

MEMORANDUM

DATE: July 13, 2018

TO: Julie Harlin
Speaker, Faculty Senate

FROM: Dr. Anne Reber
Chair, Rules and Regulations Committee

SUBJECT: Proposed Revisions to the Texas A&M Student Rules

Attached please find proposed revisions to the Texas A&M University Student Rules as approved by the Rules and Regulations Committee. These changes are for the following section:

Change to **Rule 26 Student Conduct Proceedings**

Approved by the Student Rules & Regulations Committee on July 13, 2018.

Approved by the Faculty Senate on August 13, 2018.

Approved by the President on September 4, 2018.

PROPOSAL

Please see attached rule for extensive changes

JUSTIFICATION

Through ongoing review of legislation, guidance, best practices, and recommendations/suggestions from audits, the attached rule revisions provide greater clarity for stakeholders. Additions and edits are consistent with existing practice and definitions provided in existing rules and policies in other locations.

PROPOSED BY:

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Date:	July 3, 2018

Rule 26. Student Conduct Proceedings

(Revised: ~~2015~~ 2018)

All charges shall be presented to the accused student in written form. The accused student will be given at least three (3) University business days to prepare for a conference. In all student conduct proceedings, the accused student shall be presumed not responsible until it is proven that a violation of the University rules occurred by a preponderance of the information standard.

26.1. Student Conduct Conferences which may result in University mandated separation from the University shall be conducted by the following guidelines. Accused students subject to less severe sanctions may, at the discretion of the Student Conduct Administrator, be afforded but are not guaranteed the same guidelines. These guidelines are as follows:

26.1.1. Student Conduct Conferences typically ~~shall~~ **will** be conducted in private and may involve joint conferences where two or more students are charged in the same fact pattern.

26.1.2. The accused student and ~~his/her~~ **the accused student's** advisor, if any, shall be allowed to attend the entire portion of the student conduct conference at which information is received (excluding deliberations) provided the accused student and ~~his/her~~ **the accused student's** advisor appear at the designated time and do not inhibit the proceeding. Admission of any other person to the student conduct conference shall be at the discretion of the Student Conduct Administrator.

26.1.3. In student conduct conferences involving more than one accused student, the Student Conduct Administrator, at ~~his or her~~ **the Student Conduct Administrator's** discretion, may permit the student conduct conferences concerning each student to be conducted either separately or jointly.

26.1.4. There will be no finding of responsibility solely because a student remains silent during a student conduct conference.

26.1.5. The accused student has the opportunity to be assisted by an advisor ~~s/he~~ **the accused student** chooses, at ~~his/her~~ **the accused student's** own expense.

26.1.5.1. The advisor may not be an attorney unless the accused student is also the subject of a pending subsequent criminal matter arising out of the same circumstances ~~or the charges include one or more charge of sexual harassment, sexual misconduct, dating violence, domestic violence, or stalking~~; in such cases, the accused student may be allowed to have an attorney serve as ~~his/her~~ **the accused student's** advisor, at his/her own expense, to behave in the same manner as any other advisor.

26.1.5.2. 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 at conduct proceedings.

26.1.5.3. The advisor may not be a witness or otherwise have any conflicting role in the process.

26.1.5.4. During the process, the advisor may not actively participate, directly address an involved university official, or advocate on behalf of the student.

The ~~A~~ accused student is **are** responsible for presenting ~~his/her~~ **their** own information. Therefore, a student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the student conduct conference. Student conduct conferences will not typically be delayed due to scheduling conflicts of an advisor. There is no restriction on who a student may consult or seek advice from, the restriction pertains to the conduct conference only.

26.1.6. The accused student and the Student Conduct Administrator may arrange for witnesses to present pertinent information to the Student Conduct Panel. Witnesses may provide this information to and answer questions from the Student Conduct Panel, Student Conduct Administrator ~~and~~, accused student **and/or in cases involving one or more charges that include sexual harassment, sexual misconduct, dating violence, domestic violence, stalking, or retaliation for a report of one of these rules, the complainant.** (Character statements shall be accepted in written form only.) **In cases involving one or more charges that include sexual harassment, sexual misconduct, dating violence, domestic violence, stalking, or retaliation for a report of one of these rules, the accused student shall have the opportunity to submit an impact statement detailing the alleged consequences suffered by the accused student.**

26.1.7. An advisor, witness, or other participating party who is verbally abusive, disruptive to the process, or persists in trying to inappropriately and substantively participate in the process after being warned to cease and desist may be asked to leave and may be precluded from attendance at future meetings. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor.

