

# **Virginia Commonwealth University Rules and Procedures**

## **Introduction**

Virginia Commonwealth University is an academic community given meaning through the mutual respect and trust of the individuals who learn, teach, and work within it. Each member of this community is entitled to certain rights and privileges which must be protected through fair and orderly processes and which are best safeguarded when members act in an orderly and responsible manner. Each member of the University community is equally entitled to the protection of this document.

## **I. Application**

This document governs the conduct of all persons on University premises; that is, on the campuses of VCU, and other property or facilities owned, controlled, or being used by the University. The provisions of this document are applicable to all members of the University community composed of faculty, administrators, staff, and students, as well as licensees and invitees. Statutes of the Commonwealth of Virginia, city or county codes, and federal laws apply on University premises, and violators of such laws will be subject to the provisions thereof, in addition to the sanctions of this document. In general, it is the policy of Virginia Commonwealth University not to become involved in adjudicating off-campus conduct of members of the University community. However, the institution also has a commitment to protect its own welfare and that of its members. Thus in those circumstances where the off-campus behavior of a member of the University community significantly impairs the University-related functioning of another member or gives rise to serious danger to the University community, the provisions of this document will apply to off-campus behavior of members of the University community. Such conduct may subject the violator to the provisions of law, in addition to the sanctions of this document. Additionally, in cases where off-campus conduct of a student has resulted in a criminal conviction or an adjudication of civil liability by a court of law, the University may exercise the right to impose the sanctions of this document even though the off-campus conduct does not significantly impair the University-related functioning of another member of the University community or does not give rise to serious danger to the University community. Any decision to exercise this right will be at the determination of the Provost or his/her designee.

## **II. Relationship to Other University Policies and Regulations**

This policy supplements and does not replace other University policies, procedures, and regulations that specifically address conduct or classes of individuals (students, faculty, or staff) and take precedence over procedures set forth in this policy. In certain circumstances, members of the University community may be charged for an incident or infraction under such other policies, procedures, or regulations and under provisions of this document, but charges may not be brought under this policy if a charge has been, or is in the process of being brought under the Grievance Procedures for State Employees, the Faculty Grievance and Appeal Procedures, the Promotion and Tenure Policies and Procedures, or any specific policy that governs exclusively. Further, charges or cases involving VCU students are exclusively governed by procedures set forth in other specific policies, including but not limited to the Student Code of Conduct, the Honor System, the Policy on Sexual Misconduct/Violence and Sex/Gender Discrimination, and the Computer and Network Resources Use Policy.

## **III. Rights and Prohibited Conduct**

Free inquiry and free expression are indispensable to the objectives of an institution of higher education. To this end, peaceful, reasonable, and lawful picketing and other orderly demonstrations in approved areas shall not be subject to interference by the members of the University community. Nor shall any member of the University community be subject to limitation or penalty solely because of the lawful exercise of these freedoms. However, those involved in picketing and demonstrations may not engage in conduct that violates the rights of any member of the University community.

These rules shall not be construed to restrain controversy or dissent, or to prevent, discourage, or limit communication between and among faculty, students, staff, and administrators. The purpose of these rules is to prevent abuse of the rights of others and to maintain public order appropriate to the University.

#### **A. The Right to Academic Freedom and to Equal Educational and Occupational Access**

The University is committed to providing an environment conducive to academic freedom, free inquiry, and equal access to educational and occupational opportunities. The principle of academic freedom requires all persons to respect another's dignity, to acknowledge another's right to express differing opinions, to cultivate and to cherish intellectual honesty, and to promote freedom of inquiry and expression. It is therefore the policy of the University that no act of any member of the University community shall serve to restrain or inhibit access to opportunities or the exercise of these freedoms. To that end, no person, either singly or in concert with others, shall willfully:

