



BROOKLYN LAW SCHOOL STUDENT DISCIPLINARY PROCEDURES

Issuing Authority: The Office of the President and Dean of Brooklyn Law School

Responsible Officer: The Dean for Student Affairs

Date Issued: November 19, 2014

- I. **THE PURPOSE OF THESE PROCEDURES:** To establish a process for adjudicating charges and making determinations as to the appropriate disciplinary action(s) to take against a student alleged to have violated Law School policy.

- II. **TO WHOM THESE PROCEDURES APPLY:** These procedures shall be followed to adjudicate and resolve any complaint, accusation, or allegation against a student that, after the matter has been investigated by the appropriate school designee, warrants charges for violating a Law School policy, procedure, rule, by-law, or regulation.

- III. **NOTICE OF HEARING AND CHARGES:** A Notice of the Charges shall be delivered to the charged student by the Dean for Student Affairs either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address in the Law School's records, *and* by email to the student's Law School email account. The Notice shall contain the following information:
 1. A complete, clear, and concise, itemized statement of any charge(s) against the student, including: (a) the date, time, and location of the violation; (b) a description of the factual allegations; and (c) the identification of each policy, rule, by-law, or regulation that the student is alleged to have violated;
 2. The possible penalties for such violation(s);
 3. The date, time, and location of the hearing;
 4. A statement of the student's rights during the disciplinary process;
 5. A notice that retaliation or any form of intimidation against the complainant and potential witnesses is prohibited; and
 6. A copy of these procedures.

The complainant shall receive a copy of the Notice.

IV. TIME FRAMES: All time frames referenced herein shall exclude weekends, holidays, and emergency school closings.

V. RIGHTS DURING THE DISCIPLINARY PROCESS: The complainant(s) ¹ and charged student(s) shall have the following rights throughout the disciplinary process:

1. To present a version of the relevant event(s) and respond to the allegations or, at the student's discretion, to remain silent during the hearing without any negative inferences being drawn by the Hearing Panel on the basis of the student's silence;
2. To present witnesses and other evidence;
3. To cross-examine witnesses, except in sexual misconduct cases where the Parties are not allowed to cross-examine each other;
4. To bring an advisor to the hearing who may assist and advise throughout the hearing proceedings; ² and
5. To request a procedural accommodation based a disability.

VI. INTERIM SUSPENSION: The Dean may suspend a charged student, pending a hearing, if the Dean determines that the charged student's continued presence poses a significant threat to: (1) the charged student; (2) the complainant(s); (3) witnesses; or (4) the safety, health, or welfare of the Law School community. The charged student shall be notified of the removal and given an opportunity to be heard regarding the interim suspension.

VII. MEDIATION/RESOLUTION AGREEMENT: Generally, an allegation or complaint may be resolved at any step before, during, or after the investigation process and prior to charges being served. After the charges are served, each Party shall have, on request, the right to a mediation conference at which the Parties are to pursue good-faith efforts to resolve the matter by mutual agreement, *unless the charges involve sexual misconduct, in which case mediation is not available*. The request must be made at least five (5) business days before the scheduled hearing date. Any mediation conference shall be conducted according to the following procedures:

1. The mediation shall be facilitated by a qualified staff or faculty member selected by the Assistant Dean for Student Affairs.
2. If a mutual agreement can be reached, the proposed agreement shall be reported to the Assistant Dean for Student Affairs for approval. If the proposed agreement is approved, it shall be memorialized in writing, outlining each term of the agreement and the consequences for non-compliance. Both Parties shall

¹ Depending on the charge, the institution, rather than an individual, may be the complainant.

² The advisor's role is not to speak on behalf of the student. The advisor also may not engage in any conduct that interrupts or impedes the proceedings.

execute the agreement, and both Parties shall receive copies. If a mutual agreement cannot be reached, the matter shall be referred back to the Assistant Dean for Student Affairs, who shall convene a Hearing Panel.

These mediation procedures may also be used to resolve allegations before, after, or during an investigation and prior to charges being served. The discussions held at the mediation shall remain confidential and shall not be used as evidence at the hearing.

