



# University Conduct Board Member Handbook

Office of Judicial & Mediation Services

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# CLARION UNIVERSITY

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# PHILOSOPHY AND GOALS OF THE UNIVERSITY JUDICIAL SYSTEM

## PHILOSOPHY

Freedom to teach and freedom to learn are inseparable facets of academic conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the university community.

*Student Rights, Regulations, and Procedures Handbook*

## GOALS OF DISCIPLINE

In working with each student, we have several goals which focus on the individual. Our discipline interventions are intended to increase a student's:

1. awareness of personal behavior;
2. awareness of the impact of that behavior upon others;
3. awareness of the impact of that behavior upon self;
4. awareness of options and alternative behaviors;
5. problem-solving skills;
6. sense of responsibility for their actions; and
7. self-concept.

# ASSOCIATION OF STUDENT CONDUCT ADMINISTRATION (ASCA) STATEMENT OF ETHICAL PRINCIPLES AND STANDARD OF CONDUCT

## PREAMBLE

The Association for Student Conduct Administrators (ASCA) is an organization of professional educators, many of whom hold responsibility for administering standards of student conduct within colleges and universities. The membership of ASCA believes that a primary purpose for the enforcement of such standards is to maintain and strengthen the ethical climate and to promote the academic integrity of our institutions. Clearly articulated and consistently administered standards of conduct form the basis for behavioral expectations within an academic community. The enforcement of such standards should be accomplished in a manner that protects the rights, health and safety of members of that community so that they may pursue their educational goals without undue interference.

As a means of supporting our individual commitments to fairness, honesty, equity, and responsibility, the members of ASCA subscribe to the following ethical principles and standards of conduct in their professional practice. Acceptance of membership in ASCA signifies that the individual member agrees to adhere to the principles in this statement.

### **Professional Responsibility**

Members have a responsibility to support both the general mission and goals of the employing institution and the rights, privileges, and responsibilities of the students within that institution.

### **Employment Obligations**

Acceptance of employment at an institution of higher education requires that members accept the general mission and goals of the institution and agree to adhere to the terms and conditions of the employment contract or letter of agreement for employment.

### **Legal Authority**

Members respect and acknowledge all lawful authority and refrain from conduct involving dishonesty, fraud, deceit, misrepresentation, or unlawful discrimination.

### **Nondiscrimination**

Members shall conduct their professional duties and responsibilities in a manner that complies fully with applicable law and demonstrates equal consideration to individuals regardless of status or position.

### **Treatment of Students**

Members shall treat all students with impartiality and accept all students as individuals, each with rights and responsibilities, each with goals and needs; and seek to create and maintain a campus climate in which learning and personal growth and development take place.

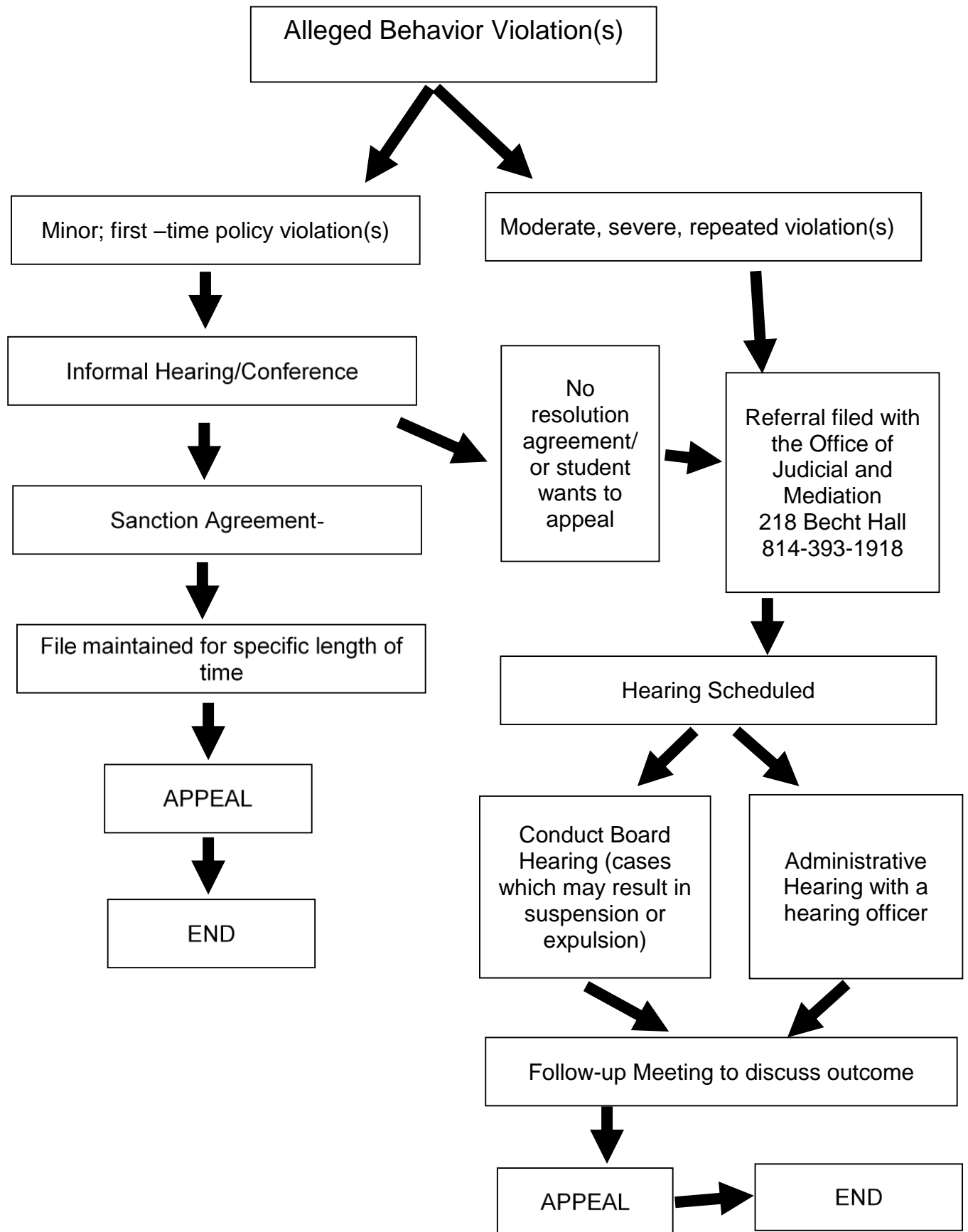
### **Development of Rules, Procedures, and Standards**

Members shall strive to ensure that rules, procedures, and standards for student conduct meet legal requirements for substantive and procedural due process and reflect the general mission and goals of the institution.

