



## 5.26 – SSCC Conduct Case Procedures [v080719](#)

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[arp.nmsu.edu/5-26](http://arp.nmsu.edu/5-26)

### PART 1: GENERAL GUIDANCE

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- A. **Confidentiality and Privacy:** Recognizing that certain information is necessarily divulged in the conduct of an investigation and hearing to provide due process, and further, than some laws require disclosure of select information; confidentiality and privacy will be maintained to the extent legally possible during the processing of a SSCC case. All meetings, Educational Conferences, hearings and appeals are closed to protect the privacy of students.
- B. **Discrimination/Title IX Cases:** When any form of prohibited discrimination is alleged in violation of ARP 3.25, including Title IX violations such as sexual harassment, stalking, intimate partner violence or other sexual misconduct (hereinafter “3.25 cases”), the role of the Dean of Students is to:
- refer any reports or complaints received directly to the Office of Institutional Equity (OIE);
  - coordinate regarding Interim Measures;
  - assist as may be needed to further the interests of the investigation;
  - receive OIE’s Reports of Inquiry and continue with the SSCC process;
  - issue Sanctions as warranted by OIE’s findings, adequate to stop the conduct, prevent its recurrence and remedy its effects; and
  - convey the sanctions in a Title IX case to the parties and inform of the right to appeal the Sanction (See PART 8)
  - communicate the sanction in all 3.25 cases to OIE once the case has been concluded.
- C. **Due Process:** Students who are the subject of an SSCC conduct case will be given notice of the facts and evidence relating to the allegation, and an opportunity to provide a statement and other evidence to refute the allegations. In 3.25 cases, due process is provided by OIE in its investigation and determination processes governed by ARP 3.25.
- D. **Extensions of Time:** Any involved party or NMSU official may request to extend a time limitation provided in the SSCC. All reasonable requests will be granted. Requests for extensions must be directed to the individual in charge of making decisions at the specific stage of the proceeding (Case Administrator, Hearing Officer, or Appeal Officer) or, if the decision-maker is the one seeking an extension, extensions may be granted by that individual’s immediate supervisor.

- E. **Student Acceptance of Responsibility:** At any time prior to a determination by the Hearing Officer, a Student may elect to accept responsibility for the alleged misconduct and accept the proposed Sanction. The decision to accept responsibility must be communicated in writing to the Dean of Students or appropriate community college designee.
- F. **Case Dismissal:** If the Case Administrator determines at any stage, that the facts do not support an SSCC violation, the case may be closed, with notice to the involved parties as may be appropriate. However, in 3.25 cases, OIE has independent authority to dismiss cases which it determines do not allege a 3.25 violation or are not supported by a preponderance of the evidence. Dismissed 3.25 cases involving non-discriminatory misconduct which may violate the SSCC will be referred to the Dean of Students for further action.

## PART 2: CASE INITIATION

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- A. **Reporting Misconduct by Students/Student Organizations:**
  - 1. Any person, including Students, faculty and members of the NMSU Community may report suspected or observed misconduct by Students and Student Organizations to the Dean of Students or appropriate community college vice president for student services.
  - 2. The NMSU Police Department forwards its reports involving student conduct to the Dean of Students for review and potential action under the SSCC.
  - 3. Any report involving discrimination on the basis of any protected class (See ARP 3.25-Discrimination, Harassment and Sexual Misconduct on Campus), including sexual assault, harassment, stalking, dating violence or other sexual misconduct, must be referred to the Office of Institutional Equity.
- B. **Appointment of Case Administrator:** Upon receipt of a report of misconduct that is within the authority of the Dean of Students (See ARP 5.20, Part 4), the dean of students appoints an NMSU employee to serve as the Case Administrator, taking into consideration the campus where the alleged incident occurred and where the Respondent is enrolled. No formal appointment documentation is necessary; standing appointments are permissible.
- C. **Preliminary Review and Investigative Referral:** The Case Administrator reviews the reported misconduct and opens a SSCC case if it appears there is a violation of the SSCC. If the allegations are not referred to another department in accordance with the following, the Case Administrator facilitates the SSCC process up to the point that a hearing might be held.
  - 1. If the alleged misconduct is any form of discrimination prohibited by ARP 3.25, which includes Title IX violations such as sexual harassment, stalking, intimate partner violence or other sexual misconduct, the Dean of Students will immediately refer the case to OIE for investigation and factual findings pursuant to that policy.
  - 2. When an incident results in alleged violations of both ARP 3.25 (discrimination including Title IX) and other non-discriminatory infractions, upon referral and on a case by case basis, the Dean of Students and OIE will coordinate to ensure the integrity of each office's need to investigate and to take action under their respective policies and procedures.

3. If the alleged misconduct occurred in NMSU residential housing (Housing), the Dean of Students may refer the case to Housing for investigation and factual findings. Alternatively, at the discretion of the Dean of Students, the case may be investigated jointly with, or independently from Housing, as it deems appropriate based on the nature of the alleged incident.

## **PART 3: EDUCATIONAL CONFERENCE**

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Once a determination is made that the facts alleged would support a finding of an SSCC violation or the relevant office investigating the case has issued findings which support a violation of the SSCC, the case proceeds to the Educational Conference. At the beginning of the Educational Conference, the Case Administrator informs the Student that any facts volunteered by the Student may be used as evidence in support of action under the SSCC in any later hearing or appeal.

