

EXISTING RULE:

26. Student Conduct Proceedings

(Revised: 2004)

26.1 The following rights apply to a student conduct proceeding that might result in expulsion, dismissal or suspension. Accused students subject to less severe sanctions may, at the discretion of the hearing officer(s), be afforded but are not guaranteed the following rights:

26.1.1 Right to be informed in writing of all charges at least three class days before any hearing may proceed.

26.1.2 Right to waive the three-day notice of charges.

26.1.3 Right to reasonable access to the case file, which shall be maintained by Student Conflict Resolution Services or, if the student is a member of the Corps of Cadets, the Office of the Commandant.

26.1.4 Right to know that there will be no finding of responsibility solely because a student remains silent during conduct proceedings.

26.1.5 Right to have one person serve as a personal advisor/counselor to consult during the student conduct proceedings. (Students who are charged in the same fact pattern, or who are not in good standing with the university are not eligible to serve as an advisor/counselor at conduct proceedings). A personal advisor or counselor (who may be an attorney) may appear at student conduct proceedings with the accused student to provide advice, but may not represent the accused student or directly question or cross-examine witnesses, except in a case where the university is represented by an attorney. There is no restriction on who a student may consult or seek advice from, the restriction pertains to the student conduct proceedings only.

26.1.6 Right to question witnesses.

26.1.7 Right to review all evidence.

26.1.8 Right to present witnesses. (Character witness information shall be accepted in written form only.)

26.1.9 Right to request an open proceeding. (See 26.7)

26.1.10 Right to a written statement of the outcome of the proceeding.

26.1.11 Right to request the university make an audio recording of the student's own proceedings at the student's expense. The record will then become part of the student's conduct file.

26.1.12 Right to appeal the decision through the appropriate university channels. (See [Part III](#), sections [58](#) and [59](#)) A student subjected to any minor disciplinary sanction shall have the right to an appropriate administrative appeal. For members of the Corps of Cadets, appeals of disciplinary sanctions assigned by the Corps will be reviewed by the commandant, or designees.

26.2 The following rights apply to the alleged victim of sexual misconduct in student conduct proceedings:

26.2.1 Right not to have to be in attendance at the student conduct proceeding.

26.2.2 Right to submit a victim impact statement that details the alleged consequences suffered by the victim.

26.2.3 Right to have a personal advisor/counselor accompany her/him during the student conduct proceeding. (Students who are charged in the same fact pattern, or who are not in good standing with the university are not eligible to serve as an advisor/counselor at conduct proceedings). An attorney may appear at a student conduct proceeding with the alleged victim to provide advice, but may not represent the alleged victim or directly question or cross-examine witnesses, except in a case where the university is represented by an attorney.

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- 26.2.4 Right to request immediate on-campus housing relocation (based on available space), transfer of classes or other steps to prevent unnecessary or unwanted contact or proximity to the accused, when such contact is likely to place the alleged victim in danger of bodily injury and/or cause the alleged victim severe emotional distress.
- 26.2.5 Right to be informed of the outcome of the hearing upon request. The proceedings and outcome of all student conduct proceedings are considered confidential information in accordance with the Family Educational Rights and Privacy Act of 1974. Such information should not be otherwise re-disclosed unless the student conduct proceeding has been declared open.
- 26.2.6 Right to not have her/his past behavioral history discussed during the student conduct proceeding. Questions of relevancy shall be determined by the hearing officer.
- 26.2.7 Right to request the university make an audio recording of the accused student's proceedings at the alleged victim's expense. The record will then become part of the accused student's conduct file.
- 26.3 The focus of inquiry in student conduct proceedings shall be the determination of whether a violation of university rules occurred. Student conduct proceedings shall be informal in nature and need not comply with the formal processes associated with the criminal and civil courts, nor shall deviations from prescribed procedures necessarily invalidate a decision or proceeding unless significant prejudice to the student or university may result.
- 26.4 In all student conduct proceedings, the accused shall be presumed not responsible until it is proven that a violation of university rules occurred.
- 26.5 In all initial student conduct proceedings, the burden of proof shall rest with those bringing the charges, and said burden of proof shall be by a preponderance of the evidence. Preponderance of the evidence is defined as the greater weight and degree of credible evidence admitted in the hearing.
- 26.6 A student may not be expelled, dismissed or suspended prior to a student conduct proceeding except when the Dean of Student Life or, if the student is a member of the Corps of Cadets, the commandant, believes that the presence of a student on campus poses a continuing danger to persons or property or presents a threat of disrupting the academic process, an interim suspension may be imposed. A student conduct proceeding will be scheduled as soon thereafter as practicable.
- 26.7 An open hearing may be held only if all students involved provide written consent to disclose any and all information which might be released from their educational record during the course of the hearing. Final determination shall be at the sole discretion of the hearing officer(s).
- Student conduct sanctions are categorized as primary and secondary. More than one primary sanction or any combination of primary sanctions and secondary sanctions may be imposed for any single violation. Once a student has been finally assessed a disciplinary sanction, however, no more severe primary sanctions may be assessed against him or her by any higher university authority.

RULE CHANGES:

<http://student-rules.tamu.edu/rule26>

JUSTIFICATION FOR PROPOSED CHANGE:

1. The changes to content of the Student Rules being proposed are a reflection of national best practices, most notably referencing the *21st Century Model Student Conduct Code* (Stoner, E. & Lowery, J., 2004) and the *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education* (45 F.R.D. 133). This General order is recommended reading to anyone seeking to understand the relationship between judicial systems and campus systems regulating student conduct
2. Texas A&M University was involved in litigation over the University's Student Rules in one particular case until appeals were exhausted at the Supreme Court level in spring 2010. The Student Rules were not to be altered in any way until this litigation was resolved.
3. The U.S. Department of Education, through its Office of Civil Rights, issued a "Dear Colleague Letter" on April 4, 2011 providing guidance in procedures in dealing with cases of sexual harassment and sexual violence throughout institutions of education (this includes K-12).

4. There were a number of grammatical and punctuation changes made as well as changes made for consistency of language used in higher education conduct proceedings versus legal system language.

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Approved by Student Rules and Regulations Committee: 4/20/12

Approved by Faculty Senate: 11/12/12

Approved by President: 12/21/12