### **Student Behavior**

Members shall demonstrate and promote responsible behavior and seek to enhance the responsibility that each student takes for their own actions.

# JUDICIAL PROCESS FLOW CHART



# CONDUCT BOARD

## DUTIES OF THE CONDUCT BOARD CHAIR

In most cases, senior members of the university community who have served on UCBs in the past will serve as conduct board chair.

### **I. Preparations Prior to the Date of the Board Hearing**

1. The chair shall review the judicial file completely and check with the coordinator to ensure that all hearing participants have been properly notified of the hearing.
2. The chair shall discuss any questions or concerns with the coordinator of Judicial Affairs and Residence Life Education.
3. The coordinator and chair shall prepare the introductory script for the conduct board.

### **II. Briefing the Conduct Board Prior to the Hearing**

1. The coordinator shall ensure that the hearing room is set up appropriately.
2. The coordinator shall ensure that the tape recorder is functioning properly.
3. The coordinator shall facilitate introductions among board members as they arrive.
4. The chair shall provide background information on the case and answer any questions by board members.
5. The chair shall review the board's purpose and review acceptable versus unacceptable questions, the facts to be determined, and general hearing procedures.

### **III. Conducting the Hearing**

1. The chair shall identify all hearing participants and instruct them regarding the seating arrangements.
2. The chair shall begin audio taping. The chair shall ask board members to introduce themselves and ask the accused student(s), witnesses, and advisers to introduce themselves, and provide participants with a copy of the "Oath Signature Form." On the record, the chair shall ask the accused if she/he has any objection to the membership of the Conduct Board. If an objection is voiced, the chair shall request a rationale and then decide if an adjustment to the board membership is warranted.
3. The chair shall read the introductory statement, which includes having the hearing participants other than the board members read and sign an "Oath Signature Form." The chair shall respond to any questions or concerns regarding procedure.
4. Throughout the hearing, the chair shall ensure that established procedures are followed. The chair shall rule on any objections and shall determine if questions are relevant and appropriate.
5. The chair shall determine the need for breaks as the hearing progresses.
6. Before dismissing the accused student(s), the chair shall discuss for the record: the approximate time the student can expect a decision, the basic process of submitting an appeal, and ask the student(s) if they have any final statements for the record.

#### **IV. Facilitating the Deliberations of the Conduct Board**

1. The chair shall instruct the board to review each allegation separately and determine if the accused student is “in violation” or “not in violation,” using “more likely than not” as standard of evidence. The chair shall remind the board that all decisions shall be reached by majority vote. Generally, the student board members should be asked prior to the faculty representatives.
2. If the board finds the accused student “in violation” of one or more regulations, the chair shall instruct the board to determine appropriate sanctioning through discussion and use of the “Guidelines for Sanctioning.” The chair shall review the accused student’s prior disciplinary history (if applicable) and share any precedent for decisions.
3. The chair shall assist the board in remaining focused during the deliberations and in considering factual evidence.
4. The chair shall record the board’s decision (not individual votes) and the corresponding rationale.

#### **V. Post-Hearing Responsibilities**

1. The chair shall inform the coordinator of the Office of Judicial and Mediation Services of the hearing outcome as soon as possible during the workday.
2. The chair and coordinator shall compose the decision letter, ensuring that the rationale for the board’s decisions are clearly articulated and sanction information is specifically stated. The decision letter should indicate an “Exit Date.”
3. The coordinator shall ensure that the student signs a receipt for the decision letter.
4. As necessary, the chair shall respond to any questions that may arise during the appeal process.

### **JOB DESCRIPTION: CONDUCT BOARD MEMBER**

Service on the University Conduct Board requires that an individual become part of a three- or five-member team which is responsible for adjudicating cases involving violations of Clarion policies and regulations.

As a board member, your responsibilities include:

- Having a thorough understanding of the structure and function of the University Judicial System (as described in the Residence Hall Handbook and the Student Rights, Regulations, and Procedures Online Handbook).
- Having a knowledge of Student Behavior Regulations and being able to recognize behaviors and actions that violate Clarion University policies and regulations.
- Participating in training workshops/luncheons to develop an awareness and understanding of the judicial process as available.
- Committing the time and effort required to sit for a board and hear a case.
- Maintaining a high level of sensitivity, awareness, and confidentiality.
- Being willing to remove yourself from a board if you know the accused student(s) or if you feel you cannot remain unbiased in hearing a case.
- Punctuality, courtesy, attentiveness, honesty, and objectivity are the hallmarks of good member behavior.

# CONDUCT BOARD ETHICAL STANDARDS

Certain ethical standards must be maintained in order to preserve the integrity of the student conduct system and the people involved with it. Also, there are concerns that must be taken into account with regard to legal implications. Therefore, the following ethics are of paramount importance when hearing a case:

## **A. Confidentiality**

1. The nature or status of any student disciplinary situation is not to be discussed with anyone outside of the conduct board hearing or deliberation meeting.
2. The disciplinary record of any student is not to be shown or discussed outside of the conduct board hearing or deliberation meeting.
3. The vote of a board member on a judiciary matter is confidential. No part of the conversation or proceedings at a conduct board hearing shall be discussed outside of that meeting.

## **B. Removal of Self from a Case**

1. A board member must remove him or herself from a hearing if they are personally acquainted with one or more persons involved in the case.

## **C. Support**

1. Conduct board decisions are considered as coming from the board as a whole.
2. All decisions must be upheld by all members of the board, regardless of how each individual voted.
3. Support for each board member is essential.