- A. **Purpose of Educational Conference:** The Educational Conference serves each of these purposes:
  1. Notice of Misconduct Allegations: The Case Administrator informs the Student of the facts alleged or the findings issued by OIE in a 3.25 case, the applicable section of the SSCC and/or other applicable university policy and the potential range of Sanctions, should the Student accept responsibility or be found responsible.
  2. Inform about SSCC Process: The Case Administrator explains the SSCC process to the Students, and answers any questions from the Student.
  3. Fact Finding: If after being informed that any facts the student shares may be used in support of disciplinary action under the SSCC, the Student wishes to discuss the case, the Case Administrator will document the information received, including exculpatory facts, and accept any records that the Student may provide in response to the allegations.
  4. Facilitate Resolution: Through full and informed discussion, the Case Administrator assists the Student in deciding whether or not to accept responsibility for the alleged misconduct or, in the alternative, to allow the SSCC conduct process to continue.
- B. **Timing and Notice of Educational Conference:** A Student accused of misconduct is notified and afforded an Educational Conference within a reasonable time after allegations are made or sufficient facts are known to the Dean of Students to appoint a Case Administrator to initiate a case. Generally, unless there are circumstances reasonably justifying a longer time period, this will occur within sixty (60) Days from the date the Dean of Students receives the report or complaint of alleged misconduct or Report of Inquiry from OIE in a 3.25 case.
  1. A minimum of five (5) Days' Notice will be given to the Student prior to an Educational Conference.
  2. The Notice includes a link to the SSCC (ARP 5.20 through ARP 5.26), and informs the Student of the following:
    - a. the date, time and location for the conference,
    - b. the fact that the Student is the subject of an SSCC conduct case,

- c. the specific factual misconduct allegation(s), and
  - d. the potential Charge(s).
  - e. the right to review, prior to the Educational Conference, the evidence collected as of that date relating to the alleged misconduct.
3. Where a Student is properly notified of an Educational Conference and fails to either (1) request an alternate date/time or (2) appear and participate at the Educational Conference, the Case Administrator will document the failure to appear and proceed in accordance with the SSCC.
- C. **Outcome of Educational Conference:** Except in 3.25 cases investigated by OIE, the Case Administrator documents the facts asserted and evidence submitted by the Respondent, and the outcome of the Educational Conference. The possible outcomes include:
- 1. Respondent Rebutts/Case Dismissed: The Student provides persuasive information refuting the alleged misconduct and the Case Administrator determines that there is insufficient evidence to support a finding that the Student violated the SSCC, and the SSCC case is dismissed. This outcome does not apply in 3.25 cases.
  - 2. Respondent Accepts Responsibility/Case Concluded: The Student, after being fully informed of the allegations and the potential Sanctions, accepts responsibility for the findings as determined by OIE or for the non-3.25 alleged misconduct and commits to fulfill the proposed Sanction. The Respondent completes and signs a form provided by the Dean of Students indicating acceptance of the proposed Charge and corresponding Sanction discussed in the conference, thereby concluding the conduct proceeding under this rule, with no right to appeal.
  - 3. Case Proceeds: When Respondent neither accepts OIE's findings in a 3.25 case, nor accepts responsibility or provides exculpatory information in a non-3.25 case, the case proceeds to the next phase in the student conduct process. In a 3.25 case, the next phase is a sanctioning conference. In a non-3.25 case, the next phase involves issuance of a formal charge if supported by the evidence.

## **PART 4: ASSESSMENT OF FACTS; ISSUANCE OF FORMAL CHARGE**

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- A. **Evidence Collection:** If the matter is not resolved in the Educational Conference, the Case Administrator obtains reports from any other offices that investigated the allegations (e.g. OIE, Housing, NMSU Police), and if the matter was not formally investigated by another unit, conducts any necessary additional investigation to ensure a full understanding of the incident or event.
- B. **Assessment of Facts:**
- 1. Once the relevant evidence (documents and witness statements) is available and complete, the Case Administrator assesses whether or not a violation of the SSCC is supported by at least a Preponderance of the Evidence.
  - 2. If the evidence does not support the alleged violation, no formal Charge will be issued.

3. If the evidence supports the alleged violation by at least a preponderance of the evidence, a formal Charge will be issued.
- C. **Issuance of Formal Charge:** The Case Administrator sends a formal Charge describing the alleged misconduct, the section of the SSCC violated, and the range of Sanctions for said violations. The formal Charge may be combined with the Notice of the Hearing. The formal Charge must inform the Respondent of the right to schedule a time to review, before the hearing, the list of witnesses and any evidence that will be presented at the hearing.

## PART 5: PRE-HEARING PROCEDURES

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Upon receipt of a Respondent's written request for a hearing on a formal Charge, the following pre-hearing procedures apply:

- A. **Designation of Hearing Officer:** The dean of students designates the Hearing Officer for the SSCC conduct case, provides the Hearing Officer with a copy of Charge determination, and gives Notice of the appointment to the Respondent and any Complainant. The appointment is subject to the following:
1. A Hearing Officer may recuse themselves if they believe there is a conflict of interest sufficient to affect their ability to hear the case fairly and impartially. For example, a conflict of interest may result from a personal relationship with, or knowledge of the case relating to, the Complainant, Respondent or a witness.
  2. A Complainant or Respondent may request a different Hearing Officer, based on facts indicating the potential for a conflict of interest or potential bias, by submitting a request in writing to the dean of students, or if the conflict involves the dean of students, Student Life's vice president for student success. An alternate Hearing Officer will be appointed when the facts are found to create a reasonable concern for potential bias.
- B. **Role of Case Administrator:** At the hearing, the Case Administrator facilitates the presentation of evidence relating to the alleged misconduct to the Hearing Officer, including coordination of the presentation of evidence gathered by other departments (e.g. Housing, Office of Institutional Equity).
- C. **Duties of Hearing Officer:** Consistent with the SSCC, the Hearing Officer's responsibilities include: resolving pre-hearing procedural issues; convening and conducting the fact finding hearing; issuing a written decision based upon the Preponderance of the Evidence standard, informing the Respondent and any Complainant of the right to appeal; and organizing and preserving the hearing record. The Hearing Officer makes arrangements to create an audio recording of the hearing which becomes a part of the hearing record. The Hearing Officer may also arrange for a Notary Public to place the witnesses under oath during the hearing.
- D. **Resolution of Pre-Hearing Procedural Issues:** The designated Hearing Officer determines if the case is ready to proceed at the scheduled date and time. The Hearing Officer resolves pre-hearing issues and concerns raised by a party, and provides the Case Administrator and the

Respondent the opportunity to provide input. Examples of issues that commonly are raised that should be resolved before the hearing include:

1. Confirmation that all potential conflicts of interest have been disclosed and addressed;
2. Requests for reasonable accommodations based on disability;
3. Requests for time extensions;
4. Requests for procedural modifications in the interest of fairness or safety;
5. The Respondent has been provided the opportunity to review the list of witnesses and the evidence that will be presented at the hearing;
6. Resolution of any issues relating to witness availability: Case Administrators and Respondents are responsible to arrange for their respective witnesses to attend the hearing. If the witness is a Student or an NMSU employee and refuses to attend the hearing voluntarily, upon written request from the Case Administrator or the Respondent, the dean of students or designee will issue an *NMSU Directive to Appear*, to facilitate the witness' participation in person or by phone.