26.1.7**8.** Pertinent records, exhibits, student impact statements and other written statements may be accepted as information for consideration by a Student Conduct Panel at the discretion of the chairperson. Student impact statements and other documents determined at the discretion of the chairperson shall be reviewed by the Student Conduct Panel during the sanction phase only.

26.1.8**9.** All procedural questions are subject to the final decision of the chairperson of the Student Conduct Panel.

26.1.9**10.** After the portion of the Student Conduct Conference concludes in which all pertinent information has been received, the Student Conduct Panel shall deliberate in private to determine whether the accused student has violated each section of the student conduct code for which the student is charged.

26.1.10**11.** The focus of inquiry in student conduct proceedings shall be the determination of whether a violation of University rules occurred. In all initial student conduct proceedings, the burden of proof shall rest with the University, and said burden of proof shall be by a preponderance of the information. Preponderance of the information is defined as the greater weight and degree of credible information admitted in the conference. The Student Conduct Panel's determination shall be made on the basis of whether it is more likely than not that the accused student violated the Student Conduct Code.

26.1.12. The accused student shall be informed of the outcome of the Student Conduct Conference.

26.1.4+13. There shall be a single verbatim record, such as a tape or digital recording, of all student conduct conferences before a Student Conduct Panel. Deliberations shall not be recorded. The record shall be the property of the University.

If an accused student with notice, does not appear at a student conduct conference, the information in support of charges shall be presented, considered, and a decision may be made. The Student Conduct Panel may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the conference. There is no entitlement to these accommodations and they shall be determined by the Student Conduct Administrator. The Student Conduct Administrator may also make reasonable accommodations to provide access for students with disabilities.

26.2. The following guidelines, **in addition to those referenced in 26.1 as applicable**, apply to ~~S~~student ~~C~~onduct ~~C~~onferences in cases of alleged sexual misconduct, sexual harassment, dating violence, domestic violence, ~~or~~ stalking, **or retaliation for a report of one of these rules**. (For Student Rule section 26.2 only, “**complainant**” means any person who is the alleged recipient of alleged behaviors concerning sexual misconduct, sexual harassment, dating violence, domestic violence, or stalking that are currently under review by the Offices of the Dean of Student Life):

26.2.1. ~~The complainant shall not be required to attend the student conduct conference.~~ **Student Conduct Conferences typically will be conducted in private and may involve joint conferences where two or more students are charged in the same fact pattern. Complainants shall only be privy to information pertaining to related charges of sexual misconduct, sexual harassment, dating violence, domestic violence, stalking, or retaliation for a report of one of these rules unless the accused student authorizes release of the accused student’s student record related to other charges.**

26.2.2. ~~The complainant shall have the opportunity to submit an impact statement detailing the alleged consequences suffered by the complainant.~~ **The complainant, complainant’s advisor, if any, and accused student, and accused student’s advisor, if any, shall be allowed to attend the entire portion of the student conduct conference at which information is received (excluding deliberations) related to charges of sexual misconduct, sexual harassment, dating violence, domestic violence, stalking, or retaliation for a report of one of these rules provided the parties appear at the designated time and do not inhibit the proceeding. Admission of any other person to the student conduct conference shall be at the discretion of the Student Conduct Administrator. The complainant shall not be required to attend the student conduct conference.**

26.2.2.1 The complainant and the accused student will not be required to be physically present in the same room during the student conduct conference should either party request that they be separated.

26.2.3. ~~The complainant has the right to be assisted by an advisor s/he chooses, at his/her own expense. In such cases, the complainant may be allowed to have an attorney serve as his/her advisor, at his/her own expense, to behave in the same manner as any other advisor. Students who are involved in the same fact pattern, or who are not in good standing with the University are not eligible to serve as an advisor at conduct proceedings. The complainant is responsible for presenting his/her own information. Therefore, a student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the student conduct conference. Student conduct conferences will not typically be delayed due to scheduling conflicts of an advisor.~~

The complainant and accused student have the right to be assisted by an advisor of their choice, at their own expense.

