- iii. Persons who serve as Hearing Officers or Hearing Panelists may not be the same individuals who investigated the alleged misconduct.

**c. Hearing Procedures**

- i. The Hearing Officer or Hearing Panel may pose questions to the witnesses before affording the Parties an opportunity to ask questions.
- ii. The Hearing Officer or Chair of the Hearing Panel will make all determinations regarding the order of witnesses, relevancy of questions, and the evidence to be considered or excluded during the Hearing and decision-making process. The Hearing Officer or Hearing Panel may, in its discretion, choose to call a Student Conduct Administrator for the purpose of explaining the investigation and findings.
- iii. The Hearing Officer or Hearing Panel must determine whether a proposed question is relevant and not otherwise impermissible prior to the question being posed, and must explain any decision to exclude a question as not relevant.<sup>97</sup> If a decisionmaker determines that a Party's question is relevant and not otherwise impermissible, then the question must be asked except that no questions that are unclear or harassing of the Party being questioned will be permitted.
- iv. The Hearing Officer or Chair of the Hearing Panel has discretion to determine whether the Parties may present expert witnesses as long as the determination applies equally to both Parties.<sup>98</sup>

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<sup>97</sup> NPRM 34 C.F.R. § 406.46(f)(3)

<sup>98</sup> NPRM 34 C.F.R. § 406.46(e)(4)

- v. At the Hearing, the Parties may:<sup>99</sup>
  - 1. Make an opening and closing statement;<sup>100</sup>
  - 2. Present relevant evidence;<sup>101</sup> and
  - 3. Cross-examine adverse witnesses.<sup>102</sup>
  
- vi. The Respondent may waive the right to be present at a disciplinary proceeding<sup>103</sup> by providing to the Student Conduct Administrator a signed waiver as set forth in **Appendix C**. The waiver shall be signed by the Respondent and the adjudicator.<sup>104</sup> The Student Conduct Administrator shall provide one copy to the Respondent and place another copy in the Administrative File.<sup>105</sup> If the Respondent waives the right to be present at a disciplinary proceeding, the Respondent shall not have the right to appeal the University's initial decision.<sup>106</sup>
  
- vii. Hearings may be conducted through a live Hearing with the Parties physically present in the same geographic location. At the University's discretion or upon the request of either Party, it will conduct the live Hearing with the Parties physically present in separate locations with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking or communicating in another format.<sup>107</sup>

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<sup>99</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(ii)-(iv)

<sup>100</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(4)(ii)

<sup>101</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(4)(iii)

<sup>102</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(4)(iv)

<sup>103</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(1)

<sup>104</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(2)

<sup>105</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(3)

<sup>106</sup> Ark. Code Ann. § 6-60-1404(c)(1)(D)(i)(b)(4)

<sup>107</sup> NPRM 34 C.F.R. § 106.46(g)

- viii. The University shall create an audio, audiovisual, or transcript of the Hearing.<sup>108</sup>
- ix. The Parties may pose relevant questions to witnesses under the following conditions:
  - 1. In cases in which a Party is represented by an advisor, the advisor may pose questions to the witness directly.
  - 2. In cases in which a Party is not represented by an advisor, the questions may be asked through the Hearing Officer or Hearing Panel. A Party may not, however, question a witness directly.<sup>109</sup> The Party may tender an initial set of proposed questions prior to the Hearing and propose follow-up questions, including questions challenging credibility, that a Party wants asked of any Party or witness.<sup>110</sup>
- x. If a Party does not respond to questions related to their credibility, the decisionmaker must not rely on any statement of that Party that supports that Party's position. The decisionmaker must not draw an inference about whether misconduct occurred based solely on a Party's or witness's refusal to respond to questions related to their credibility.<sup>111</sup>

**d. Written Decision**

- i. As soon as practicable after the Hearing, the Hearing Officer or Chair of the Hearing Panel shall simultaneously distribute to the Parties a written decision of the result that contains the following:<sup>112</sup>
  - 1. A description of the alleged Code violation;

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<sup>108</sup> Ark. Code Ann. § 6-60-1404(b)(3); NPRM 34 C.F.R. § 106.46(g)

<sup>109</sup> NPRM 34 C.F.R. § 106.46(f)(ii)

<sup>110</sup> NPRM 34 C.F.R. § 106.46(f)(i)

