

3359-41-05 University hearing board.

(A) Composition. The university hearing board shall be composed of four members, as follows:

- (1) ~~Two~~ Three faculty members shall be appointed by the vice president and dean of students student life from a hearing board pool appointed by the president. The dean of each academic college will nominate three ~~elect~~ by all full-time members of the faculties of the his/her respective ~~colleges~~ college and forward the names of the nominees to the university president for a one-year renewable term. ~~in the same manner and proportion as their elected representation on university council. Elections to the hearing board pool shall be held in conjunction with the annual elections to determine university council membership.~~
- (2) Two student members appointed by the associate vice president and dean of students student life or his/her agent from a hearing board pool of student members. The student members shall apply to the office of student development and be recommended by a majority vote of the associated student government; or, in the case of a graduate student accused of misconduct, the student members shall be recommended by a majority vote of the graduate student council or by the vice president and dean of the graduate school or his/her agent. All student members then will be appointed by the university president for a one-year renewable term.
- (3) Each hearing board shall select its own presiding member.
- (4) The accused student shall have the right to challenge any member of the university hearing board, for good cause; and, at the discretion of the associate vice president and dean of students student life, the challenged member may be excused and a substitute member appointed.
- (5) The associate vice president and dean of students student life or his/her ~~representative~~ agent shall attend all meetings of the hearing board.

(B) Procedures. When a case of alleged student misconduct is to be heard by the university hearing board, all of the student procedural rights which appear under rule 3359-41-04 of the Administrative Code shall pertain, and the following procedures shall be adhered to:

- (1) ~~The presiding member shall request the~~ The associate vice president and dean of students or his/her agent to immediately ~~shall~~ notify the student suspected of misconduct. Such notification shall include:

- (a) Written notification presented in person to the accused, or sent by certified mail to the last known address of the accused; and, whenever reasonably practicable, the university shall seek to have the accused verify receipt thereof.
- (b) The specific charge and the facts which purport to sustain that charge.
- (c) The time and place at which the accused student is to appear before the university hearing board.

(2) The associate vice president and dean of student life or his/her agent shall provide for a hearing before a university hearing board unless the student files a written request for a hearing by the associate vice president and dean of student life or his/her agent. A hearing by the associate vice president and dean of student life or his/her agent may be granted only:

- (a) When the student has admitted responsibility for the charges, and
- (b) When based on the evidence presented, a university rule or regulation was violated.
- (c) The associate vice president and dean of student life or his/her agent shall conduct the hearing as a counseling-type interview in which time the immediate welfare of the accused and the welfare of the university are preeminent and the rehabilitation of the accused is also of vital concern. The associate vice president and dean of student life or his/her agent shall then implement the disciplinary action that is appropriate to the circumstances.

(3) If the accused student refuses to go before the university hearing board or the associate vice president and dean of student life or his/her agent, s/he may be tried in absentia and sanction imposed in accordance with the findings.

(4) A student appearing before the university hearing board may admit responsibility. The student also has the right to have his/her responsibility or lack of responsibility determined by the university hearing board. In the latter case, it is the responsibility of the university to present a substantial amount of evidence to prove tha the student has violated university rules. To provide for a fair and impartial hering, the following elements shall pertain.

- (a) No member of the university hearing board shall be a party to prior investigation of the case against the student, nor should any member of the university hearing board be placed in a position of

developing or presenting the case. If any member is unavoidably involved, s/he must not participate in the proceedings.

- (b) The presiding member of the board shall conduct the hearings and shall be responsible for providing a tape recording of the hearing and supervising preparation of a summary.
- (c) The presiding member of the board shall advise the student of the charge by reading the notice of hearing to him/her, after which the presiding member shall inform the student that s/he may deny or admit, totally or in part, the charges levied against him/her.

A complete admission of responsibility would require no further proceedings, except that any student should be offered the opportunity to present evidence of character, scholarship, or previous record of good conduct bearing only upon the extent of the sanction to be assessed by the university hearing board.