## **D. Questioning**

1. Questioning of the referring party, accused student(s), and witnesses should attempt to get at necessary information without unduly prying into personal matters.
2. Objective, non-prejudiced, and non-hostile questions are essential.

## **E. University Policies**

1. All university policies must be upheld by the conduct board.



## CONDUCT BOARD HEARING OVERVIEW: “WHO, WHAT, WHEN, WHERE, AND WHY?”

### 1. What constitutes a Conduct Board?

- One chairperson (faculty or staff).
- Five Conduct Board members (two students and three faculty/staff).
- A Panel Board will have three Conduct Board members (one student and two faculty/staff).

All board members shall read the *Conduct Board Member Manual* prior to serving on the board.

### 2. Who serves on the Conduct Board?

- Ideally, 10 faculty/staff and 10 students.
- The coordinator often tries to mix new and returning board members.
- The coordinator may also create a mix by gender and/or race/ethnicity.

### 3. Who is in charge of the Conduct Board during a hearing?

- The chair (a small group of trained faculty and staff may serve as chair).
- The chair is responsible for making sure that due process is safeguarded in the proceedings.
- The chair decides if a line of questioning is appropriate.
- The chair can remove hearing participants if necessary, etc.

### 4. Who attends a Conduct Board hearing?

- The referring party (resident assistants, area coordinators, Public Safety, etc.).
- Witnesses called by both the referring party and the accused student(s).
- The accused student(s) has/have the option to not attend or to remain silent.
- Accused students and alleged survivors of physical/sexual assault may bring someone to advise them privately during the proceedings.
- Campus hearings are confidential and are not open to the public.

### 5. What types of cases does the Conduct Board hear?

- Most serious allegations (examples: arson, sexual assault, physical assault, weapons possession or use, academic integrity cases, false fire alarms, or repeated, escalated behaviors).
- Also complex cases or cases with priors.

### 6. Does the Conduct Board hear cases involving off-campus behavior?

- Yes.

7. What liability do board members have for their decisions?

- In the event of a lawsuit, university employees and duly-appointed volunteers are generally entitled to representation and indemnification, to the extent provided by state law, if the Governor's General Counsel determines that the defendant's conduct giving rise to the cause of action was within the scope of his employment and a good faith exercise of his authority.

8. How are cases scheduled?

- The Office of Judicial and Mediation Services will first find a date and time when all accused students, witnesses, and referring party are available for a period of at least two hours. The coordinator will then contact Conduct Board members to see who is available and willing to serve on the appointed date and time according to the schedule that board members submitted.
- The length of the Conduct Board hearings may vary. Most are about an hour in length, but some run longer or shorter periods of time.

9. How are Conduct Board members contacted?

- Via e-mail or telephone as needed.
- Board members are asked if they can serve at a specific date and for an estimated time period. If they can, they'll be asked if they know the involved individuals. If they don't, they'll be informed of the general allegations. If they are comfortable serving, then they are placed on the Conduct Board.
- Board members are free to decline service on any case without explanation.

10. Why should Conduct Board members arrive early for a hearing?

- To have adequate time to prepare for the case by reading materials and getting settled in (we would suggest arriving 10-15 minutes early).

11. What are the basic procedures for a Conduct Board hearing?

- All cases are recorded via electronic recorder.
- Introductory statement with all involved parties present.
- Statement of Oath signed by all students except the board and chair.
- Witnesses are excused—alleged victims may choose to stay.
- Chair reads charge(s).
- Referring party makes their statement and responds to questions.
- Accused student(s) makes statement and responds to questions if desired.
- Witnesses may make statements and respond to questions.
- Witnesses brought by accused make statements and answer questions.
- Closing statements presented by the accused student(s), referring party, and alleged victim, if desired.
- Academic record of accused student is discussed.

- All except the board members and chair are excused.
- Conduct Board deliberates and decides the case.
- Chair meets with the coordinator to convey board's decision verbally and submits notes from board regarding sanction.
- Chair/coordinator prepare decision letter and director delivers it to accused student.
- Accused student appeals, if desired, within three business calendar days.

12. What constitutes a lack of fairness on the part of the Conduct Board?

- Prejudgment based on appearance, gender, race/ethnicity, or other personal characteristics.
- Biased questioning.
- Not considering all evidence.
- Not basing decision on facts presented.

# DUE PROCESS

## Pennsylvania Code

Title 22, Part XVII  
Board of Governors  
Pennsylvania State System of Higher Education  
Chapter 505 (Student Personnel)  
Student Disciplinary Due Process

**505.1. Rules and Procedures.** Each university president, with trustee approval, shall create rules of student conduct and judicial procedure, consistent with these regulations, which shall provide substantive rules defining with reasonable specificity disciplinary offenses, penalties or sanctions, and procedural guidelines to adjudicate rules violations.

**505.2. Publication.** The university's rules shall be published and disseminated to all students in student handbooks and other institutional publications.

**505.3. Procedural Guarantees.** The university's rules of procedure for student disciplinary hearings shall provide students with the following procedural guarantees:

- (a) Reasonably specific advanced written notice of charges containing a description of the alleged acts of misconduct, including time, date, and place of occurrence and the rules of conduct allegedly violated by the student.
- (b) Advanced written notice of the date, time, and place of the hearing, unless such right is waived in writing by the student.
- (c) An opportunity for submission of written physical and testimonial evidence and for reasonable questioning of witnesses by both parties.
- (d) A reasonably sufficient interval between the date of service of charges and the date of the hearing to allow the student to prepare a defense.
- (e) An impartial hearing body that may consist of a committee, board or individual appointed by the university president.
- (f) Maintenance of a written summary or audio tape record of the hearing at university expense, although students may be required to pay the costs of copies of requested records.
- (g) A decision based upon evidence sufficient to make a reasonable person believe that a fact sought to be proved is more likely true than not.
- (h) A written decision in which the facts and reasons are set forth with reasonable specificity, which shall be issued within 30 working days after the close of proceedings.
- (i) A student may identify an advisor, who may be an attorney, to be present at hearings. The advisor may only consult and interact privately with the student, unless the university grants the advisor permission to represent a student in a particular case.