<sup>111</sup> NPRM 34 C.F.R. § 106.46(f)(4)

<sup>112</sup> NPRM 34 C.F.R. § 106.45(h)(1)

2. Information about the policies and procedures the University used to evaluate the allegations;
3. The decisionmaker's evaluation of the relevant evidence and determination of whether a violation occurred;
4. When the decisionmaker finds that a violation occurred, any disciplinary sanctions the University will impose on the Respondent, and whether remedies other than the imposition of disciplinary sanctions will be provided by the University to the Complainant and, to the extent appropriate, other Students identified by the University to be experiencing the effects of a violation; and
5. The University's procedures to appeal the result of the disciplinary Hearing;<sup>113</sup>
  - ii. If there is a determination that a violation occurred, as appropriate, the Student Conduct Administrator shall provide and implement remedies to a Complainant or other affected person(s) and take other prompt and effective steps to ensure that a violation does not continue or recur within the University's education program or activity.<sup>114</sup>
  - iii. The determination regarding responsibility becomes final either on the University providing the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.<sup>115</sup>

**e. Appeals**

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<sup>113</sup> Ark. Code Ann. § 6-60-1404(c)(1)(I)(iii)(b)

<sup>114</sup> NPRM 34 C.F.R. § 106.45(h)(3)

<sup>115</sup> NPRM 34 C.F.R. § 106.46(h)(d)



- i. A Party may appeal a decision or sanction by submitting a written statement to the Student Conduct Administrator within **25 calendar days**<sup>116</sup> of receiving the Hearing Officer or Hearing Panel's written decision. An Appeal Form is set forth in **Appendix D**.
- ii. An appeal may be initiated after the deadline if the Party shows that new, previously unavailable evidence came to light or that there is a compelling reason for the delay.
- iii. The appeal shall be heard by the Provost or designee.
- iv. The appeal shall be decided based on the record and without deference to the decision of the Hearing Officer or Hearing Panel.
- v. A Party may only appeal based on one of the following grounds:<sup>117</sup>
  1. A procedural irregularity that would change the determination of whether a Code violation occurred;
  2. The discovery of new evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether a Code violation occurred or dismissal was made;
  3. A Student Conduct Administrator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome of the matter; or
  4. The sanctions are grossly disproportionate to the severity of the offense.

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<sup>116</sup> Ark. Code Ann. § 6-60-1404(c)(1)(F)(ii)

<sup>117</sup> NPRM 34 C.F.R. § 106.46(i)

- vi. The Student Conduct Administrator shall promptly notify the other Party of the appeal and provide a copy of the Party's written statement. The other Party may submit a written counterstatement within **5 business days** thereafter.
- vii. The decision on appeal may uphold the decision, modify it, or remand the matter to the Hearing Officer or Hearing Panel for further factual development.
- viii. The Provost or designee shall inform the Parties of the decision in writing within **5 business days** of the last Party's written submission or as soon as practicable thereafter.
- ix. The Parties may challenge the Provost's (or designee's) involvement for bias or a conflict of interest with the potential to undermine the integrity of the appellate process. The Chancellor may decide any such challenge and replace the administrator with an appropriate substitute.

**f. Certification of Compliance**

- i. At the conclusion of the disciplinary proceedings, the Provost shall certify, on a form similar to **Appendix E**, that the substantial rights of the Complainant and Respondent as established in Act 470 of 2023 have been followed.<sup>118</sup>
- ii. The certification shall be maintained in the Administrative File.<sup>119</sup>

**3. Disciplinary procedures in non-Title IX cases in which neither expulsion nor suspension from the University will be imposed**

- a. If the Student Conduct Administrator determines, in his or her discretion at the inception of the case, that a sanction of expulsion or suspension will not be imposed in a non-Title IX case involving an alleged violation of the Code (other

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<sup>118</sup> Ark. Code Ann. § 6-60-1404(d)(1)

<sup>119</sup> Ark. Code Ann. § 6-60-1404(d)(2)

than an act of Academic Dishonesty), then the alleged violation of the Code shall be resolved through an administrative Hearing before the Student Conduct Administrator or designee.