26.2.3.1. In such cases, the complainant and/or accused student may be allowed to have an attorney serve as their advisor, at their own expense, to behave in the same manner as any other advisor.

26.2.3.2. Students who are involved in the same fact pattern, or who are not in good standing with the University are not eligible to serve as an advisor at conduct proceedings.

26.2.3.3. The advisor may not be a witness or otherwise have any conflicting role in the process.

26.2.3.4. During the process, the advisor may not actively participate, directly address an involved university official, or advocate on behalf of the student.

The complainant and accused student are responsible for presenting their own information. Therefore, a complainant and accused student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the Student Conduct Conference. Student Conduct Conferences will not typically be delayed due to scheduling conflicts of an advisor. There is no restriction on who a complainant or accused student may consult or seek advice from, the restriction pertains to the student conduct conference only.

~~26.2.4. The complainant shall have the opportunity 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 student, when such contact is likely to place the complainant in danger of bodily injury and/or cause the complainant severe emotional distress.~~ **The complainant, accused student, and/or Student Conduct Administrator may arrange for witnesses to present pertinent information during the student conduct conference. Witnesses may provide this information to and answer questions from the Student Conduct Panel, Student Conduct Administrator, accused student, and/or complainant. (Character statements shall be accepted in written form only.) The complainant shall have the opportunity to submit an impact statement detailing the alleged consequences suffered by the complainant.**

26.2.5. The complainant, or, **upon request, the** surviving family member if the complainant dies as a result of the alleged misconduct, shall be informed of the outcome of the student conduct conference ~~upon request~~. The proceedings and outcome of all student conduct conferences are considered confidential information in accordance with the Family Educational Rights and Privacy Act of 1974. Such information should not be otherwise re-disclosed.

26.2.6. An advisor, witness, or other participating party who is verbally abusive, disruptive to the process, or persists in trying to inappropriately and substantively participate in the process after being warned to cease and desist may be asked to leave and may be precluded from attendance at future meetings. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor.

~~26.2.67. The complainant shall have the right to not have her/his past behavioral history discussed during the student conduct conference. Questions of relevancy shall be determined by the chairperson.~~ **As a general matter, the complainant's past behavioral history (including sexual history) is irrelevant and will not be discussed**

in the Student Conduct Conference. Similarly, the accused student's past behavioral history (including sexual history), unless a part of the accused student's student file, is irrelevant and will not be discussed in the student conduct conference. However, the chairperson may permit information of past behavioral history in rare circumstances where the information is significantly useful in making a relevant disputed fact more or less true, and its value is not substantially outweighed by concerns of unfair prejudice and/or confusion.

26.2.78. In conduct conferences which may result in a University mandated separation from the University for the accused student, there shall be a single verbatim record, such as a tape or digital recording, of all student conduct conferences before a Student Conduct Panel. Deliberations shall not be recorded. The record shall be the property of the University.

26.3. Appeals

The decision as to which procedure to utilize for a grievance filed by a student shall be made solely by the University and shall be based on the fact pattern of each particular case.

A decision reached by the Student Conduct Panel or a sanction imposed by the Student Conduct Administrator may be appealed by the accused student(s), or in cases of sexual misconduct, sexual harassment, dating violence, domestic violence, or stalking the complainant, to an appeal panel within five (5) University business days of the decision. Such appeals shall be in writing and shall be delivered to the coordinator of the appeals process or his/her designee.

Rules regarding the Student Conduct Code and related actions are listed in Part III, Student Life Rules, Grievance Procedures (See sec. 51). An appeal panel may uphold the sanction(s) imposed by the original Student Conduct Panel and/or Student Conduct Administrator or the appeal panel may modify the sanction(s) imposed by the original Student Conduct Panel and/or Student Conduct Administrator. If sufficient information is presented that may have materially altered the decision of the original conference and was not or could not have been known at the time of the original conference, the appeal panel may require that the case be heard again by a Student Conduct Panel administered by the Offices of the Dean of Student Life.

Following an appeal, the matter shall be considered final and binding upon all involved.

26.4. An open conference 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).