1. Discriminate against another person on a basis not reasonably related to the educational or job functions involved on the basis of race, ethnicity, sex, religion, color, creed, disability, sexual orientation, marital status, and age.
2. Harass or intimidate any person.
3. Cause physical injury or threaten any person with force or violence.
4. Have in his or her possession any firearm, other weapon, or explosive, regardless of whether a license to possess the same has been issued, without the written authorization of the president of the University. This restriction does not apply to persons whose duties lawfully require the possession of firearms or other weapons.
5. Disrupt or prevent the peaceful or orderly conduct of classes, lectures, meetings, or other University functions, or interfere with the lawful freedom of other persons, including invited speakers, to express their views.
6. Falsify or forge an official University record or document; or file documents with the University with the intent to mislead.
7. Lie, cheat, steal, or plagiarize. Violations of lying, cheating, plagiarism, and stealing will be adjudicated through this or other applicable documents. Student academic violations of lying, cheating, plagiarism, and stealing will be referred to the VCU Honor System for adjudication.
8. Violate any duly authorized University rule or regulation issued pursuant to a specific University function, for example, regulations applicable to social events, the library, or University hospitals.
9. Incite others to commit any act which has been herein prohibited.
10. Bring charges against a member of the University community that are spurious, or that are intended primarily to harass or maliciously defame, or that are designed to intentionally overburden the adjudicatory system.

## **B. The Right to Appropriate Use of University Premises in the Pursuit of Educational Goals, Occupational Endeavors, and Recreational Activities**

No person, either singly or in concert with others, shall willfully:

1. Unreasonably stop or obstruct the free movement of any person or vehicle, or unreasonably obstruct a passageway, entrance, or exit.
2. Refuse to leave any University premise after being ordered to do so by an authorized member of the University community.
3. Destroy or damage land, buildings, or equipment owned or controlled by the University, the personal possessions of any individual, or without proper authorization, use, remove, or fail to return such property.
4. Without permission, expressed or implied by the duly assigned occupant, enter any office of an administrative officer, faculty member, or employee, or student office or room. This does not prohibit the right of University law enforcement officers or maintenance personnel to enter private rooms, offices, or any other University facility to prevent damage to or protect persons or property.
5. Enter into, or remain in, any University premise for other than an authorized purpose, or remain beyond the prescribed hours for utilization of the facility, without written permission from a University community member authorized to give such permission.

## **C. Student Off-Campus Conduct**

When determined to be detrimental to the interests of the University by the Provost or his/her designee, certain off-campus conduct by students, that does not involve another member of the University community or otherwise does not give rise to serious danger to the University community but which results in a conviction of a criminal offense or an adjudication of civil liability by a court of law, may subject the convicted or adjudicated student to the penalties of this document. Such offenses include, but are not limited to, the following:

1. Theft, destruction, defacing (e.g., graffiti) or damaging (e.g., vandalizing) land, buildings, equipment or property of others.
2. Possession, use, sale or distribution of illegal drugs or substances or the underage possession and/or consumption of alcohol.
3. Assault and/or battery, sexual assault, threats, stalking or domestic violence or other offenses causing personal injury or death.
4. Breach of the peace (e.g., disorderly conduct, public drunkenness, unlawful assembly, etc.)

## **D. Prohibitions from Other Policies**

There are a number of separate policies that specify further prohibitions, and that refer to the procedures and penalties of this document. A list of such policies can be obtained from the office of the senior vice president for administration.

# **IV. Penalties and Other Disciplinary Actions**

Any person who violates the provision of this document is subject to one or more of the following penalties and/or disciplinary actions: Classified employees and faculty may also be subject to penalties under other University policies.

#### **A. Censure**

Censure may be imposed by the University Hearing Board, or by the president upon the recommendation of the University Appeal Board, or in the event the accused waives the right to a hearing, by the administrator receiving the charges. Censure is a written warning advising that the individual has been judged guilty of conduct which violates the provisions of this document and that the individual must avoid a recurrence of conduct which violates the provisions of this document. Censure is an official warning and is not reported to external agencies as a University disciplinary action.

#### **B. Probation**

Probation may be imposed by the University Hearing Board or by the president upon the recommendation of the University Appeal Board, or in the event the accused waives the right to a hearing, by the administrator receiving the charges. Probation is a written warning indicating that the individual has been judged guilty of conduct which violates the provisions of this document. An individual on Probation who is charged with another violation of this document will be required to appear before the University Hearing Board or appropriate administrator for consideration of Separation or Dismissal from the University. (See IV.D.) Probation is an official warning and is not reported to external agencies as a University disciplinary action.

#### **C. Public Service and/or Educational Experience**

Assignment of hours of Public Service or Educational Experience may be imposed by the University Hearing Board, or by the president upon the recommendation of the University Appeal Board, or by the administrator receiving the charges. Public Service or Educational Experience may be within the University, or in the larger community. Such Public Service or Educational Experience should ideally bear some relationship to the offense committed. Documentation of successful completion of the assigned hours of Public Service or Educational Experience must be provided by the accused within a specified time period in the form of a written certification from the supervisor of the community or University organization/office where the service or Educational Experience was performed. An individual assigned Public Service and/or Educational Experience who fails to complete the assignment and provide documentation will be required to appear before the University Hearing Board or appropriate administrator for this violation and may be considered for Separation or Dismissal from the University. Public Service and/or Educational Experience is not reported to external agencies as a University disciplinary action.