VIII. STUDENT DISCIPLINARY HEARING PANEL:

1. Each Hearing Panel shall consist of two (2) tenured or untenured faculty members, two student members, and one Chair, who shall be a tenured faculty member.³
2. The faculty members, including the Chair, shall be selected by the Assistant Dean for Student Affairs from a pool of faculty members, selected by the Dean, who have been trained to conduct student disciplinary procedures. Each faculty member shall be rotated off the Panel after serving on no more than three (3) Panels.
3. The student members shall be chosen by random selection in accordance with the procedures established by the Student Bar Association. These students shall receive training on how to conduct student disciplinary procedures.
4. A quorum to proceed with the hearing consists of the Chair and any two members of the Panel, one of whom must be a student.
5. In the event the Chair is unable to complete service on the Hearing Panel, the Dean for Student Affairs may select another Chair from the exiting pool. If a faculty member or student is unable to complete service on the Panel, the Dean for Student Affairs may select replacements using the process described above.
6. Anyone who has a potential conflict with the proceedings (e.g., who will serve as witness or has a pre-existing relationship with the Parties or witnesses involved) cannot serve on the Panel hearing the case. If the conflicted Panel member is the Chair or another faculty member, the Assistant Dean for Student Affairs shall select replacements using the process described above. If the conflicted Panel member is a student, the student shall be replaced using the selection procedures described above.

³ If a charge is based on a sexual misconduct violation, the student members will be replaced by faculty members.

IX. HEARING PROCEDURES:

1. A hearing date shall appear in the Notice of Charges. The hearing shall be scheduled to commence no later than fifteen (15) business days after delivery of the Notice of Charges, but may be postponed to accommodate the mediation process (as described in Part VII above) or by mutual consent of the Parties.
2. If the hearing date is postponed due to a mediation process, a new hearing date shall be set as soon as is practicable if the mediation does not lead to a full and final resolution of the charge(s).
3. The Dean shall appoint a School representative to present the charges and the basis for such charges to the Panel.
4. If more than one student is charged with joint violations, the Dean for Student Affairs may determine whether there should be separate Panels for one or more of the students.
5. Both the complainant and the charged student may present and cross-examine witnesses and introduce evidence, except that in sexual misconduct cases, the complainant and respondent may not cross-examine each other. Such examination may be done by the Hearing Panel.
6. In charges involving sexual misconduct, prior sexual history with persons other than the charged student or the complainant are excluded. In addition, evidence regarding their mental health diagnosis and/or treatment are excluded.
7. The charged student and the complainant shall provide the Panel with a list of witnesses and documents no later than eight (8) business days before the date of the hearing. The complainant and the charged student shall have equal access to such information and any other information that will be used in the disciplinary proceeding.
8. The hearing shall be closed to the public. Proceedings shall be confidential, and Panel members who violate confidentiality may be subject to disciplinary action in accordance with the procedures herein.
9. The complainant (if other than the Law School) does not have to be present as a prerequisite to proceeding with the hearing.
10. A record of the hearing shall be made by voice recording or stenographic transcript. The complainant and charged student may have access to a copy of the record.
11. Prior to hearing testimony, the Chair may rule on motions made by the Law School, charged student, or complainant regarding the impartiality of any Panel member or the adequacy of the Notice of Charges.

12. After the Chair has ruled on any motions, the hearing may proceed. The complainant's case shall proceed first and charges must be proven by a preponderance of the evidence.
13. The role of the Hearing Panel is to listen, ask questions, and elicit information from witnesses, and to rule on the sufficiency of the evidence presented. The Panel has the authority to exclude irrelevant, immaterial, or repetitive evidence.
14. Both the complainant (if other than the Law School) and the charged student have the right to an advisor who may assist and advise the student throughout the hearing proceedings. The advisor's role is not to speak on behalf of the student. The advisor also may not engage in any conduct that interrupts or impedes the proceedings.
15. All witnesses, including the charged student and complainant, are expected to testify truthfully.
16. Witnesses shall be sequestered from the hearing prior to testifying and shall be asked to leave the room after testifying.
17. The Hearing Panel may receive guidance from the School's General Counsel to ensure compliance with these procedures.
18. Following the Parties' presentation of their cases, the Panel shall deliberate in a closed session and vote. The Panel's decision regarding whether to sustain the charges and the sanctions to impose (if any), shall be based solely on the evidence presented at the hearing, including testimony and documents. If a majority of the Panel determines that the charges against the student are sustained, the Panel shall determine the sanctions to be imposed. Prior to determining the sanctions, the Parties may present impact statements and past findings of domestic violence, dating violence, stalking, or sexual assault to the Panel if the charges are based on a sexual misconduct violation.
19. In the event of a disagreement among the Panel members regarding sanctions, the Chair shall have the final authority to determine the sanctions.
20. Within ten [10] business days of the hearing, the Panel shall issue a written decision detailing the factual findings supporting the determination and the rationale for the sanctions (if any) imposed. Hearing Panel dispositions do not serve as precedent. Each hearing is to be decided individually on its own merits.