**505.4. Conduct of Hearings.**

- (a) The conduct of hearings shall be committed to the hearing body which may make all rules reasonable and necessary for the orderly and efficient disposition of cases.

(b) Hearings shall be conducted to ensure that an accused student has a fair and reasonable opportunity to answer, explain, and defend against charges.

(c) The university shall have the burden of proof in all cases.

**505.5. Informal Hearings.** Cases not involving the sanctions of expulsion or suspension may be heard informally, as specified by university procedures, with notice and the opportunity to be heard afforded students.

**505.6. Uses of Evidence.** The university shall not be bound by formal rules of evidence. However, all evidence must be inherently reliable.

(a) Hearsay evidence shall not be used as the sole evidence to establish any fact necessary to establish guilt or innocence in a case.

(b) A student's previous disciplinary record shall not be used to prove their guilt in a current case but may be used to establish reputation or habit if relevant. However, the hearing body may consider a student's previous disciplinary record, in the event the student is found guilty of violating the rules of conduct, to determine the appropriate disciplinary penalty or sanction.

**505.7. Waivers.** A student, through a written statement, may waive their right to a hearing.

**505.8. Appeals.** The allowance of appeals shall be discretionary with the president of the university or designee.

**505.9. Interim Suspensions.** The president or designee may suspend a student from the university including the student's privilege to enter any university facility or property pending the final disposition of the case if it is determined the student's continued presence constitutes an immediate threat of harm to the student, other students, university personnel, or university property. In the event a student is suspended under such conditions, a hearing shall be convened within 10 working days, unless extenuating circumstances warrant an extension, in which case a hearing shall be provided at the earliest possible date.

**505.10. Maintenance of Status.** Unless an interim suspension is imposed, as provided in these regulations, a student shall continue matriculation until their case is fully adjudicated through university procedures.

**505.11. Retention of Hearing Records.** The university shall retain records of cases involving expulsions or suspensions for a minimum period of two years from the date of final adjudication. The university may retain hearing records for a longer period of time, in accordance with its policy.

**505.12. Enforcement.** A university may withhold transcripts, grades, diplomas, or other official records pending the disposition of cases if such action is reasonably necessary to preserve the university's ability to enforce its disciplinary rules.

## THE THREE RULES OF DUE PROCESS

1. The student has been notified about the policies, procedures, rules, or regulations of the institution.
2. The student has been informed that they are being accused of a violation of university policy.
3. The student has an opportunity to respond to the accusations brought against them.

*In all cases, we have an obligation to ensure each rule of due process is extended to the student. By law, we may make allowances for more due process, but we are prohibited by law to grant less due process than the Constitution of the United States and judicial precedent has established*

## DUE PROCESS AT CLARION UNIVERSITY

Any student charged with a violation of university regulations and/or policies has the legal and ethical right to a fair and impartial review of those charges.

At Clarion University of Pennsylvania (CU), the university's rules of procedure for formal hearings shall provide students with the following procedure guarantees:

- (a) reasonable specific advanced written notice of charges containing a description of the alleged acts of misconduct, including time, date, and place of occurrence; and the rules of conduct allegedly violated by the student;
- (b) reasonably-advanced written notice of the date, time, and place of the hearing, unless such right is waived in writing by the student;
- (c) a reasonably sufficient interval between the date of service of charges and the date of the hearing, to allow the student to prepare a defense;
- (d) an opportunity for submission of written, physical, and testimonial evidence, and for reasonable questioning of witnesses by both parties;
- (e) an impartial hearing which may consist of a committee, board, panel, or individual appointed by the university;
- (f) maintenance of a written summary or audiotape record of the hearing at university expense, though students may be required to pay the cost of copies of requested records;
- (g) a decision based upon presented evidence sufficient to make a reasonable person believe that a fact sought to be proved is more likely true than not;
- (h) a written adjudication in which the facts and reasons for the decision are set forth with reasonable specificity shall be issued within 30 working days after the close of the proceedings; and
- (i) a student may identify an advisor, who may be an attorney, to be present at hearings. The advisor may only consult and interact privately with the student, unless otherwise determined by the university regarding a particular case.

For additional information relative to conduct regulations and disciplinary proceedings, consult the *Student Rights, Regulations, and Procedures Online Handbook*.

## THE APPEAL PROCESS

Decisions of adjudication officers that students have violated conduct regulations and decisions of faculty members that students have engaged in academic dishonesty may be appealed to the university Conduct Board. Decisions of the University Conduct Board or vice president for student affairs that students have violated conduct regulations may be appealed to the university president or her designee, which may include an Appeals Board. The appeals are made by submitting the Formal Hearing Appeal Form to the Office of Judicial & Mediation Services within three business days of the hearing decision. The form may be found at [www.clarion.edu/judicial](http://www.clarion.edu/judicial). Upon reasonable request, the three business day deadline may be extended by the Coordinator of Judicial Affairs & Residence Life Education. Discretionary authority to review adjudication decisions is retained by the university president, or her designee, which may include an Appeals Board. An appeal or review may result in a new hearing of the case, or the original decision may be affirmed, reversed, or modified.

# GUIDELINES FOR ADVISORS

According to Clarion University of Pennsylvania Judicial Policy, a student may select an advocate to advise him/her at judicial proceedings. The following information has been prepared to familiarize Conduct Board members with the roles advocates play in the judicial system procedures/processes and the role of advocates during judicial proceedings.

## **I. The purposes of the university's judicial system are:**

- A. To hold members of the university community accountable for their actions by hearing alleged violations of rules and regulations and levying appropriate sanctions.
- B. To teach students who violate university policy the consequences of their behavior (to self, to others, to the university) and aid them in preventing future violations.

## **II. The responsibilities of a Hearing Officer/Conduct Board are:**

- A. To determine what actually happened.
- B. To determine whether the student is responsible for violating university policy.
- C. If it is more likely than not that the student violated policy, to determine an appropriate sanction(s) for their actions.
- D. If it is determined that the student is unlikely to have violated policy, to dismiss the charges against the student.