## PART 6: HEARING PROCEDURES

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- A. **Hearing Purpose:** The hearing provides the opportunity for a neutral factfinder to evaluate the available evidence as presented by the Respondent, any Complainant who chooses to participate, and the Case Administrator (or other NMSU official), to determine whether or not the SSCC violation(s) alleged in the Charge are supported by a Preponderance of the Evidence, and, where a violation is found, to review the Sanctions imposed by the Case Administrator.
- B. **Notice of Hearing:** Unless a shorter time is consented to by the parties, a minimum of ten (10) Days' Notice of the hearing date, time and location must be given to the Respondent, any Complainant, and to the Case Administrator.
- C. **Witnesses:** The following procedures will apply when witnesses are called by a party to the SSCC conduct hearing:
  1. Questioning of Parties: In order to preserve the educational atmosphere and to avoid creation of an adversarial proceeding, questions for witnesses are submitted to and asked through the Hearing Officer.
  2. Obligation to Testify: Witnesses who are NMSU Students or employees must attend a hearing when directed (*NMSU Directive to Appear*) by the Dean of Students. Failure to attend may result in a separate employee or student disciplinary action for the uncooperative individual.
  3. Testimonial Evidence: The Hearing Officer may require witnesses to take an oath to tell the truth, administered by a Notary Public. The Hearing Officer may exclude the use of written witness statements if the lack of an opportunity to cross examine the witness in front of the Hearing Officer is deemed prejudicial. If a necessary witness is unavailable or cannot reasonably appear, and the Hearing Officer determines that the written or recorded statement regarding the events pertaining to the issue are more probative than prejudicial, then such written statements may be allowed. Upon request, the Hearing Officer will

continue the hearing to allow a party to question the witness providing written or recorded testimony.

4. Exclusion of Witness from Proceeding: The Respondent and Complainant, if any, are entitled to attend the hearing during all presentation of evidence. Other witnesses are required to wait outside the hearing room until they are called to testify and are required to leave the hearing room once dismissed by the Hearing Officer.
- D. **Conduct of Hearing:** The Hearing Officer convenes the hearing at the designated date and time, and ensures that the proceeding is audio recorded, including the resolution of any pre-hearing issues. Before the presentation of the case commences, the Hearing Officer provides the parties with an overview of the hearing process to the parties.
1. Resolution of Pre-Hearing Issues: The Hearing Officer asks parties if all pre-hearing issues have been resolved. If they have not been, the Hearing Officer addresses these issues first. If resolution of a prehearing issue will substantially impact the hearing process or outcome, the hearing should be re-set to another date and time while the parties are still present.
  2. Opening Statements: The Hearing Officer provides each party an equal opportunity to present a brief opening statement to describe their position and the evidence they will present that supports their position relative to the Charge or the proposed Sanction. Opening statements are not required, may be limited in time by the Hearing Officer, or may be waived the parties altogether.
  3. Evidence in Support of Determination: The Hearing Officer calls first on Case Administrator, or the alternate NMSU official, to present evidence and call witnesses in support of the determination on the Charge and the imposed Sanction. Respondent is given the opportunity to submit questions related to the evidence or witnesses presented by the Case Administrator, to be asked through the Hearing Officer.
  4. Rebuttal: The Hearing Officer calls on Respondent to present evidence including personal testimony and the testimony of witnesses to rebut the Charge, evidence presented by Case Administrator, or proposed Sanction. The Case Administrator is given the opportunity to submit questions related to the evidence or witnesses presented by the Respondent, to be asked through the Hearing Officer.
  5. Hearing Officer Questioning: The Hearing Officer may ask any question of any party or witness relating to the Charge, the evidence, or the proposed Sanction.
  6. Evidentiary Issues: The hearing is not a legal proceeding and the rules of evidence used by courts do not apply to SSCC hearings. The Hearing Officer has discretion to make decisions about the relevance or admissibility of evidence, however, the exclusion of evidence should be rare and only to address possible prejudice or improper conduct by a party. If evidence is excluded, a party may summarize on the record the anticipated testimony or proffered evidence and its relevance to the case.
  7. Closing Statements: The Hearing Officer provides each party an equal opportunity to present a closing statement to summarize or comment on the evidence presented and how it supports their position relative to the Charge and the proposed Sanction. Closing

Statements are not required, may be limited in time by the Hearing Officer, or may be waived the parties altogether.

- E. **Decision by Hearing Officer:** Within five (5) Days from the date the hearing was concluded, the Hearing Officer will issue the written decision to the Respondent with factual findings and imposing a sanction, if appropriate. The Hearing Officer decision will comport with the following:
1. Findings of Fact. The decision memo or letter must clearly identify the Hearing Officer's findings of fact in support of the decision.
  2. Decision to Dismiss. If the Hearing Officer does not find the Respondent responsible, the decision must state that the Charge is dismissed, and no conduct record results.
  3. Sanction Review. If the Hearing Officer finds the Respondent responsible, the Hearing Officer will also review and impose appropriate Sanction(s), taking into consideration any Sanction previously proposed or imposed, the evidence presented by the Respondent, and the factors listed in ARP 5.21 Part 3.
  4. Appeal Rights: The Hearing Officer's decision must inform the Respondent and the Complainant, if any, of their right to appeal the decision as provided below.
  5. Time Deadlines: If the Hearing Officer needs more than time to issue the decision, a time extension may be requested. (See PART 1 above).
- F. **Maintenance of Hearing Record:** The Hearing Officer organizes and preserves the record of the fact finding hearing, including pre-hearing correspondence and notices, the audio recording, and exhibits or other evidence, labelled by the party who introduced it. The hearing record is transferred to the Dean of Students and is maintained as required by the state's record retention laws and NMSU policy.