#### **D. Separation and Dismissal**

Separation or Dismissal may be imposed by the University Hearing Board or by the president upon the recommendation of the University Appeal Board, or in the event the accused waives the right to a hearing, by the administrator receiving the charges. (See V.D.2.b.) Separation or

Dismissal may be imposed even though the violator has not previously received a Censure or been placed on Probation. Separation can be given for a definite period of time up to two years. A Dismissal will be for an indefinite period. (See IV.F.) If the accused is a faculty member, an administrator, or a classified or hourly employee, the Separation or Dismissal will be effected according to the conditions stipulated in the policies and contract under which the accused member is employed. Separation and Dismissal are University disciplinary actions which may be reported to external agencies.

#### **E. Interim Suspension**

Interim Suspension may be imposed as described in Section V.D.3.

#### **F. Reinstatement After Separation or Dismissal**

Only when a penalty of Separation has been removed by expiration or when Dismissal has been removed by action of the University Appeal Board may an individual petition the appropriate admissions committee or hiring agency for reinstatement. Faculty members and administrators separated for eight months or less will be automatically reinstated. In cases of Dismissal, the individual may, after two years, annually request the University Appeal Board to alter the penalty so as to allow the individual to apply for reinstatement to the University. Such individuals must meet all other University requirements and be judged competitively with other applicants before being reinstated. (See VI.A.3.)

#### **G. Penalties Against a Licensee or Invitee**

When the accused is a licensee, invitee, or visitor, authorization to remain on the campus or other facilities used by the University may be withdrawn, and he or she may be directed to leave the premises. Failure to leave or unauthorized return may subject the individual to applicable penalties under city, county, or state laws. A licensee, invitee, or visitor may petition the president of the University in writing to authorize a hearing before the University Hearing Board to determine whether there are proper and sufficient grounds for being excluded from University premises. The University Hearing Board shall present its recommendations directly to the president. There will be no further appeal.

#### **H. Restitution**

Restitution by the violator to the University or to members of the University community may serve, in certain instances, in lieu of or in addition to the application of the above penalties.

### **V. Procedures**

#### **A. Informal Complaint Option**

1. The Informal Complaint Option is intended to provide an opportunity for an informal resolution of a complaint by a member of the University community or a department or unit of the University against other member(s) of the University community. The administrator receiving the Informal Complaint serves as a neutral mediator to resolve the complaint, although the administrator receiving the Informal Complaint is authorized to take several

actions against the accused as specified below. Action taken through the Informal Complaint Option does not negate the right of the complainant to file a formal charge under the procedures specified in V.B.

2. Any member of the University community or a department or unit of the University may make an Informal Complaint about any other member(s) of the University community. All Informal Complaints involving charges of discrimination (III.A.1) or harassment (III.A.2) must be in writing and are filed with the assistant vice president for human resources. Informal Complaints not involving charges of discrimination or harassment must be in writing and are filed as follows:
  - a. Informal Complaints against the president shall be filed with the rector of the Board of Visitors
  - b. Informal Complaints against a student shall be filed with the dean of student affairs.
  - c. Informal Complaints against a faculty member (including academic department chairs) shall be filed with the academic dean of the accused faculty member.
  - d. Informal Complaints against a classified or hourly employee shall be filed with the assistant vice president for human resources.
  - e. Informal Complaints against an administrator shall be filed with the appropriate vice president or provost.
  - f. Informal Complaints against an administrator reporting to the president shall be filed with the president.
3. The administrator receiving the Informal Complaint shall conduct a confidential investigation by interviewing the individual(s) bringing the complaint and the individual(s) accused in the complaint. When necessary, the administrator also may interview other individuals who have direct and specific information regarding the behavior alleged in the complaint. At the discretion of the administrator receiving the Informal Complaint, staff members from other areas may assist with the investigation interviews, (e.g., a female staff member from the Division of Human Resources could assist with a complaint related to sexual harassment.)
4. As soon as reasonably possible after the conclusion of the interviews, the administrator shall schedule a joint conference involving the administrator, the individual(s) bringing the complaint and the individual(s) accused in the complaint. As appropriate, the administrator may suggest one or more of the following options resolve the complaint, such as:
  - a. Apologies, written or verbal.
  - b. Specific understandings for future contact and behavior between and among the parties involved in the Informal Complaint.
  - c. Specific actions intended to correct or compensate for the behavior alleged in the complaint.