- (d) A denial or partial denial of the charges by the accused student shall require the presentation of evidence supporting the charges. This presentation of the evidence shall be made by the person designated by the associate vice president and dean of student life to present evidence and information. Such evidence may consist of oral testimony made truthfully and the introduction of any physical exhibits necessary to support the charge. The student shall be given an opportunity to hear and question adverse witnesses, as well as present evidence in his/her own defense. The person designated by the vice president for student affairs to represent the university's position shall have the right to question all witnesses for the defense, and members of the hearing board shall have the right to ask questions of all witnesses. The presiding member of the board shall exercise normal discretionary controls, prevent abusiveness, require relevance and ensure the expeditious pursuit of information. A standard of substantial evidence shall apply to all hearings. ("Substantial evidence" is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred.)

- (5) The university hearing board shall have the authority to call upon any member of the faculty or student body who, in its opinion, might have pertinent information. Only information that will tend to establish either a violation or an absence of violation will be admitted.
- (6) The accused student may deny or admit totally or in part the charges levied against him/her. If s/he denies or denies in part the charges, s/he shall have the opportunity to hear and question adverse witnesses. The

person designated by the vice president for student affairs to present evidence and information shall have the right to question all witnesses for the defense and members of the hearing board have the right to ask questions of all witnesses. The presiding member of the board shall exercise normal discretionary controls, prevent abusiveness, require normal discretionary controls, require relevance, and ensure the expeditious pursuit of information. The accused shall not be required to testify against himself/herself.

- (7) All members of the university hearing board shall be present at all hearings on a particular case. Responsibility and sanction shall be decided by a majority vote. The presiding member shall participate in balloting.
- (8) The hearings shall be confidential unless the accused requests the presiding member to conduct public or open hearings. Such requests shall be granted.
- (9) The report of the university hearing board shall consist of a simple statement covering the chronological sequence of the hearing procedure, together with a summary of evidence presented to the university hearing board, and the conclusions reached by it on the basis of such evidence, and finally, its conclusion as to the finding of responsibility, sanction or disposition of the case. The report shall be signed by all members of the university hearing board shall be final, subject only to the student's right of appeal to the university appeals board or the vice president for student affairs' right to request a presidential review.
- (10) The presiding member shall transmit the findings and recommendations of the university hearing board to the associate vice president and dean of student life and his/her agent. The associate vice president and dean of student life or his/her agent shall review the report and forward a recommendation to the vice president for student affairs or his/her agent. The vice president for student affairs or his/her agent shall review the matter and, unless a presidential review is requested by the vice president for student affairs, the associate vice president and dean of student life or his/her agent shall notify the student of the hearing board's decision in writing.
- (11) Consistent with the requirements of the "Family Educational Rights and Privacy Act," disciplinary records and information concerning students may be provided from time to time to other university officials, including faculty who have been determined by the university to have legitimate educational interests. In such instances, neither the consent of the student nor the student's parents shall be required. The determination of whether or not there is a "need to know" shall be within the discretion of the president, senior vice president and provost, or vice president for student

affairs. The procedure for arriving at such determination shall be directed by the president.

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- ~~(3) — The accused student may deny or admit totally or in part the charges levied against him/her. If he/she denies or denies in part the charges, he/she shall have the opportunity to hear and question adverse witnesses. The person designated by the vice president for student affairs to present evidence and information shall have the right to question all witnesses for the defense, and members of the hearing board shall have the right to question all witnesses for the defense, and members of the hearing board have the right to ask questions of all witnesses. The presiding member of the board shall exercise normal discretionary controls, prevent abusiveness, require normal discretionary controls, prevent abusiveness, require relevance, and ensure the expeditious pursuit of information. The accused shall not be required to testify against himself/herself.~~
- ~~(4) — All members of the university hearing board shall be present at all hearings on a particular case. Guilt and penalty shall be decided by a majority vote. The presiding member shall participate in the balloting.~~
- ~~(5) — The hearings shall be confidential unless the accused requests the presiding member to conduct public or open hearings. Such requests shall be granted.~~
- ~~(6) — The recommendation of the university hearing board as to guilt or innocence shall be forwarded to the vice president for student affairs for appropriate action as set forth in rule 3359-41-04.~~