## **III. Typical Questions**

- A. *Who can be an advisor?*  
An advocate can be another student, a friend, a faculty/staff/administrator, a member of the family, or an attorney.
- B. *What is the role of an advisor?*  
Generally, an advocate is present to provide support for a student. According to the *Student Rights, Regulations, and Procedures Online Handbook*, "A student may identify an advisor, who may be an attorney, to be present at hearings. The advisor may only consult and interact privately with the student, unless otherwise determined by the university regarding a particular case."
- C. *What happens if the advisor does not act within the limitations outlined for him/her?*  
A hearing officer or Conduct Board chair will request that the advisor comply with the limitations warning, if noncompliance persists, the advisor will be required to remove him or herself from the hearing.

For more information on the Clarion University of Pennsylvania Judicial Process, please review the Clarion University of Pennsylvania *Student Rights, Regulations, and Procedures Handbook*.

## EFFECTIVE HEARING PARTICIPATION

During every hearing, remember the following tips for being an effective board member:

1. Carefully listen to everything that is said.
2. Watch for nonverbal behaviors which may indicate attitudes, true feelings, or emotions.
3. Be sure that you clarify any conflicting information before you enter into deliberation. Continue to ask questions until you have all of the necessary facts regarding the incident. Do not wait until you are in deliberation and then start guessing at reasons why the information presented was conflicting.
4. Carefully examine the time/date sequence of the incident. Follow-up on contradictions when questioning.
5. Avoid jumping from one line of questioning to another; attempt to examine one area completely before moving on. Board members should learn to look to the other board members before changing lines of questioning.
6. Avoid unnecessary writing during the hearing. You should be concentrating on the content while developing lines of questioning. The tape recorder will provide a complete record of the hearing.
7. Note passing or whispering should not occur in the hearing unless absolutely necessary. You should show the respect to the speaker that you would expect if you were speaking.
8. Maintain your concentration throughout the hearing and remain attentive. Good posture and eye contact should be demonstrated anytime the hearing is in session.
9. Never accuse a student or participate in heated arguments. Maintain your composure even if others do not.
10. If possible, carefully prepare your questions in advance. Avoid questions that are not relevant to the hearing.
11. The hearing is about the actions of the accused. Don't be drawn into irrelevant examinations of the actions of witnesses, survivors, or other hearing participants unless they directly impact whether or not the accused student violated policy.
12. Speak up firmly and politely if you have a procedural question or wish to point out a possible error in the proceedings. Direct your comments to the chairperson.
13. Mistakes happen—if you speak out of turn or are reprimanded by the chair, apologize and move on.
14. Avoid using legalistic language (i.e. “defendant,” “guilty,” etc.). You are adjudicating policy violations, not trying a student in court.



# THE DECISION-MAKING PROCESS

Rendering decisions in Conduct Board cases is often difficult, particularly when the outcome may be suspension or dismissal. The decision-making process can be simplified by utilizing the following suggestions.

## TESTIMONY BY HEARING PARTICIPANTS

Listen carefully throughout the hearing to each participant's account of the events. When information is not clear, ask questions to clarify. Pay close attention to participants' non-verbal behaviors, attitudes, and emotions, and use them to help determine how much credence to give to each person's testimony. Carefully note discrepancies and the sequence of events.

Some relevant issues to consider about testimony include:

- How relevant is the person's testimony to the core issue of the case?
- How much direct information does the person have about the incident in question?
- How did the person come to know the information being provided?
- Which of the witnesses has the most direct information?
- How detailed is the witness' account? Is this witness' account similar or different from the account given by other witnesses?
- Is there anything that causes the credibility of the witness to be in question?
- Is there any reason that the witness may be providing false or inaccurate information? Are they potentially biased toward or against the accused student(s) because of relationship issues, etc.?

It is your responsibility to question all hearing participants when information is unclear or incomplete. It's important to phrase questions in an unbiased manner. Before you ask a question, you should assess what information you hope to elicit and why it will help you in deciding the case. Keep in mind that the chair has the responsibility of intervening if you ask a biased question or ask for information that is not relevant to the judicial case.

## QUESTIONING

Appropriate questioning can help the Conduct Board determine the facts in a case and clarify confusing information.

You are encouraged to ask open-ended questions (who, what, how) rather than closed-ended questions (did you, were you). Closed-ended questions elicit "yes" or "no" answers, while open-ended questions require the respondent to answer in more detail.

Avoid asking multiple-choice questions, where you are providing the respondent with several choices. For example: "When you hit her, were you angry, frustrated, or intoxicated?" A better, open-ended, question is clearly, "What motivated you to hit her?"

Expect that some hearing participants may pause before answering questions. The hearing is often stressful for participants and some people require time to think or calm themselves before providing a response. Remember that the accused student does not have to answer any questions unless they choose. In cases where the accused student is also facing criminal or civil charges, it is not unusual for him/her to remain silent throughout

the entire proceeding. In those cases, the Conduct Board must decide the case without the testimony of the accused student.

### **Sample Open-Ended Questions**

In addition to asking clarification questions concerning the factual evidence in a case, you may want to ask some of the following questions:

1. What effect did your behavior have on others? On the community? On yourself?
2. Explain what you hoped to accomplish through your actions.
3. Who is responsible for your actions?
4. What other options did you have in this situation?
5. How would you feel if others engaged in that behavior?
6. How is your relationship with your roommate? With other residents on your floor? With the CAs?
7. How might you react if this situation arose again in the future?

## **FACT FINDING**

In judicial cases where discrepancies exist, it can be very difficult to determine the facts. It's your responsibility to determine which evidence presented is clear and causes you to believe that a fact "is more likely true than not." The following are some considerations to assist you in determining the facts in a case:

Always use the standard of "more likely true than not" when determining fact. Events, circumstances, incidents, and/or actions that meet this standard may be considered to be fact.

1. Witnesses need to be credible, convincing, and able to provide a reasonable amount of detail about an event.
2. Facts are not incidents or circumstances that may or may not have occurred. That is conjecture.
3. The main question to resolve through hearing proceedings is "what happened?" Once you answer this question, you can assess whether or not the accused student is "in violation" of charges faced.
4. Conduct Board members should have a clear command of the facts in a case before beginning deliberations.