## **PART 7: SANCTIONING CONFERENCE IN 3.25 CASES**

In 3.25 cases, in lieu of the hearing process described above in PART 6, once the Office of Institutional Equity has issued findings and a determination in support of a violation of ARP 3.25, the case is referred to the dean of students for a sanctioning conference with a designated Hearing Officer.

- A. **Purpose of Sanctioning Conference:** The focus of the sanctioning conference shall be the determination of an appropriate Sanction(s) for a violation of ARP 5.22 Sections F.(Discrimination), G. (Discriminatory Harassment) or W. (Sexual Misconduct).
- B. **Notice of Sanctioning Conference:** Unless a shorter time is consented to by the parties, a minimum of ten (10) Days' notice of the sanctioning conference date, time and location will be provided to the Respondent.
- C. **Conduct of Sanctioning Conference:** At the conference, the Hearing Officer, summarizes the information in the Report of Inquiry and facilitates a conversation with the Respondent to as to the circumstances of the case.
- D. **Sanction Decision and Delivery:** The Hearing Officer will take into consideration information shared by the Report of Inquiry, information provided by the Respondent, nature of the incident, aggravating or mitigating circumstances, prior disciplinary history, similar cases and

Sanctions imposed, educational and developmental impact for the student, and factors listed in ARP 5.21.

1. The Sanction decision will be delivered to all parties (respondent and complainant) simultaneously, meaning without substantial delay between the notifications to each.
  2. Notification will be made in writing and may be delivered by one or more of the following methods: in person by the Haring Officer (or designee); mailed to the local or permanent address of the student as indicated in NMSU records; or emailed to the student's NMSU issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- E. **Appeal Rights:** The Hearing Officer's decision must inform the Respondent and the Complainant of their right to appeal the Sanction decision as provided below (Part 8).

## **PART 8: APPEAL PROCEDURES**

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- A. **Notice of Appeal; Time Limit:** A Respondent or a Complainant may appeal the Hearing Officer's decision by sending a Notice of Appeal in writing to the dean of students, within five (5) Days from receipt of the Hearing Officer's determination in either a PART 6 fact finding hearing or a PART 7 sanctioning conference. The dean of students submits the Notice of Appeal to the NMSU official designated to serve as the Appeal Officer, and ensures that each party receives a copy of the Notice of Appeal.
- B. **Grounds for Appeal/Standard of Review:** The purpose of the appeal process is to provide a limited, final review based on the hearing record, to determine if there was a substantial miscarriage of justice in the resolution of the case. To avoid summary dismissal, the appealing party must assert at least one of the following grounds for appeal, and establish that, but for the asserted grounds, a different outcome would have resulted.
1. Procedural error: Significant procedural error occurred in the processing of the case that resulted in a substantial likelihood that the outcome was affected.
  2. Conflict of Interest or Bias: Objective facts demonstrate that a decision-maker was biased or had a conflict of interest of such significance that a reasonable person would not believe that the decision maker could be objective in making the decisions regarding the case.
  3. Arbitrary or Capricious: The record does not reveal evidence from which a reasonable person could find that the Student engaged in the alleged misconduct by a Preponderance of the Evidence; accordingly, the decision appears to be arbitrary or capricious.
  4. New Evidence: New significant evidence was discovered that was not reasonably available or discoverable at the time of the hearing, which presents a substantial likelihood that it would have affected the decision.
  5. Nature/Level of Sanction: The level or nature of the Sanction imposed is not appropriate for the level or nature of the violation the Respondent is found responsible for.
- C. **Opportunity for Non-Appealing Party to Respond:** The non-appealing party may, but is not required to, submit a responsive document to the Appeal Officer providing their position on any issue raised in the Notice of Appeal within ten (10) Days from their receipt of the copy of

the Notice of Appeal. The Appeal Officer considers any response from a non-appealing party before deciding whether to accept the appeal for the record review.

- D. **Summary Dismissal:** The Appeal Officer determines if the Notice of Appeal was timely submitted, and whether the Notice sufficiently states appropriate grounds for review of the hearing decision. If the Notice of Appeal is not timely or does not provide any description of how one of the required grounds for appeal applies to their SSCC conduct case, the appeal is summarily dismissed.
- E. **Appeal Review:** If the appeal is accepted for a record review, the following procedures will apply:
1. The Appeal Officer notifies the Dean of Students, the Respondent and the Complainant, if any, that the appeal is accepted for review.
  2. The Dean of Students ensures that the hearing record is transmitted to the Appeal Officer within three (3) days of receiving the notification.
  3. The Appeal Officer reviews the hearing record, including the evidence submitted by the parties, any relevant policies or law, and the arguments raised in the Notice of Appeal and any response submitted by the non-appealing party.
  4. Within twenty (20) Days from the date of receipt of the SSCC hearing record, the Appeal Officer issues a final appeal decision based upon evidence in the record. The decision may uphold, modify or reverse the decision of the Hearing Officer, or in extraordinary circumstances, if necessary to ensure a just and impartial resolution, may remand the matter for a new hearing. The decision of the Appeal Officer is final.
  5. The Appeal Officer provides Notice of the decision to the Respondent, the Complainant (if any) and the Dean of Students. The Appeal Officer assembles the appeal record and transfers both the hearing record and the appeal record to the Dean of Students for record retention purposes.
  6. The Dean of Students is responsible for taking necessary steps to implement the decision of the Appeal Officer.