- b. An attorney or non-attorney advisor may not participate at any stage of the disciplinary proceedings.
- c. The Student Conduct Administrator or designee shall ensure that the Respondent receives:
  - i. Written notice of the charges;
  - ii. An opportunity to inspect the Administrative File;
  - iii. An opportunity to be heard at a meeting with the Student Conduct Administrator or designee;
  - iv. A written decision on whether the Respondent has violated the Code and the sanctions that will be imposed; and
  - v. An opportunity to appeal to the Provost or designee, within **5 business days** of the decision, based on one of the following grounds:
    - 1. A procedural irregularity that affected the outcome;
    - 2. The discovery of new evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome;
    - 3. The University investigator or decisionmaker had a conflict of interest or bias that affected the outcome; or
    - 4. The sanctions are grossly disproportionate to the severity of the offense.

- vi. A reasonably prompt, written decision from the Provost regarding the appeal.
- vii. An opportunity to challenge the involvement of any decisionmaker due to bias or a conflict of interest.

### **Section 10: Amnesty**

The University offers amnesty to anyone who may be hesitant to report a serious incident because of fear that they personally may be accused of minor policy violations, such as underage drinking, at the time of the incident. Educational options may be explored, but no conduct sanctions or records will result.

### **Section 11: Sanctions**

1. Sanctions must be reasonable and proportionate to the seriousness of the violation. The Student Conduct Administrator must accurately advise the disciplinary body of sanctions that have been imposed for similar violations in the past in order to ensure consistency and equity across time.
2. A Student's conduct history shall not impact the finding of responsibility, but it may be used as information in determining appropriate sanctions.
3. Ordinarily, sanctions will not be imposed until the resolution of an appeal. However, if it is deemed necessary to protect the welfare of the victim or the University community, the Hearing Officer or Hearing Panel may recommend to the decisionmaker on appeal that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.
4. Any sanction imposed on a Respondent—including those based on a finding that sex-based harassment occurred<sup>120</sup>—will take on the following forms:
  - a. Verbal warning;

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<sup>120</sup> NPRM 34 C.F.R.45(k)(2)

- b. Written reprimand;
  - c. Probation and/or suspension in abeyance;
  - d. Loss of privileges for a specified period of time;
  - e. Restitution through community service or fine;
  - f. Research assignments;
  - g. A requirement to receive certain training;
  - h. Community service;
  - i. Removal from campus housing, including terms for readmission;
  - j. Suspension from the University, including terms for readmission; and/or
  - k. Expulsion from the University
5. The University may withhold a Respondent's degree for a reasonable amount of time to resolve any pending charges under this Code and to make sure that related sanctions are satisfied.
6. Student organizations and their officers and members, in their capacity as such, are subject to the same sanctions as other Respondents if a preponderance of the evidence shows actual participation in, or actual authorization or ratification of, a violation of the Code.
- a. In making this determination, the University shall consider whether the organization's members were acting in accord with the organization's practices and policies, or with the knowledge or approval of a substantial number of its members or leadership.

- b. The University may impose upon a Student organization any of the sanctions that apply to individuals (including a loss of privileges), suspension for a period of time, or a permanent loss of University recognition.

#### **Section 14: Confidentiality**

1. When conducting an informal resolution process under this Code, implementing disciplinary proceedings, or requiring the Student Conduct Administrator to take other appropriate steps under this Code, the University must not disclose the identity of a Party, witness, or other participant except in the following circumstances:<sup>121</sup>
  - a. When the Party, witness, or other participant has provided prior written consent to disclose their identity;
  - b. When permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, or its implementing regulations, NPRM 34 C.F.R. Part 99;
  - c. As required by law; or
  - d. To carry out the purposes of Title IX, including action taken to address conduct that may constitute sex discrimination under Title IX in the University's program or activity.
2. To protect the privacy of all Parties and in accordance with FERPA, the Hearing will be closed.
3. Educational records related to any aspect of discipline against a Student will not be released by the University without the Student's authorization. This prohibition does not apply to Students in possession of their own educational records. Only exceptions authorized under will be permitted. For instance, the University may release records:
  - a. To comply with a judicial order or a lawfully issued subpoena;

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<sup>121</sup> NPRM 34 C.F.R. § 106.44(j)