## **ISSUES CONCERNING CREDIBILITY**

If you find that you must make a hearing decision based on whom you believe in a hearing, you will need to assess several types of information. Some information presented in the hearing is useless and should be disregarded. To help you determine relevant versus irrelevant information, here's a list of information that may be useful in a hearing:

### **1. Motive**

Did the student have any motive to violate policy?

## 2. Ability to commit the violation(s)

Did the student have the ability to commit the alleged violation(s)?

## 3. Malice

Did the accused student harbor malice toward an alleged survivor of the incident? Or, did the person raising the charges against the accused student have malice toward them?

## 4. Threats, expressions, or earlier similar acts which imply intent

Did the accused student verbally threaten the alleged survivor with harm before an incident during which the survivor was actually hit? That may suggest the accused student's involvement in an incident.

## 5. Miscellaneous issues that harm credibility

Did the accused student conceal their identity?

Did the accused student lie or destroy evidence?

Did the accused student resist arrest, run away, or react violently when confronted?

# TYPES OF INFORMATION

There are four kinds of information that will be presented in a judicial hearing, direct information, circumstantial information, documentary information, and hearsay information.

**Direct information** is based on an eyewitness account. You will either find the person to be credible and believe him/her or find the person to be unbelievable.

**Circumstantial information** does not involve an eyewitness to the incident, but includes enough information on surrounding circumstances so that a reasonable person believes that the accused student "more likely than not" committed the alleged violation(s).

**Documentary information** is any supportive writings (statements, reports, etc.) that support or deny a fact at issue.

**Hearsay information** is second-hand information. The board may consider hearsay information as long as it is not the sole information used to establish any fact necessary to establish a violation has occurred or not.

# WEIGHING THE INFORMATION PRESENTED IN A HEARING

All testimony and information is not equivalent in value. Testimony can often contain a degree of bias or may lead the listener toward a single interpretation of a fact or situation.

Here are some guidelines to use when weighing information:

1. When you are weighing one person's words against another's, the testimony of the least biased person is more credible. Uninvolved witnesses or a police officer are likely to be less biased than an accused student's significant other.

2. The testimony of a single, unbiased, disinterested witness is more persuasive than several similar testimonies provided by biased witnesses. Quantity of information is less important than quality or credibility of that information.
3. If the accused student claims that they violated a policy because they didn't know the policy, you should still hold the accused student accountable for their actions. Ignorance is not an excuse.
4. If an accused student admits responsibility for the charges against them, you do not need to question the facts of the case unless you require clarification. You should instead focus on gathering information that will assist you in determining appropriate sanctions.
5. When a witness is asked to identify the accused student as the responsible party, their testimony has the most credibility when the witness has been acquainted with the accused student. If the witness has never met the accused student before, be sure to ask specifically how and why the witness can make a positive identification.
6. Testimony of character witnesses is of little value to the process of fact finding in the hearing. Most people can find someone who supports them and will speak highly of their character—that does not address whether or not the student committed a particular act. Generally, character witnesses are not allowed to participate in the hearing process.
7. Clarion University uses a preponderance of 51 percent as previously stated to determine if a violation of university policy has occurred.

The above information was adapted from *Model Training and Selection Manual: Student Judicial Boards*, Linda Murphy and Melora Sundt, American College Personnel Association, Commission on Campus Judicial Affairs and Legal Issues, 1993; IUP Judicial Training Handouts, 2002; Slippery Rock University, 2001; SSHE Legal Council Briefs, '98, '99, '02.

## SEXUAL ASSAULT GUIDELINES

### ADVICE FOR QUESTIONING IN ALLEGED SEXUAL ASSAULT CASES

It is particularly important in alleged sexual assault/rape cases to ask only those questions which pertain to the charges. These cases deal with delicate subject matter and often involve great emotion. The board should only be concerned with facts that answer the question of whether or not sexual assault or rape occurred.

**Avoid asking condescending/blaming questions that begin with the words “Did you know,” or “Didn’t you know.”**

#### Strongly Discouraged

Ex: Didn't you know that alcohol in your system makes it easier to be raped?  
Did you know that most rapes that occur on campus involve alcohol?

**Avoid questions related to the way the survivor was dressed unless the question is related to evidence.**

#### Not Recommended

Ex: How short was your skirt?  
Do you always wear tight-fitting clothes?

#### Acceptable

Ex: Mr. Blank stated that you removed your own blouse over your head, you said he ripped it off of you. Could you describe the blouse you were wearing?

**Avoid questions about the sex life of the survivor.**

Not Recommended

Ex: How many persons living in the house have you had sex with?

Acceptable

Ex: Could you describe your relationship with the accused?

**List of Recommended Questions**

Did they force him or herself upon you?

Did penetration occur?

Did you consent to the act in question?

Did you at anytime verbally and audibly say, "NO?"

Was alcohol involved? If so, how much had you consumed?

Did you tell anyone about the alleged assault/rape?

Did you go to the hospital?

***Adapted from Ohio State University Rape Education and Prevention Program***

## SEXUAL ASSAULT ON CAMPUS: “THE JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS ACT”

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (hereafter referred to as “The Jeanne Clery Act”) was enacted in parts, beginning in 1990, as “The Campus Security Act” and continuing until July 2000. While there are many provisions in the Jeanne Clery Act, the focus in this handout is on the requirements related to sexual assaults on campus.

According to the act, universities must disclose:

- a description of educational programs related to raising awareness about sexual;
- offenses, including the frequency of offenses, locations, etc;
- possible judicial sanctions resulting from campus hearings involving sexual assaults; and
- procedures students should follow if a sexual offense occurs, including who to contact, who to report the incident to, and the importance of preserving evidence.

These disclosures are made by Clarion University of Pennsylvania and available to the public in the safety and security information that is published online at [www.clarion.edu/securityinfo](http://www.clarion.edu/securityinfo) and updated each October.

In addition, a “Victim’s Bill of Rights” provision requires that:

- Victims have the same opportunity as accused students to have others present at a campus hearing.
- Victims will be notified of the hearing outcome.
- Victims will be notified of their option to report a crime to the campus or local police.
- Victims will be notified of their options for support and counseling.
- Victims will be informed of their options for changing living conditions or academic situations following an assault.