## 5.26 – SSCC Conduct Case Procedures v080719

### **PART 1: ~~REPORTING STUDENT MISCONDUCT~~**

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~~1. Students, faculty or any other member of the NMSU Community may report suspected or observed misconduct by students to the Dean of Students or appropriate community college vice president for student services. NMSU police reports involving student conduct are forwarded to the Dean of Students for review and potential disciplinary action pursuant to the SSCC. Verbal and written reports received by other NMSU officials involving potential violations of the SSCC are also forwarded to the Dean of Students. Any report involving discrimination on the basis of any protected class (See ARP 3.25 Discrimination, Harassment and Sexual Misconduct on Campus), including sexual assault, harassment, stalking, dating violence or other sexual misconduct, must be referred to the Office of Institutional Equity.~~

### **PART 2: GENERAL GUIDANCE APPLICABLE AT ALL STAGES OF CONDUCT CASE**

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A. ~~**Dismissal:** If at any time the Case Administrator determines that the facts do not support an SSCC violation, then, upon consultation with the dean of students, the report review, case or Charge is closed. If the subject parties have been informed of the pending matter, then formal Notice of the dismissal is sent.~~

~~B.A. **Accepting Responsibility:** At any time prior to a determination by the Hearing Officer, a Student may elect to accept responsibility for the alleged misconduct and accept the proposed Sanction. The decision to accept responsibility must be communicated in writing to the Dean of Students or appropriate community college designee.~~

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~~C.A. **Confidentiality and Privacy:** Recognizing that certain information is necessarily divulged in the conduct of an investigation, and hearing to provide due process, and further, than some laws require disclosure of select information; confidentiality and privacy, ~~as provided by law and NMSU policy, are will be~~ maintained to the extent legally possible during the processing of a SSCC conduct cases case. All meetings, Educational Conferences, hearings and appeals are closed to protect the privacy of students.~~

~~B. **Discrimination/Title IX Cases:** When any form of prohibited discrimination is alleged in violation of ARP 3.25, including Title IX violations such as sexual harassment, stalking, intimate partner violence or other sexual misconduct (hereinafter “3.25 cases”), the role of the Dean of Students is to:~~

- a. refer any reports or complaints received directly to the Office of Institutional Equity (OIE);
- b. coordinate regarding Interim Measures;
- c. assist as may be needed to further the interests of the investigation;
- d. receive OIE's Reports of Inquiry and continue with the SSCC process;
- e. issue Sanctions as warranted by OIE's findings, adequate to stop the conduct, prevent its recurrence and remedy its effects; and
- f. convey the sanctions in a Title IX case to the parties and inform of the right to appeal the Sanction (See PART 8)
- g. communicate the sanction in all 3.25 cases to OIE once the case has been concluded.

**D.C. Due Process:** Students who are the subject of an SSCC conduct case will ~~receive due process including adequate be given~~ notice of the facts and evidence ~~supporting relating to~~ the allegation, and an opportunity to provide a ~~rebuttal~~ statement and other evidence ~~refuting to refute~~ the allegations. In 3.25 cases, due process is provided by OIE in its investigation and determination processes governed by ARP 3.25.

**E.D. Extensions of Time:** ~~A Student or any official involved in the administration of an SSCC case or charge may make written request, and for reasonable cause, will be granted a time extension relating to any requirement under the SSCC, unless countervailing factors make such an extension impractical or burdensome. A request for an extension is not valid unless the requesting individual includes the reasonable cause for the request (e.g. scheduling conflict, a primary witness' unavailability, etc.); and any request may be denied if made for improper purpose or if prejudice to the other party would result.~~ Extensions of Time: Any involved party or NMSU official may request to extend a time limitation provided in the SSCC. All reasonable requests will be granted. Requests for extensions must be directed to the individual in charge of making decisions at the specific stage of the proceeding (Case Administrator, Hearing Officer, or Appeal Officer) or, if the decision-maker is the one seeking an extension, extensions may be granted by that individual's immediate supervisor.

**E. Student Acceptance of Responsibility:** At any time prior to a determination by the Hearing Officer, a Student may elect to accept responsibility for the alleged misconduct and accept the proposed Sanction. The decision to accept responsibility must be communicated in writing to the Dean of Students or appropriate community college designee.

**F. Case Dismissal:** If the Case Administrator determines at any stage, that the facts do not support an SSCC violation, the case may be closed, with notice to the involved parties as may be appropriate. However, in 3.25 cases, OIE has independent authority to dismiss cases which it determines do not allege a 3.25 violation or are not supported by a preponderance of the evidence. Dismissed 3.25 cases involving non-discriminatory misconduct which may violate the SSCC will be referred to the Dean of Students for further action.

## **PART 32: CASE INITIATION**

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**A. Reporting Misconduct by Students/Student Organizations:**

1. Any person, including Students, faculty and members of the NMSU Community may report suspected or observed misconduct by Students and Student Organizations to the Dean of Students or appropriate community college vice president for student services.
2. The NMSU Police Department forwards its reports involving student conduct to the Dean of Students for review and potential action under the SSCC.
3. Any report involving discrimination on the basis of any protected class (See ARP 3.25-Discrimination, Harassment and Sexual Misconduct on Campus), including sexual assault, harassment, stalking, dating violence or other sexual misconduct, must be referred to the Office of Institutional Equity.

**A.B. Appointment of Case Administrator:** Upon receipt of a report of misconduct that is within the authority of the Dean of Students (~~as delineated in Rule~~See ARP 5.20, Part 4), the dean of students appoints an NMSU employee to serve as the Case Administrator, taking into consideration the campus where the alleged incident occurred and where the Respondent is enrolled. No formal appointment documentation is necessary ~~and;~~ standing appointments ~~for various types of incoming reports may be utilized.~~are permissible.

**A. Preliminary Review: and Investigative Referral:** The Case Administrator ~~screens~~reviews the reported misconduct ~~to determine whether the reported misconduct, if presumed to be true, would constitute~~and opens a SSCC case if it ~~appears there is a~~ violation of the SSCC. ~~If the determination is in the affirmative, an SSCC case file is opened; otherwise the report is dismissed.~~

**C. Investigative Referral:** ~~If the allegations, presumed to be true, would violate NMSU non-~~are not referred to another department in accordance with the following, the Case Administrator facilitates the SSCC process up to the point that a hearing might be held.