- b. To inform the Complainant in a case involving allegations of a crime of violence or a non-forcible sex offense of the final results of a related disciplinary Hearing;
  - c. To inform any third party, including other educational institutions, of the final results of a disciplinary proceeding related to a crime or violence or non-forcible sex offense if Respondent is found responsible;
  - d. To any Student's parents:
    - i. If the parents claimed the Student as a dependent on their tax returns; or
    - ii. To inform the parents if the Student is found responsible for an offense related to drugs or alcohol and the Student is under the age of 21 at the time of the disclosure; or
  - e. To address a health or safety emergency.<sup>122</sup>
4. For cases involving allegations of Sex-based Harassment under Title IX, the University shall keep confidential the identity of any Complainant, Respondent, and witness, except as permitted by FERPA, required by law, or necessary to conduct any investigation, Hearing, or judicial proceeding arising under the Title IX grievance process.
5. Disclosure of final results to third Parties, if permitted, shall include only the name of the Responsible Student, the violation committed, and any sanction imposed. The disclosure must not include the name of any other Student, including a victim or witness, without the written consent of that other Student.
6. The University may take reasonable steps to protect the privacy of the Parties and witnesses during the pendency of disciplinary proceedings under this Code, but it will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consulting with a family member, confidential resource, or advisor; preparing for a Hearing (if one is offered); or otherwise defend their interests.<sup>123</sup>

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<sup>122</sup> NPRM 34 C.F.R. § 99.36

<sup>123</sup> NPRM 34 C.F.R. § 106.45(b)(5)

7. Except as allowed by the Parties' Free Speech Rights, the Parties and their advisors may not disclose information and evidence obtained solely through the process set forth in this Code without authorization.<sup>124</sup>

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<sup>124</sup> NPRM 34 C.F.R. § 106.26(e)(6)(iii)



**Appendix A: Arkansas Student Due Process and Protection Act (Act 470 of 2023), codified at Ark. Code Ann. § 6-60-1401 *et seq.***

State of Arkansas                      As Engrossed: S3/9/23  
94th General Assembly                      **A Bill**

Regular Session, 2023  
365

SENATE BILL

By: Senator Irvin  
By: Representative Dalby

**For An Act To Be  
Entitled**

AN ACT TO CREATE THE ARKANSAS STUDENT DUE PROCESS  
AND PROTECTION ACT; TO ESTABLISH PROCEDURAL  
PROTECTIONS APPLICABLE TO STUDENT CONDUCT  
DISCIPLINARY PROCEEDINGS AT PUBLIC TWO-YEAR AND  
FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION; AND FOR  
OTHER PURPOSES.

**Subtitle**

TO CREATE THE ARKANSAS STUDENT DUE  
PROCESS AND PROTECTION ACT; AND TO  
ESTABLISH PROCEDURAL PROTECTIONS FOR  
STUDENT CONDUCT DISCIPLINARY  
PROCEEDINGS AT PUBLIC TWO-YEAR AND  
FOUR-YEAR INSTITUTIONS OF HIGHER  
EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-60-109 is repealed.

SECTION 2. Arkansas Code Title 6, Chapter 60, is amended to add an additional subchapter to read as follows:

Subchapter 14 – Arkansas Student Due Process and Protection Act

6-60-1401. Title.

This act shall be known and may be cited as the "Arkansas Student Due Process and Protection Act".

6-60-1403. Definitions.

As used in this subchapter:

(1) "Disciplinary proceeding" means a hearing, appeal, or investigatory interview conducted by an institution's administrator relating to an alleged serious violation of the code of student conduct;

(2) (A) "Fully participate" means the opportunity for an institution, a student complainant, a student respondent, or a student organization to be provided an opportunity to be present and advised by an attorney or non-attorney advocate.

(B) (i) "Fully participate" does not require an institution to use formal rules of evidence in a disciplinary proceeding.

(ii) However, an institution shall make good faith efforts to include relevant evidence and exclude evidence that is neither relevant nor probative;

(3) "Institution" means an Arkansas public two-year or

four-year institution of higher education; and

(4) (A) "Serious violation" means a violation of a nonacademic rule under a student code of conduct that an institution's official determines, at the inception of the case, could result in a sanction of suspension or expulsion.

(B) "Serious violation" does not include an act of academic dishonesty.

6-60-1404. Procedural protections.

(a) (1) The procedural protections established by this subchapter shall apply only to a serious violation.