If all parties to the complaint agree to the conditions of the options offered by the administrator, the complaint shall be considered resolved, notwithstanding the option of the complainant to bring charges as noted in V.A.1. The administrator shall prepare and maintain a memorandum to the file which summarizes the results of the investigation and the terms of the agreement to resolve the complaint.

5. If the options suggested in V.A.4 are not accepted by all parties to the complaint, or, if the administrator determines that the circumstances warrant further action, the administrator is authorized to take actions or penalties such as, but not limited to the following:
  - a. Issue a verbal or written warning to the accused member of the University community. Such a warning would inform the accused formally of the nature of the complaint, provide the name of the individual(s) bringing the complaint, provide an explanation as to why the behavior in question was unacceptable, and caution that further complaints could lead to more serious penalties.
  - b. Assign a Censure as described under IV.A.
  - c. Assign Public Service or Educational Experience as described under IV.C. d. Require Restitution as described under IV.H.
6. If the accused disagrees that an action or penalty is warranted, he or she may request, in writing, within 10 days, excluding weekends and official University holidays, of receipt of the notification of the decision of the administrator, that the administrator refer the case to the University Hearing Board. The administrator shall honor this request. During the hearing process, the accused has the same status as held prior to the action of the administrator.
7. Unless a penalty as specified under V.A.5.a.-d. is assigned, or unless the accused requests that the case be referred to the University Hearing Board, there will be no formal records maintained by the administrator regarding any Informal Complaint, except as provided in V.A.4.c. above.

## **B. Formal Charges**

1. Charges against an invitee, licensee, or any other person who is not a member of the University campus.

Any member of the University community may bring charges against an invitee, licensee, or any other violator who is not a member of the University community. Upon notification of such charge, the president of the University or a designee may inform the charged person that he or she is not authorized to remain on the University premises and may direct that person to leave. If the charged person refuses to leave, the president or designee may cause ejection from the University premises.

2. Charges against the president.

Any member of the University community may bring charges against the president of the University. These charges must be in writing and directed to the Board of Visitors of the University. The Board of Visitors shall adjudicate the charges as it deems proper.

3. Charges against other members of the University community.

Any member of the University community may bring charges against any other members of the University community. Such charges must be in writing and filed as follows:

- a. Charges against a student shall be filed with the dean of student affairs, except as provided in V.G.4.
  - b. Charges against a faculty member (including an academic department chair) shall be filed with the academic dean of the accused faculty member.
  - c. Charges against a classified or hourly employee shall be filed with the assistant vice president for human resources.
  - d. Charges against an administrator shall be filed with the appropriate vice-president or provost.
  - e. Charges against an administrator reporting to the president shall be filed with the president.
4. Charges may be brought by a department or unit of the University (for example, police department, University libraries, University Enrollment Services, etc.). In such cases, the unit head will designate a representative to act as accuser.
  5. In order to be considered, a charge must be brought within two years of the incident for which the charge is being brought.

### **C. Preliminary Evaluation of Charges**

The administrator with whom the charge is filed will determine within 30 calendar days of receiving a charge whether the charge warrants further investigation. If the administrator decides that the accusation should be dropped, he or she shall notify the individual who filed the charge. Should the individual filing the charge disagree with the administrator, he or she may request, in writing, within 10 working days, that the administrator refer the charge to a panel of three administrators designated to receive charges in V.B.3., one each to be selected by the administrator with whom the charge was filed, the accused, and the accuser. All such requests will be granted. Within 30 calendar days of the charge being referred to the panel, the panel shall review the charge and information, and direct the administrator either to terminate further action or proceed with an investigation in accordance with V.D.