**B. If the alleged misconduct is any form of discrimination policies (e.g. discriminatory misconduct on the basis of any protected class (prohibited by ARP 3.25-Discrimination, Harassment and Sexual Misconduct on Campus), including, which includes Title IX violations such as sexual harassment, stalking, dating intimate partner violence or other sexual misconduct, the ~~dean~~Dean of studentsStudents will immediately refer**

1. ~~the case to OIE for investigation, and will take action pursuant to the SSCC only upon receipt of investigative findings by OIE. The dean of students may refer other types of alleged misconduct to other NMSU entities for investigation as well (e.g. Housing, NMSU Police), and factual findings pursuant to that policy.~~
2. **SSCC Case Processing:** ~~If the allegations, presumed to be true, would support a finding~~When an incident results in alleged violations of a violation of the SSCC, both ARP 3.25 (discrimination including Title IX) and do not require other non-discriminatory infractions, upon referral outand on a case by case basis, the Dean of Students and OIE will coordinate to ensure the integrity of each office's need to investigate and to take action under their respective policies and procedures.

~~C-3. If the alleged misconduct occurred in NMSU residential housing (Housing), the Dean of Students may refer the case to Housing for investigation by another unit, then the case is initiated, and factual findings. Alternatively, at the discretion of the Dean of Students, the case may be investigated and processed by the Case Administrator in accordance jointly with this rule, or independently from Housing, as it deems appropriate based on the nature of the alleged incident.~~

## **PART 43: EDUCATIONAL CONFERENCE**

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Once a determination is made ~~regarding jurisdiction and it is determined~~ that the facts alleged would support a finding of an SSCC violation, ~~the case will proceed or the relevant office investigating the case has issued findings which support a violation of the SSCC, the case proceeds~~ to the Educational Conference ~~and informal fact finding stage.~~ At the beginning of the Educational Conference, the Case Administrator informs the Student that any facts volunteered by the Student may be used as evidence in support of action under the SSCC in any later hearing or appeal.

- A. Purpose of Educational Conference:** The Educational Conference serves each of these purposes:
1. Notice of Misconduct Allegations: The Case Administrator informs the Student of the ~~potential facts alleged or pending Charge, including the factual allegations~~ findings issued by OIE in a 3.25 case, the alleged violation applicable section of the SSCC and/or other applicable university policy and the potential range of Sanctions, should the Student accept responsibility or be found responsible.
  2. Inform about SSCC Process: The Case Administrator explains the SSCC process to the Students, and answers any questions from the Student.
  3. Fact Finding: ~~The~~ If after being informed that any facts the student shares may be used in support of disciplinary action under the SSCC, the Student wishes to discuss the case, the Case Administrator conducts the Educational Conference and where appropriate, conducts an investigative interview, documenting any will document the information or accepting received, including exculpatory facts, and accept any records that the Student provides, if any, may provide in response to the allegations.
  4. Facilitate Resolution: Through full and informed discussion, the Case Administrator assists the Student in deciding whether or not to accept responsibility for the alleged misconduct or, in the alternative, to allow the SSCC conduct process to continue.
- B. Timing and Notice of Educational Conference:** A Student accused of misconduct is notified and afforded an Educational Conference within a reasonable time after allegations are made or sufficient facts are known to the Dean of Students to appoint a Case Administrator to initiate a case. ~~Generally~~ Generally, unless there are circumstances reasonably justifying a longer time period, this will occur within sixty (60) Days from the date the Dean of Students receives the report or complaint of alleged misconduct, ~~unless there are circumstances reasonably justifying a longer period of time.~~ or Report of Inquiry from OIE in a 3.25 case.

~~1. **Advance Notice:** A minimum of five (5) Days' Notice is will be given to the Student prior to an Educational Conference.~~

~~C.2. The Notice includes a link to the SSCC (ARP 5.20 through ARP 5.26), and informs the Student of the following: (1) the date, time and location for the conference, (2) the fact that the Student is the subject of an SSCC conduct case, (3) the specific factual misconduct allegation(s), and (4) the potential Charge(s).~~

~~a. the date, time and location for the conference.~~

~~b. the fact that the Student is the subject of an SSCC conduct case.~~

~~c. the specific factual misconduct allegation(s), and~~

~~d. the potential Charge(s).~~

~~e. the right to review, prior to the Educational Conference, the evidence collected as of that date relating to the alleged misconduct.~~

~~3. Where a Student is properly notified of an Educational Conference and fails to either (1) request an alternate date/time or (2) appear and participate at the Educational Conference, the Case Administrator will document the failure to appear and proceed in accordance with the SSCC.~~

~~D.C. **Outcome of Educational Conference:** The Case Administrator will document any factual information obtained through the Educational Conference including any rebuttal provided Except in 3.25 cases investigated by the Student OIE, the Case Administrator documents the facts asserted and evidence submitted by the Respondent, and the outcome of the Educational Conference. The possible outcomes include:~~

~~1. **Respondent Rebutts/Case Dismissed:** The Student provides persuasive ~~rebuttal~~ information refuting the alleged misconduct and the Case Administrator determines that there is insufficient evidence to support a finding that the Student violated the SSCC, and the SSCC case is dismissed. This outcome does not apply in 3.25 cases.~~

~~2. **Respondent Accepts Responsibility-Accepted-/Case Concluded:** The Student, after being fully informed of the allegations and the potential ~~sanctions~~Sanctions, accepts responsibility for the findings as determined by OIE or for the non-3.25 alleged misconduct and commits to fulfill the proposed Sanction. The Respondent completes and signs a form provided by the Dean of Students indicating acceptance of the proposed Charge is signed by the Student, and the Case Administrator imposes a and corresponding Sanction discussed in the conference, thereby concluding the conduct proceeding under this rule, with no right to appeal.~~