(2) An institution shall not impose a sanction of suspension or expulsion for a violation of a nonacademic rule under an institution's student code of conduct unless the procedural protections established by this subchapter are followed.

(b) (1) An institution shall maintain an administrative file of all disciplinary proceedings.

(2) The administrative file required under subdivision (a) (1) of this section shall include without limitation all documents and evidence in the institution's possession or control that is relevant to an alleged violation of the institution's code of student conduct and the institution's investigation into the alleged violation of the institution's code of student conduct, including without limitation:

- (A) Exculpatory evidence;
- (B) Statements by an accuser or an accused student or a student organization;
- (C) Third-party witness statements;
- (D) Electronically stored information;
- (E) Written communications;

(F) Social media posts;  
(G) Demonstrative evidence;  
(H) Documents submitted by any participant involved in disciplinary proceedings; and

(I) The institution's choice of a video recording, an audio recording, or a transcript of any disciplinary hearing ultimately held on the matter.

(3) The administrative file required under subdivision (b) (1) of this section shall not include privileged documents, internal communications, or communications from nonparties that the institution does not intend to introduce as evidence at a disciplinary proceeding.

(c) (1) A student who is accused of a serious violation and who is enrolled at an institution shall have the following disciplinary rights and be subject to the following procedures:

(A) The right to receive a copy of this subchapter at the inception of the disciplinary matter;

(B) (i) The right to be represented by:

(a) An attorney; or

(b) A non-attorney advocate if the student or student organization prefers.

(ii) An attorney or non-attorney advocate representing a student or student organization under subdivision (c) (1) (B) (i) of this section may fully participate during a disciplinary proceeding.

(iii) The right of a student or student organization to be represented by an attorney or non-attorney advocate under subdivision (c) (1) (B) (i) of this section applies until the conclusion of any institution appellate process.

(iv) (a) It shall be the student's or the

student organization's responsibility to make arrangements for the use of an attorney or a non-attorney advocate as permitted under subdivision (c) (1) (B) (i) of this section.

(b) An institution shall not be responsible for providing, training, or paying for the services of an attorney or a non-attorney advocate;

(C) (i) The express presumption of innocence.

(ii) A student or student organization shall not be deemed guilty of a violation of the code of student conduct of an institution until:

(a) A student or student organization formally acknowledges responsibility for a violation of the code of student conduct; or

(b) The conclusion of a disciplinary proceeding during which an institution has established every element of an alleged violation by the student or student organization;

(D) The right to have the opportunity for a live hearing, including the right to:

(i) (a) Be present at a disciplinary proceeding.

(b) (1) A student or student organization may

waive the right to be present at a disciplinary proceeding.

(2) A waiver under subdivision (c) (1) (D) (i) (b) (1) of this section shall be:

(A) Provided in writing by the student or student organization; and

(B) Signed by the student or

student organization and the adjudicator of the disciplinary proceeding.

(3) A copy of the signed waiver required under subdivision (c) (1) (D) (i) (b) (2) (B) of this section shall be provided to the student or student organization and placed in the administrative file required under subdivision (b) (1) of this section.

(4) If a student or student organization waives the right to be present at a disciplinary proceeding under subdivision (c) (1) (D) (i) (b) (1) of this section, the student or student organization shall not have a right to appeal an institution's initial decision under subdivision (c) (1) (F) of this section;

(ii) Make an opening and closing statement;

(iii) Present relevant evidence; and

(iv) Cross-examine adverse witnesses through an attorney or non-attorney advocate, which the student is responsible for selecting and compensating;

(E) The right to be advised by an institution of the student's or student organization's rights under this subchapter:

(i) Before a disciplinary proceeding is scheduled;  
and

(ii) At least twenty-four (24) hours before a student or student organization may be questioned by the institution or an agent of the institution regarding any allegation of a serious violation, provided that nothing in this subchapter restricts the ability of campus law enforcement to investigate a possible criminal violation;

(F) (i) The opportunity to appeal an institution's initial decision to an appellate entity that is an institutional employee or body that did not make the initial decision finding the student or student organization to be in violation of the institution's

non-academic or code of student conduct rules.

(ii) An appeal under subdivision (c) (1) (F) (i) of this section shall be filed within twenty-five (25) days after a student or student organization receives final notice of an institution's decision.

(iii) (a) An institution may designate the appellate entity as the final institutional authority.