### **D. Action by the Administrator**

If the administrator determines that the charge warrants investigation, he or she will appoint a designee to conduct one. The administrator shall provide written notification to both the accused and the accuser of the name of the appointed investigator. The accused, and the accuser, may request once each that the investigator be disqualified for bias or conflict of interest. To be considered, this request must be in writing and delivered to the administrator within seven (7) working days of notification. The administrator will then decide whether the investigator is to be disqualified, and his/her judgment is final. If a new investigator is appointed, the administrator shall provide written notification to both the accused and the accuser of the name of the new investigator. The administrator shall also provide written notification to the accused of the charges and who filed them. The investigator shall then consult with the accused and perform such fact finding activities as might be necessary. Both the accused and the accuser have the right to be accompanied by an adviser when meeting with the investigator and throughout the procedures described in this document. The administrator shall ensure that investigator's report is received, and one of the following actions is taken, within a reasonable period – and no later than one year – of decision to investigate:



1. If the administrator determines that action is not warranted, he or she shall, in writing, notify both the accused and the accuser. Should the accuser disagree with this decision, the accuser may request, in writing, that the administrator refer the charge and all information obtained by the investigator to a panel of three administrators designated to receive charges in V.B.3., one each to be selected by the administrator, the accused, and the accuser. All such requests will be granted. Within a reasonable period-and no later than six months-of the charge being referred to the panel, the panel shall review the charge and information obtained upon investigation by the administrator or by the panel (if it deems further investigation desirable), and direct the administrator either to terminate any action or proceed under V.D.2.
2. If the administrator decides that the charge warrants further action, he or she shall proceed by one of the following alternatives:
  - a. If the administrator determines that the charge has been substantiated, but is insufficient to cause Separation or Dismissal, he or she shall Censure, assign Public Service and/or Educational Experience, place the accused member on Probation, or any combination of these actions. If the accused member disagrees the penalty is warranted, he or she may request, in writing within 10 days of receipt of notification of the action, that the administrator refer the case to the University Hearing Board. The administrator shall honor this request.
  - b. If the administrator determines that the charge is of such nature that conviction would subject the accused member to possible Separation or Dismissal from the University, the administrator shall, except as immediately noted, refer the case to the University Hearing Board. If the accused states in writing that he or she waives the right to a hearing and agrees to accept the decision of the administrator without appeal, then the administrator will decide the case and appropriate penalty.
3. Interim Suspension
  - a. If the University president or designee determines that the presence of an accused member of the University community presents a serious and immediate threat to the University, the president or designee may immediately suspend that member, if this is permitted by the policies and contracts governing the accused.
  - b. The president or designee shall cause a hearing to be conducted within five days excluding weekends and official University holidays to determine the validity of the Interim Suspension and to determine if it should continue. Such hearing will be conducted within the University Hearing Board guidelines contained in V.F. and V.G. If the Interim Suspension is determined to be not valid, the accused shall be allowed to resume a customary and usual role within the University community without penalty.
  - c. If the Interim Suspension is continued, another hearing must be held to adjudicate the case no sooner than five days nor later than 10 days, excluding weekends and official University holidays, of the date of the Interim Suspension hearing. If the Interim Suspension is not continued, another hearing must be held to adjudicate the case as soon as possible.

## **E. University Hearing Board**

1. The University Hearing Board will be constituted annually at the beginning of the academic year and will consist of the following members:
  - a. A chair appointed annually by the president of the University. The chair shall be non-voting, except in the case of a tie vote.
  - b. Two students, only one of whom shall serve on a given case, as outlined below:
    - 1) A student from the Monroe Park Campus appointed annually by the Appointments Committee of the Student Government Association.
    - 2) A student from the Health Sciences Campus appointed annually by the VCU Medical Center Honor Council.
    - 3) If the accused has greater responsibility on the Monroe Park Campus, the student from the Monroe Park Campus will serve. If the accused has greater responsibility on the Health Sciences Campus, the student from the Health Sciences Campus will serve. Should the accused have equal responsibility on both campuses, either student will serve as decided by lot.
  - c. The president of the University Faculty Senate or his or her annually appointed designee from the Faculty Senate.
  - d. An administrator appointed annually by the president of the University.
  - e. A classified employee appointed by the senior vice president for administration.
  - f. Each appointing party will annually designate at least two alternates for each appointee.
2. Although every reasonable effort shall be made to have all members present, four members shall constitute a quorum provided that the representative of the peer group of the accused is present. The chair shall be counted in determining whether a quorum is present.
3. Annually, the chair of the University Hearing Board shall, at the beginning of the academic year and before hearings are conducted, schedule an orientation and training session for all members and alternates appointed to the University Hearing Board. Such training shall include a review of the procedures to be followed by the University Hearing Board in conducting hearings, together with such issues as confidentiality, sensitivity required for charges of sexual assault or rape, and other duties of board members.
4. The administrator overseeing the investigation, or his/her designee, and the investigator shall present to the University Hearing Board the findings and evidence establishing the charges against the accused.
5. Each member of the University Hearing Board, excluding the chair, except in the case of a tie (see E.1.a.) will have one vote as to the guilt or innocence of the accused on each charge and the decision will be determined by a simple majority.
6. On a finding of guilty, the University Hearing Board shall determine the punishment of the accused by majority vote.