~~3. **Charge of Violation of SSCC-The Student Case Proceeds:** When Respondent neither provides persuasive exculpatory information accepts OIE's findings in a 3.25 case, nor accepts responsibility, and the Case Administrator concludes that it is more likely than not that the Student violated or provides exculpatory information in a non-3.25 case, the SSCC. The Case Administrator prepares a written Charge and gives Notice to the Respondent. The SSCC conduct case proceeds in accordance with this rule.~~

- ~~E. **Consequences for Failure to Attend Educational Conference:** Where a Student is properly notified of an Educational Conference and fails to either~~
- ~~3. (1) request an alternate date/time or (2) appear and participate at to the next phase in the Educational Conference student conduct process. In a 3.25 case, the Case Administrator will document next phase is a sanctioning conference. In a non-3.25 case, the failure to appear, and will investigate as necessary, issue a Charge next phase involves issuance of a formal charge if warranted supported by the evidence and proceed in accordance with the SSCC.~~

## **PART 54: ASSESSMENT OF FACTS AND SANCTION; NOTICE; ISSUANCE OF FORMAL CHARGE**

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- ~~A. **Evidence Collection:** Once a Charge if the matter is issued, not resolved in the Educational Conference, the Case Administrator assembles the evidence relating to the alleged misconduct. The Case Administrator consults with and obtains reports from any other offices that investigated the allegations (e.g. OIE, Housing, NMSU Police), and if the matter was not formally investigated by another unit, conducts any~~
- ~~A. necessary additional investigation to ensure a full understanding of the incident or event.~~
- ~~B. **Assessment of Facts and Sanction:** Once the relevant evidence:~~
- ~~1. Once the relevant evidence (documents and witness statements) is available and complete, the Case Administrator assesses whether or not a violation of the SSCC is supported by a Preponderance of the Evidence. If not, the Charge is dismissed, and the Respondent(s) and complainant, if any, are immediately provided Notice. Otherwise, the Case Administrator issues a written determination finding the Student responsible for the allegations, including an appropriate Sanction to address the violation, consistent with the guidelines in ARP 5.25 Part 3. at least a Preponderance of the Evidence.~~
- ~~A. **Notice of Determination with Imposition of Sanction:** The Respondent and the dean of students are provided Notice of the written determination within five (5) days from the date of the Case Administrator's determination, and the Respondent is notified of the opportunity to request a review hearing. The Notice will advise the Respondent that unless the request for a review hearing is submitted in writing to the dean of students within ten (10) days from receipt of the Case Administrator's determination, the determination will stand as the final resolution of the conduct case, including imposition of the Sanction.~~
- ~~2. If the evidence does not support the alleged violation, no formal Charge will be issued.~~
- ~~3. If the evidence supports the alleged violation by at least a preponderance of the evidence, a formal Charge will be issued.~~
- ~~C. **Issuance of Formal Charge:** The Case Administrator sends a formal Charge describing the alleged misconduct, the section of the SSCC violated, and the range of Sanctions for said violations. The formal Charge may be combined with the Notice of the Hearing. The formal~~

Charge must inform the Respondent of the right to schedule a time to review, before the hearing, the list of witnesses and any evidence that will be presented at the hearing.

## **PART 65: PRE-HEARING PROCEDURES**

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Upon receipt of a Respondent's written request for a hearing on a formal Charge, the following pre-hearing procedures apply:

A. **Designation of Hearing Officer:** The dean of students designates the Hearing Officer for the SSCC conduct case, provides the Hearing Officer with a copy of Charge determination, and gives Notice of the appointment to the Respondent and any Complainant. The appointment is subject to the following:

1. A Hearing Officer may recuse themselves if they believe there is a conflict of interest sufficient to affect their ability to hear the case fairly and impartially. For example, a conflict of interest may result from a personal relationship with, or knowledge of the case relating to, the Complainant, Respondent or a witness.

~~2.~~—A Complainant or Respondent may request a different Hearing Officer, based on facts indicating the potential for a conflict of interest or potential bias, by submitting a request in writing to the dean of students, or if the conflict involves the dean of students, Student Life's vice president for student success. An alternate Hearing Officer will

2. be appointed when the facts are found to create a reasonable concern for potential bias.

~~B.~~—**Role of Case Administrator:** ~~The At the hearing, the Case Administrator, or a designee is typically responsible for facilitates~~ the presentation of ~~the evidence of relating to~~ the alleged misconduct ~~at the hearing. In cases investigated by to the Hearing Officer, including coordination of the presentation of evidence gathered by other departments (e.g. Housing, Office of~~

~~B.~~ Institutional Equity, ~~the Director or an investigator from OIE will present the evidence.~~)

C. **Duties of Hearing Officer:** Consistent with the SSCC, the Hearing Officer's responsibilities include: ~~scheduling and sending Notice of hearing;~~ resolving pre-hearing procedural issues; convening and conducting the fact finding hearing; issuing a written decision based upon the Preponderance of the Evidence standard, informing the Respondent and any Complainant of the right to appeal; and organizing and preserving the hearing record. The Hearing Officer makes arrangements to create an audio recording of the hearing which becomes a part of the hearing record. The Hearing Officer may also arrange for a Notary Public to place the witnesses under oath during the hearing.

D. **Resolution of Pre-Hearing Procedural Issues:** The designated Hearing Officer determines if the case is ready to proceed at the scheduled date and time. The Hearing Officer resolves pre-hearing issues and concerns raised by a party, ~~providing and provides~~ the Case Administrator

and the Respondent the opportunity to provide input. Examples of issues that commonly are raised ~~and that~~ should be resolved before the hearing include:

1. Confirmation that all potential conflicts of interest have been disclosed and addressed;
2. Requests for reasonable accommodations based on disability;
3. Requests for time extensions;
4. Requests for procedural modifications in the interest of fairness or safety;

~~1. Pre-hearing exchanges of exhibit and witness lists;~~

5. The Respondent has been provided the opportunity to review the list of witnesses and the evidence that will be presented at the hearing;

~~5-6.~~ Resolution of any issues relating to witness availability: Case Administrators and Respondents are responsible to arrange for their respective witnesses to attend the hearing. If the witness is a Student or an NMSU employee and refuses to attend the hearing voluntarily, upon written request from the Case Administrator or the Respondent, the dean of students or designee will issue an *NMSU Directive to Appear*, to facilitate the witness' participation in person or by phone.