(b) However, nothing in this subchapter precludes a court from granting a prevailing plaintiff equitable relief;

(G) (i) Reasonable continuing access to the administrative file required under subdivision (b) (1) of this section that pertains to the student's or student organization's alleged violation and the ability to review all evidence or documents in the administrative file beginning at least seven (7) business days before a disciplinary hearing, or sooner if otherwise specified by federal law.

(ii) However, individual portions of the administrative file shall be redacted if confidentiality of the evidence is required by law;

(H) (i) The right for a disciplinary proceeding to be carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles.

(ii) An institution shall be considered to be commingling administrative or adjudicative rules if an individual carries out more than one (1) of the following roles with respect to the disciplinary proceeding:

(a) Attorney or non-attorney advocate for

a complaining or accused student or student organization;

- (b) Investigator;
- (c) Adjudicator; or
- (d) Appellate adjudicator.

(iii) It is not a conflict of interest under this subdivision (c) (1) (H) for the institution's investigator to simultaneously serve as the individual who presents evidence to an adjudicator; and

(I) The right of a student or student organization that makes a complaint against another student or student organization for purposes of a disciplinary hearing to:

(i) (a) Be represented at the student's or student organization's own expense by an attorney or, if the complaining student or student organization prefers, a non-attorney advocate, who may fully participate during a disciplinary proceeding.

(b) The right of a student or student organization to be represented by an attorney or non-attorney advocate under subdivision (c) (1) (I) (i) (a) of this section applies until the conclusion of any institution appellate process;

(ii) (a) Have reasonable continuing access to the administrative file required under subdivision (b) (1) of this section that pertains to the student's or student organization's allegation and the ability to review all evidence or documents in the administrative file beginning at least seven (7) business days before a disciplinary hearing, or sooner if otherwise specified by federal law.

(b) However, individual portions of the administrative file required under subdivision (b) (1) of this section shall be redacted if confidentiality of the evidence is



required by law; and

(iii) (a) Appeal an institution's decision following a disciplinary proceeding on grounds set forth in the institution's student code of conduct.

(b) An institution shall provide simultaneous notification to both the student or student organization that makes a complaint against another student or student organization and the student or student organization that is the subject of a complaint regarding the institution's procedures to appeal the result of a disciplinary hearing.

(2) The rights provided under subdivision (c) (1) of this section shall be included in each institution's code of student conduct.

(d) (1) At the conclusion of a disciplinary proceeding or an appeal that involves a serious violation, an institution's chancellor or vice chancellor of student affairs shall certify that the substantial rights of student complainants and respondents as established under this subchapter have been followed.

(2) The certification required under subdivision (d) (1) of this section shall be maintained in the administrative file required under subdivision (b) (1) of this section.

6-60-1405. Interim measures.

(a) (1) Nothing in this subchapter precludes an institution from providing at any time an individualized service to an accused student or an accusing student that is nondisciplinary, nonpunitive, reasonably available, and without fee or charge to the accused student or accusing student.

(2) (A) An individualized service offered to an accused student or accusing student under subdivision (a) (1) of this section shall be designed to restore or preserve equal access to the institution's education programs or activities without unreasonably burdening the other party.

(B) An individualized service offered to an accused student or accusing student under subdivision (a) (1) of this section may be designed to protect the safety of all involved parties or the institution's educational environment, which may include without limitation:

- (i) Counseling;
- (ii) Extensions of deadlines or other course-related adjustments;
- (iii) Campus escort services;
- (iv) Mutual restrictions on contact between the involved parties;
- (v) Modifications of class schedules or housing locations;
- (vi) Increased security and monitoring of certain areas of the institution's campus; and
- (vii) Other similar services.

(b) (1) An institution may remove an accused student from the institution's programs or activities on an emergency basis if the institution:

- (A) Undertakes an individualized safety and risk analysis;
- (B) Determines that an immediate threat or the safety of a student or another individual arising from the allegations of misconduct

justifies removal of the accused student; and

(C) Provides the accused student with notice and an opportunity to challenge the decision immediately following his or her removal.