7. At the conclusion of the hearing, the chair shall, in writing, notify the accused, the accuser, and the administrator receiving the charge of the decision of the University Hearing Board and return to the administrator all records and documents of the case and hearing.
8. In the case of an appeal, the chair of the University Hearing Board will have access to all records and documents and copies when needed to prepare and present the findings of the University Hearing Board to the University Appeal Board.
9. Service on the University Hearing Board
  - a. If any one of the members of the University Hearing Board cannot continue in that position, the alternate shall serve as a replacement, and a new alternate shall be appointed by the appointing party.
  - b. If a member of a University Hearing Board cannot serve on a particular case, his or her alternate will serve. If the alternate cannot serve, the chair of the University Hearing Board must ask the appointing party to appoint a substitute for that particular case. (See V.E.2.)
  - c. If the chair cannot serve on a particular case, the alternate chair will serve.

## **F. Hearings and Procedural Due Process**

Preparations and hearings shall proceed as follows:

1. The chair of the University Hearing Board shall notify the accused and the accuser, in writing, of the nature of the charge(s), who filed the charge(s), a brief description of the circumstances of the charge(s), and the penalties to which the accused may be subject if found guilty. The chair shall also provide written notification to both the accused and the accuser of the names of the University Hearing Board members that will hear the case.
2. The accused and the accuser upon request will each be permitted to review the evidence and obtain copies of the records and documents at a reasonable cost.
3. The hearing must be held no sooner than five days and no later than 10 days, excluding weekends and official University holidays, from the date of notification of the hearing. At the request of the accused and with the agreement of the chair of the University Hearing Board, a hearing may be held sooner than five days.
4. Either the accused or the accuser may request postponement of the hearing. The chair of the University Hearing Board may grant postponement for a reasonable period of time, but is not required to do so.
5. The University Hearing Board will develop a hearing format and the accused and the accuser shall be informed of such at the time of notification of the hearing.
6. The hearing format must provide for the following:
  - a. The hearing will be open to the University community (open hearings do not require that a large number of persons be accommodated) unless:

- 1) The accused requests a closed hearing.
  - 2) The accused requests a closed hearing except for a few observers of his or her choice. (The number shall be determined by the chair).
  - 3) The chair closes the hearing because of disruptions.
  - b. The accused and the accuser each may be accompanied in the hearing - even if closed - by an adviser of his or her choice and may consult with the adviser throughout the hearing. The role of the adviser is limited to consultation with the advisee (e.g., the adviser may not call or question witnesses).
  - c. The accused and the accuser each will be given the opportunity to hear the evidence presented, to present witnesses (including themselves) and to cross-examine all witnesses who testify. For cause, the chair may permit both the accuser and the accused to provide testimony in closed session.
  - d. The accused may reserve the right to remain silent.
7. Within five days, excluding weekends and official University holidays, of the conclusion of the hearing, the chair of the University Hearing Board, shall, in writing, notify the accused, the accuser, and the administrator receiving the charges of the decision. Other notifications shall be made in accordance with VI.B.
  8. A record will be made of the proceedings.
  9. Upon request, the accused and the accuser shall have the right to view all records and documents pertaining to the hearing and shall be furnished copies of such records and documents at a reasonable cost.
  10. The accused - but not the accuser - may appeal the University Hearing Board decision to the University Appeal Board. See V.H.4.
  11. Members of the University Hearing Board shall hold all specific information regarding hearings and deliberations confidential.

#### **G. Other Considerations for University Hearings**

1. If the accused refuses to participate or fails to appear at a hearing, the University Hearing Board will hear the case on the basis of the evidence accumulated as a result of the investigation.
2. If the accused refuses to participate or fails to appear, the accused's adviser shall not be permitted to participate beyond a brief opening statement.
3. If the accused member terminates his or her relationship with the University prior to the hearing, the University Hearing Board shall have the option of conducting a hearing, with the accused present if possible.
4. If the accused is a faculty member, the academic dean involved, in consultation with the chair of the University Hearing Board, may determine that the charges are more appropriate to resolution by the Faculty Grievance Procedure.