## HOW MUCH DO YOU KNOW ABOUT GENDER-RELATED VIOLENCE?

Questions	Please Circle	
1. Date rape is only a bad sexual experience.	T	F
2. There are some women who provoke rape because of their appearance, behavior, or reputation.	T	F
3. About 1 in 1,000 male college students recently surveyed said they had committed acts that met the legal definition of rape or attempted rape.	T	F
4. Date rape only happens between people who have just met or don't know each other well.	T	F
5. Rape does not include having sex with an intoxicated woman who passes out.	T	F
6. Sexual harassment occurs infrequently and is a remote issue in university settings.	T	F
7. Harassment affects victims' work or studies and their psychological well being.	T	F
8. One of the best ways for a victim to end harassing behavior is to avoid the harasser or ignore the problem.	T	F
9. Sexual harassment can occur only between members of different sexes.	T	F
10. A student-sponsored wet T-shirt contest is a form of sexual harassment.	T	F
11. Violence against people who are gay parallels and is related to violence against women.	T	F

*Adapted from the UCLA Women's Resource Center and Dean of Student's Office*

## Answers

1. False. The most powerful and longstanding myth about rape is that rape is sex. Believing the myth led to the belief that rape survivors do not suffer as a result of the experience, that women actually enjoy rape, and that somehow they are responsible for the crime. The definition of rape varies from state to state, however it usually includes "sexual intercourse against someone's will through the use of force or threat of force." Rape is motivated by a violent urge, not a sexual one. The rapist is motivated by a need to control, dominate, and degrade rather than fulfill sexual impulses.

In date rape situations, most men have not planned to rape, but have planned to have sex, no matter what the wishes of the other person. A situation like this becomes rape when one person, in most instances the woman, says no, does not consent to sex, and despite that, the aggressor forces her to have sex against her wishes. Miscommunication can be a factor in a situation that leads to rape. Many times men and women enter into a dating situation with different sexual expectations. A woman may agree to a certain amount of intimacy and at some point she makes a decision that she doesn't want to have sex. Some men feel cheated and angry. Most men will stop at this point and not coerce or force a woman into having sex. Some men, however, do not stop or respect her right to say no and force her to have sex against her will. Date rape, however, is not merely a result of miscommunication. It is an attempt to assert power and anger. In stranger rape and acquaintance rape situations, the aggressor makes a decision to force his victim to submit to what he wants. The prime motive for each type of rape is the same: to overpower and control someone.

2. False. The myth that women somehow provoke rape stems from the myth that rapists are motivated by lust and thus were enticed by their victim. The misconception that only a "certain kind" of woman is raped may serve as a kind of false security against the frightening fact that anyone can be victimized. Women of all ages, from a baby as young as four months to a 90-year-old woman, have been raped. People rape women from all age groups, backgrounds, races, classes, religions, and levels of education and physical descriptions.

A woman who is raped by someone she knows is often suspected of "asking for it" because she may have agreed to go to the man's room, let him buy dinner, or agreed to some form of intimacy other than intercourse. The idea that women are responsible for rape is ingrained in both men and women at an early age. A survey of 1,700 sixth-to-ninth graders in Rhode Island found that 51 percent of the boys and 41 percent of the girls said that a man has the right to force a woman to kiss him if he spent a lot of money on her. "A lot of money" was defined by 12-year-olds as \$10-\$15. Thirty-one percent of the boys and 32 percent of the girls said it would not be improper for a man to rape a woman who has had previous sexual experiences.

No one deserves to be raped, regardless of what they say, wear, or do, just as no one deserves to be robbed because they are carrying money. The responsibility lies with the person committing the crime, not with the victim.

3. False. In the Ms. Magazine/National Institute of Mental Health (MS/NIMH) survey, one in 12 men admitted having forced or tried to force a woman to have intercourse through physical force or coercion, thus admitting to have raped or attempted to rape someone. Yet, virtually none of those men identified themselves as a rapist. A study at Auburn University (1982) found 15 percent of college men said they had forced a woman to have intercourse. There also appears to be a significant number of men who don't find sexual aggression reprehensible, and who are somewhat attracted to it although they have never committed such actions. In a recent survey conducted by UCLA communications professor Neil Malamuth, 26 percent of the men surveyed said they would be somewhat likely to commit rape if they could escape punishment.

Most men are not rapists, but some are. Those men are not considered "psychotic" and are not distinguishable by race or educational or economical background. Most men who rape women they know seem quite normal, perhaps even charming. The only similarities that have been shown among convicted rapists are their inability to control anger, a strong belief in traditional male and female roles, and a high degree of hostility or anger toward women.



4. False. Date rape can happen between people who are on a first date or who are engaged. The definition of rape has nothing to do with how well the victim knows the assailant. In the MS/NIMH study, 47 percent of the reported rapes were committed by first or casual dates, or a romantic acquaintance. Yet it's not uncommon for women to be raped by someone they have been dating for a long time, by a former boyfriend, or by a spouse.
5. False. California law defines an act of intercourse as rape if the victim is prevented from resisting, for example if she is under the influence of an intoxicating substance with the knowledge of the accused, or if the victim is unconscious of the nature of the act.
6. False. Although not a scientific survey, a review of a newspaper article suggests an "outbreak of bigotry on United States campuses." (New York Times. 6-23-89). In 18 months, demonstrations against racists acts occurred at Stanford, University of Michigan, Dartmouth, UC Berkeley, Dennison University, University of Kentucky, and Penn State, to name a few.

Surveys at Cornell University (1986), MIT (1986), and University of Rhode Island (1980) confirm reports across the nation that between 70-92 percent of the women and approximately 57 percent of the men surveyed had experienced unwelcome sexual attention. According to Catherine MacKinnon, one of the foremost experts on sexual harassment, at least seven out of every 10 women will be sexually harassed during their work lives.