(2) An institution that removes an accused student on an emergency basis under subdivision (b) (1) of this section shall:

(A) Within twenty-four (24) hours of an institution removing an accused student on an emergency basis, provide written notice to the accused student that explains the institution's reasons for removing the accused student on an emergency basis;

(B) (i) Within three (3) business days of the written notice required by subdivision (b) (2) (A) of this section, unless otherwise waived by the removed accused student, convene an interim hearing to determine whether there is substantial evidence that the removed accused student poses a risk to the health or safety of any student or other individual and that the emergency removal of the accused student is appropriate to mitigate that risk.

(ii) (a) At an interim hearing, the removed accused student and the accusing student may be represented by an attorney or a non-attorney advocate who may fully participate to the same extent as in a final hearing to determine responsibility.

(b) An accused student's waiver of his or her right to be represented by an attorney or a non-attorney advocate under subdivision (b) (2) (B) (ii) (a) of this section shall not constitute an admission of guilt or a waiver of additional rights under this subchapter.

6-60-1406. Cause of action.

(a) If a student or student organization's rights under this

subchapter have been violated, the student or student organization may file a claim with the Arkansas State Claims Commission to recover:

- (1) Compensatory damages;
- (2) Attorney's fees;
- (3) Expert witness fees; and
- (4) Monetary damages consisting of any financial losses, such as lost scholarship funds or unnecessary tuition payments, proximately caused by a substantial violation of this subchapter.

(b) Any error, defect, irregularity, or variance that does not affect a student's or student organization's substantial rights under this subchapter shall be not be considered.

6-60-1407. Statute of limitations.

(a) (1) A student or student organization shall bring suit for a violation of this subchapter not later than one (1) year after the day the cause of action occurred.

(2) For purposes of calculating the one-year limitation period, the cause of action shall be deemed accrued on the date that the student or student organization receives final notice of discipline from an institution.

(b) This subchapter shall apply to disciplinary proceedings beginning on or after its effective date.

**Appendix B: Student Misconduct Complaint Form**

**Nature of Complaint**

Sex-based Harassment       Other Sex Discrimination

Other Discrimination                       Theft

Physical Assault                               Other

**Complainant Information**

Student     Staff     Other

Student Conduct Administration       Faculty

Name: \_\_\_\_\_

University ID No. \_\_\_\_\_

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Local address: \_\_\_\_\_

**Incident Information**

Date of Incident: \_\_\_\_\_

Location of Incident: \_\_\_\_\_

Description of Incident: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(use additional pages as necessary)

Witnesses to the incident(s):

Name

Description of relevant knowledge

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Please provide any documentation that is relevant to the alleged incident.

**Appendix C: Form for Respondent's Waiver of Right to Be Present at Hearing**

I understand that I have been charged with a violation of the Code of Student Conduct for which a sanction of expulsion or suspension from the University could be imposed. I hereby waive my right to be present at any disciplinary proceedings, including a live hearing, under Ark. Code Ann. § 6-60-1404(c)(1)(D)(i). I further understand that I shall not have a right to appeal the University's decision on whether I am responsible for violating the Code. I acknowledge that a signed copy of this waiver will be placed in the Administrative File as required by state law.

/s/ \_\_\_\_\_  
[student's name]

**Appendix D: Student Misconduct Appeal Form**

Student Name: \_\_\_\_\_

Student ID No. \_\_\_\_\_

The appeal must be submitted to the Student Conduct Administrator within 25 calendar days of receiving the written decision. A Party may appeal the written decision from the following reasons only:

- 1. A procedural irregularity that affected the outcome;
- 2. The discovery of new evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome;
- 3. The University investigator or decisionmaker had a conflict of interest or bias that affected the outcome; or
- 4. The sanctions are grossly disproportionate to the severity of the offense.

Please select the reason for your appeal (you may select more than one):

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ 4. \_\_\_\_\_

Please provide a narrative of the basis for your appeal. This is not a statement of the incident, but rather an explanation of why the decision should be overturned. If your appeal is based on reason 1, 2, or 3, include an explanation as to how the outcome was affected. You may use more than one page.

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**Appendix E: Form for Provost's Certification of Compliance**

In my capacity as Provost, I certify that that the substantial rights of student complainants and respondents established under the Arkansas Student Due Process and Protection Act, Ark. Code Ann. § 6-60-1401 et seq., have been followed. This certification shall be placed in the Administrative File required under state law.

/s/ \_\_\_\_\_  
[Provost name]  
[title]