5. If the accuser is a non-probationary classified employee and the issue raised is one that would qualify as "grievable" under the State's Employee Grievance Procedure, the assistant vice president for human resources, with the consent of the accuser, may refer the case through the State's Standards of Conduct and/or Employee Grievance Procedure. Actions and procedures under this document shall not limit the employee's rights as provided by the Virginia Personnel Act and Employee Grievance Procedure.
6. The president of the University shall appoint additional ad hoc hearing boards and appeal boards if required in emergency situations. Such boards shall follow the same procedures and have the same representative composition as the annually constituted boards.

## **H. Appeal**

1. The accused has a right to appeal a University Hearing Board finding of guilt as per section V.H.4. of this document. A written appeal must be delivered in person or by certified mail to the chair of the University Appeal Board, or designee, within 10 days, excluding weekends and official University holidays, of receipt of the notification of the action of the University Hearing Board. The appellant must state as clearly and as fully as possible the reasons for seeking modification of the decision.
2. The chair of the University Appeal Board shall provide written notification to both the accused and the accuser of the names of the University Appeal Board members who will hear the case.
3. In considering an appeal, the University Appeal Board shall consider only the following issues:
  - a. Whether the original board's process was conducted fairly and in accordance with prescribed procedures.
  - b. Whether there is new evidence or relevant information not available at the time of the original hearing that, if consequential, shall result in a remanding of the case to the original board.
  - c. Whether the original decision is supported by substantial evidence.
  - d. Whether the University regulations alleged to have been violated were properly interpreted or applied by the original board.
  - e. Whether the sanction imposed was proportionate to the gravity of the misconduct.
4. During the appeal process the accused has the same status as he or she had prior to the finding of guilty. An individual on Interim Suspension will remain on Interim Suspension during the appeal process. An individual who has been separated (suspended) or dismissed by the University Hearing Board or other duly authorized board or Honor Council shall, following a recommendation to the University Appeal Board and a decision by the president to uphold said penalty, be separated or dismissed from the University effective as of the date of the initial decision of the University Hearing Board or other duly authorized board or Honor Council.
5. The University Appeal Board will be constituted and shall consist of the following:

- a. A student. If the case arises from the Health Sciences Campus, a student annually appointed by the Executive Council of the Health Sciences Student Government Association will serve. If the case arises from the Monroe Park Campus, a student annually appointed by the University Appointments Committee of the Student Government Association will serve.
  - b. A faculty member. The Faculty Senate will choose one faculty member from the Health Sciences Campus and one faculty member from the Monroe Park Campus. Only the member from the campus of the accused will serve at the appeal hearing.
  - c. A classified or hourly employee appointed by the senior vice president for administration.
  - d. An administrative officer jointly appointed by the vice-president for academic affairs and the vice-president for health sciences.
  - e. A chair appointed by the president of the University from among the full-time faculty. The chair shall vote only in case of a tie.
  - f. The administrative officer, the classified or hourly employee, and the chair must provide representation from both campuses.
  - g. No one who serves on a University Hearing Board, or the Honor Councils, shall also serve on the University Appeal Board. Nor shall an University Appeal Board for faculty, administrators, or staff include any division chair, departmental chair, dean, or vice-president under whom the accused serves.
  - h. Each appointing party shall annually designate at least two alternates for each appointee who will serve when the appointee is not available or has disqualified himself or herself.
  - i. Although every reasonable effort shall be made to have all members present, three members plus the chair shall constitute a quorum, provided that a representative of the peer group of the accused is present.
  - j. If a member cannot continue to serve, the chair of the University Appeal Board shall request the original appointing party to make a new appointment. If a member of the University Appeal Board cannot serve on a particular case, an alternate will serve. If no alternate can serve, the chair will ask the appointing party to appoint a substitute for that particular case. If the chair or alternate cannot serve on a particular appeal, the president shall appoint a substitute.
  - k. Annually, the chair of the University Appeal Board shall, before appeals are considered, schedule an orientation session for all members and alternates appointed to the University Appeal Board. Such orientation shall include a review of the procedures to be followed by the University Appeal Board in conducting appeals, together with such issues as confidentiality and other duties of board members.
6. The University Appeal Board may remand a case, dismiss some or all of the charges, affirm the decision of the University Hearing Board, other duly authorized board, or the Honor Councils, or reduce the penalty imposed. In no event may an appeal result in the imposition of a more severe penalty for the accused.
  7. When hearing an appeal from the Honor Council or an all-Monroe Park Campus judicial system or other procedures authorizing such appeal, the University Appeal Board shall take into consideration the provisions, procedures, and sanctions of the document from which the appeal arose.