7. True. The effects of harassment range from emotional responses such as embarrassment, anger, depression, anxiety, disgust, and indecision to loss of self confidence and abandonment of career or academic goals.
8. False. Studies have shown the problem does not go away. It is important for a victim to let a harasser know that the behavior is unacceptable, although few victims want to confront their harasser. It's a good idea for the victim to keep a record of dates, times, places, witnesses and the nature of the harassment.
9. False. Sexual harassment may occur between any combination of sexes. Sexual harassment is a form of sex discrimination. Although both men and women are harassed, more than 95 percent of sexual harassment cases reported involve a woman being harassed by a man.
10. True. Wet T-shirt contests, X-rated pornographic movies used as fund raisers, and calendars of nude or partially-clothed women used as promotional devices are all examples of ways women are demeaned by portraying them primarily as sexual beings. Those examples convey the message that women are not valued as individuals and that they should not be taken seriously. Sexual harassment involves unwanted sexual attention, which may take the form of a sexually demeaning climate or atmosphere. The cumulative effect of that type of harassment can be devastating.
11. True. Different forms of oppression in our society, such as homophobia and sexism are closely connected to each other in various ways. For instance, when gay men "break ranks" with traditional heterosexuals, and make roles through bonding and affections outside the arenas for war and sports, they are perceived as not being "real men," that is, as being identified with women. Thus gay men are often seen as people who must be eliminated. Lesbians are often seen as threats to the status quo because of the perception that a lesbian is someone who has stepped out of line, who is not sexually or economically dependent on a man, and who is, therefore (however illogically), against men. Homophobia is alive and well on our nation's college campuses. In a 1988 study of freshman across the country, UCLA professor Alexander Astin found 49 percent of students surveyed believed homosexual relations should be prohibited.

# GUIDELINES FOR DETERMINING SANCTIONS

Once the adjudicator has ascertained that a student is “in violation” of one or more behavioral policies, they are responsible for determining disciplinary sanctions that will encourage the accused student to make deliberate, informed behavioral choices in the future.

Sanctions which are intended to deter further disciplinary infractions by reminding the student of a pending loss of status (such as a “Warning,” “Reprimand,” “Disciplinary Probation,” or “Removal from University owned Housing-in abeyance”) are most often effective when used in conjunction with an educational sanction.

Educational sanctions are an integral component in challenging students to grow and change as an outcome of a conduct board hearing. Sanctions, which necessitate that a student lose a privilege (for example, no visitation in a particular residence hall, loss of a specific room assignment, or removal from university-owned housing) can serve as powerful incentives to make behavioral changes.

The following pages provide the minimum sanctions that should be given in response to first-time, singular policy violations. The information is intended to promote consistent sanctioning amongst adjudicators in the residence life disciplinary system, and throughout the campus system.

When students engage in multiple and/or repeat policy violations, the adjudicator will need to increase sanctions beyond the minimum level provided here.

## **Small Increases over Minimum Sanctions Should be Given When:**

1. The student engages in multiple policy violations during one incident, but does not have a previous disciplinary record.
2. The violation(s) does/do not constitute a danger to the accused student or other members of the community.
3. During the informal judicial hearing, the student demonstrates understanding of the impact their choices had on self and others.
4. The student is unlikely to repeat the behavioral violation(s) in the future.

## **Significant Increases over Minimum Sanctions Should be Given When:**

1. The student has a previous disciplinary record (new sanctions should build upon past sanctions).
2. The violation(s) involves potential or demonstrated harm to self or others.
3. The student does not exhibit understanding of the implications of their behavior.
4. The student is likely to repeat the behavioral violations in the future.

The adjudicator is expected to take time to consider all aspects of the incident and the judicial hearing before determining the sanction(s) that are appropriate. They should trust their intuition and knowledge of student behavior, apply the information they learned in the disciplinary encounter, and consult with a colleague as necessary.

The adjudicator who determines a sanction has the responsibility to ascertain whether or not they are handling a case that merits an exception to the guidelines for sanctioning. Generally, the minimum sanctions list should be adhered to, but, on a rare occasion, a case may need to be considered “exceptional.” If the adjudicator is

uncertain as to whether or not a case is an exception, they should consult with the Office of Judicial and Mediation Services.

Campus Police officers, students, and staff often choose to file civil or criminal charges against a student for the same behavior(s) that prompted a judicial referral. In these situations, the civil or criminal charges and the campus judicial charges are adjudicated separately and independently from one another.

The following parameters exist regarding the type of sanctions that may be given at various levels of the residence life and administrative-level disciplinary system:

**Informal Hearings/Conferences – Sanctions that may be given include:**

- disciplinary warning;
- behavioral contract;
- educational task/community service;
- referral to a health workshop for BASICS and/or the Marijuana Workshop;
- referral for a chemical health assessment/counseling;
- restricted contact with an individual;
- restricted visitation in a building/area;
- restitution;
- disciplinary probation;
- enforced room change;
- (deferred) revocation of on-campus housing;
- letter to parents/guardians;
- Judicial Educator Modules;
- counseling; and
- referral for one-on-one meetings with coordinator of Health Promotions and/or Peer Mentor meetings.

**Formal Judicial Hearings/Waivers of Judicial Hearings – Sanctions that may be given include:**

- any sanction that may be given at an informal hearing;
- no trespassing on university-owned property;
- loss of eligibility for university-owned housing;
- suspension from the university; and
- dismissal (expulsion) from the university.

It is the responsibility of any University Conduct Board to determine a sanction from the listed sanctions (reprimand, probation, suspension, or expulsion). There is leeway in providing educational opportunities and other mandates to aid the student and/or protect the community.

## NOTES:

**It is the policy of Clarion University of Pennsylvania that there shall be equal opportunity in all of its educational programs, services and benefits, and there shall be no discrimination with regard to a student's or prospective student's race, color, religion, sex, national origin, disability, age, sexual orientation/affection, gender identity, veteran status or any other factors that are protected under local, state, and federal laws. Direct related inquiries to the Assistant to the President for Social Equity/Title IX Coordinator, 207 Carrier Administration Building, Clarion University of Pennsylvania, Clarion, PA 16214-1232. Email [jgant@clarion.edu](mailto:jgant@clarion.edu) or phone 814-393-2109.**