X. DISCIPLINARY SANCTIONS: One or more of the following disciplinary sanctions may be imposed if the charges are sustained:

1. Written reprimand;
2. Restitution or restoration;
3. Referral to the appropriate civil/criminal authorities;
4. Probation for one semester or more with specific conditions;

5. Suspension for one semester or more with or without specific conditions;
6. Expulsion; and
7. Any other sanctions deemed appropriate by the Hearing Panel or as dictated by another School Policy (e.g., Regulations Regarding Intellectual Property Infringement), unless such sanctions are prohibited by law or school policy.

The complainant (if other than the Law School) and the charged student shall receive written notice of the outcome of the hearing simultaneously either by personal delivery, overnight mail with signature, or by certified mail with return receipt *and* by email to the students' Law School email accounts. The charges and the disposition of those charges shall become part of the charged student's education file and shall be reported on bar admission applications that request such information.

XI. TRANSCRIPT NOTATION FOR CONDUCT THAT MEETS CLERY ACT REPORTING REQUIREMENTS:

For conduct including, but not limited to sexual violence, that is defined as a crime meeting the reporting requirements of the federal Clery Act (20 U.S.C. § 1092 (F) (1) (F) (I)(I) – (VIII)), *and* that has resulted in a sanctions of suspension or expulsion, the Law School shall make a notation on the transcript of the charged student that the student was "Suspended after a finding of responsibility for a code of conduct violation," or "Expelled after a finding of responsibility for a code of conduct violation." For a charged student who withdraws from the Law School while charges are pending and declines to complete the disciplinary process, the Law School shall make a notation on the student's transcript that the student "Withdrew with conduct charges pending." If a finding of responsibility is vacated for any reason, the transcript notation shall be removed.

A charged student may seek to remove a transcript notation for a suspension by submitting a written appeal either as part of the appeal process below or as a separate request, provided that such notation shall not be removed prior to one year after the conclusion of the suspension. If the appeal is initiated as a separate request, such request must be made in writing to the Dean. A copy of the request shall be provided to the complainant, who shall have an opportunity to respond within ten (10) business days of receipt. The Dean's decision, which is final, shall be issued simultaneously to the charged student and the complainant, in writing, within thirty (30) business days of the date of the request, either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address in the Law School's record, *and* by email to the students' Law School email accounts, unless additional deliberation time is warranted.

Transcript notations for expulsions shall not be removed.

XII. APPEALS PROCESS:

1. An appeal of the Hearing Panel's decision by either the complainant or the charged student must be made in writing to the Dean within ten (10) business days of receipt of the Notice of Discipline. The basis for the appeal is limited to the following grounds:
 - (a) Procedural error;
 - (b) Previously unavailable relevant evidence that could significantly impact the outcome; or
 - (c) The sanction is substantially disproportionate to the findings.
2. The Dean shall review the record, which includes the Hearing Panel's decision, the transcripts or tapes, and evidence presented at the hearing. The Dean has the discretion to grant or deny the appeal based on any of the three grounds listed above, including adopting the findings but modifying or rejecting the sanctions.
3. The Dean's decision on appeal, which is final, shall be issued simultaneously to the charged student and the complainant, in writing, within fifteen (15) business days of the date of the appeal either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address in the Law School's record, *and* by email to the students' Law School email accounts, unless additional deliberation time is warranted.

XIII. RECURRENCE: The Law School will take steps to prevent the recurrence of the behavior found to have occurred, including any sex discrimination or harassment, and to correct its discriminatory effects on the complainant and others if appropriate.

XIV. REASONABLE ACCOMODATIONS: Individuals with disabilities who request an accommodation to enable participation in the disciplinary process must contact the Accommodations Coordinator ⁴ as soon as possible so there is sufficient time to process the request.

XV. RECORD RETENTION: Records from disciplinary proceedings are retained permanently.

XVI. DISCLAIMER: This policy does not form an agreement of any kind and may be altered, modified, or rescinded at the discretion of Brooklyn Law School or as required by law.

Revised February 14, 2017

⁴ The Accommodations Coordinator is Louise Cohen, who can be reached at (718)780-0377 or louise.cohen@brooklaw.edu.