8. The decisions of the University Appeal Board will be reached by a simple majority vote and shall be presented to the president, or designee, as a recommendation within three days, excluding weekends and official University holidays, from the completion of the appeal hearing. The president, or designee, shall make his/her decision after reviewing the recommendations and supporting material. The decision of the president, or designee, is final. The decision will be relayed to the accused member, the University Hearing Board, or Honor Council, and the accused member's dean or supervisor within 10 days, excluding weekends and official University holidays, after receipt of the recommendation of the University Appeal Board.
9. Members of the University Appeal Board shall hold all specific information regarding appeals and deliberations confidential.

## **I. Additional Appeals**

1. Actions and procedures under this document shall not limit the classified or hourly employees' rights as stated in the Virginia Personnel Act.
2. A tenured faculty member may appeal a decision of Dismissal by the University Hearing Board to the University Promotion and Tenure Appeal Panel as provided in Section VII.B.2. of the Faculty Promotion and Tenure Policies and Procedures. Appeals must be filed within 15 working days of notification.

## **VI. Records and Release of Information**

### **A. Records**

1. If the administrator who initially received a charge determines that no action is warranted, and if after a reasonable period there is no appeal of this decision, all records and documents shall be returned to the individuals or agencies which supplied them. The administrator shall destroy all remaining records pertaining to the charge and its description. The same will be done if a hearing or an appeal results in an acquittal.
2. All records of Censure and Probation will be kept for five years and then destroyed except as provided in VI.A.3. If an individual receives additional sanctions (Censure and Probation) during this five-year period, records of all violations of these provisions will be retained until there is a period of five years following the most recent sanction. They shall be retained by the administrator who initially received the charges, with sufficient safeguards to ensure confidentiality.
3. If an individual is separated or dismissed, complete records of the proceedings and all pertinent documents, including any records of previous censures or probations, shall be permanently maintained by the administrator who initially received the charges with sufficient safeguards to ensure their confidentiality.

4. A student's academic transcript will indicate any action which prohibits readmission as long as the prohibition is in effect. This means that once a penalty of Separation has been removed by expiration or a Dismissal by action of the University Appeal Board, the notation will be removed from the academic transcript by action of the administrator who initially received the charges. The records for classified employees will be dealt with in accordance with applicable State policies. All records for faculty will be dealt with in accordance with the Promotion and Tenure Policies and Procedures and the Faculty Grievance Procedures. (See IV.F.)

## **B. Release of Information**

1. Information relative to a case or subsequent penalties shall be released to members of the University on a need-to-know basis. The administrator directly in charge of the above records (See VI.A.3.) shall determine need-to-know.
2. When a student is found guilty, the dean of the school in which the student is enrolled will be notified of the action taken. When the student is separated, or is dismissed, the director of academic records will be notified to withdraw the student and make an appropriate notation on the academic transcript.
3. When an employee is found guilty, the assistant vice president for human resources will be notified of the action taken.
4. The individual or agency which initiated a charge under this document will be notified of subsequent acquittals or penalties. Notices of such actions shall include a statement of confidentiality and a request for care in the security of the information.
5. Release of information not covered under VI.B. shall be only with written consent of the member adjudicated, or as required by law.

## **VII. Implementation**

### **A. Coordination and Orientation**

The president or his or her designee shall be responsible for coordinating the provisions of this document and will provide orientation and training for those with identified functions under this document.

### **B. Enabling Clause**

This document replaces and supersedes the Virginia Commonwealth University Rules and Procedures effective January 8, 1979. Records created or sanctions imposed under previous documents will be continued, amended, stored, or destroyed as appropriate to conform to the provisions of this document.

### **C. Revisions**



The president of the University may establish an ad hoc committee to recommend specific changes or to undertake a general revision of this document. Any member of the University community, either singly or in concert with others, has the right to petition the president in this regard.

**Revision approved by the University Council: May 6, 2004**

**Revision approved by the Board of Visitors: May 21, 2004**

**Effective: August 26, 2004**