## **PART 76: HEARING PROCEDURES**

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- A. **Hearing Purpose:** The hearing provides the opportunity for a neutral factfinder to evaluate the available evidence as presented by the Respondent, any Complainant who chooses to participate, and the Case Administrator (or other NMSU official), to determine whether or not the SSCC violation(s) alleged in the Charge are supported by a Preponderance of the Evidence, and, where a violation is found, to review the ~~sanctions~~Sanctions imposed by the Case Administrator.
- B. **Notice of Hearing:** Unless a shorter time is consented to by the parties, ~~five (5)~~a minimum of ten (10) Days' Notice of the hearing date, time and location must be given to the Respondent, any Complainant, and to the Case Administrator.
- C. **Witnesses:** The following procedures will apply when witnesses are called by a party to the SSCC conduct hearing:
  1. **Questioning of Parties:** In order to preserve the educational atmosphere and to avoid creation of an adversarial proceeding, questions for witnesses are submitted to and asked through the Hearing Officer.
  2. **Obligation to Testify:** Witnesses who are NMSU Students or employees must attend a hearing when directed (*NMSU Directive to Appear*) by the Dean of Students. Failure to attend may result in a separate employee or student disciplinary action for the uncooperative individual.
    - ~~3.~~ **Testimonial Evidence:** The Hearing Officer may require witnesses to take an oath to tell the truth, administered by a Notary Public. The Hearing Officer may exclude the

4.3. use of written witness statements if the lack of an opportunity to cross examine the witness in front of the Hearing Officer is deemed prejudicial. If a necessary witness is unavailable or cannot reasonably appear, and the Hearing Officer determines that the written or recorded statement regarding the events pertaining to the issue are more probative than prejudicial, then such written statements may be allowed. Upon request, the Hearing Officer will continue the hearing to allow a party to question the witness providing written or recorded testimony.

5.4. Exclusion of Witness from Proceeding: The Respondent and Complainant, if any, are entitled to ~~be in attendance~~attend the hearing during all presentation of evidence. Other witnesses are required to wait outside the hearing room until ~~their point of participation~~they are called to testify and are required to leave the hearing room once ~~they are~~ dismissed by the Hearing Officer.

D. **Conduct of Hearing:** The Hearing Officer convenes the hearing at the designated date and time, and ensures that the proceeding is ~~audiorecorded~~audio recorded, including the resolution of any pre-hearing issues. Before the presentation of the case commences, the Hearing Officer provides the parties with an overview of the hearing process to the parties.

1. Resolution of Pre-Hearing Issues: The Hearing Officer asks parties if all pre-hearing issues have been resolved. If they have not been, the Hearing Officer addresses these issues first. If resolution of a prehearing issue will substantially impact the hearing process or outcome, the hearing should be re-set to another date and time while the parties are still present.
2. Opening Statements: The Hearing Officer provides each party an equal opportunity to present a brief opening statement to describe their position and the evidence they will present that supports their position relative to the Charge or the proposed Sanction. Opening statements are not required, may be limited in time by the Hearing Officer, or may be waived the parties altogether.
3. Evidence in Support of Determination: The Hearing Officer calls first on Case Administrator, or the alternate NMSU official, to present evidence and call witnesses in support of the determination on the Charge and the imposed Sanction. Respondent is given the opportunity to submit questions related to the evidence or witnesses presented by the Case Administrator, to be asked through the Hearing Officer.
4. Rebuttal: The Hearing Officer calls on Respondent to present evidence including personal testimony and the testimony of witnesses to rebut the Charge, evidence presented by Case Administrator, or proposed ~~sanction~~Sanction. The Case Administrator is given the opportunity to submit questions related to the evidence or witnesses presented by the Respondent, to be asked through the Hearing Officer.
5. Hearing Officer Questioning: The Hearing Officer may ask any question of any party or witness relating to the Charge, the evidence, or the proposed Sanction.
6. Evidentiary Issues: The hearing is not a legal proceeding and the rules of evidence used by courts do not apply to SSCC hearings. The Hearing Officer has discretion to make decisions about the relevance or admissibility of evidence, however, the exclusion of evidence should be rare and only to address possible prejudice or improper conduct by a party. If evidence

is excluded, a party may summarize on the record the anticipated testimony or proffered evidence and its relevance to the case.

7. Closing Statements: The Hearing Officer provides each party an equal opportunity to present a closing statement to summarize or comment on the evidence presented and how it supports their position relative to the Charge and the proposed Sanction. Closing Statements are not required, may be limited in time by the Hearing Officer, or may be waived the parties altogether.

E. **Decision by Hearing Officer:** Within ~~ten (10)~~ five (5) Days from the date ~~of~~ the hearing was concluded, the Hearing Officer will ~~make a decision regarding the conduct violations alleged in the Charge and the Sanction imposed, and will~~ issue athe written decision to the ~~dean of students with a copy to the Case Administrator (or alternate) and to the~~ Respondent, ~~indicating whether or not the facts, as established under the Preponderance of the Evidence standard support a finding that Respondent was responsible for violating the SSCC. with factual findings and imposing a sanction, if appropriate.~~ The Hearing Officer decision will comport with the following:

1. Findings of Fact. The decision memo or letter must clearly identify the Hearing Officer's findings of fact in support of the decision.
2. Decision to Dismiss. If the Hearing Officer does not find the Respondent responsible, the decision must state that the Charge is dismissed, and no conduct record results.
3. Sanction Review. If the Hearing Officer finds the Respondent responsible, the Hearing Officer will also review and impose appropriate Sanction(s), taking into consideration any ~~sanction~~ Sanction previously proposed or imposed, the evidence presented by the Respondent, and the factors listed in ARP 5.21 Part 3.
4. Appeal Rights: The Hearing Officer's decision must inform the Respondent and the Complainant, if any, of their right to appeal the decision as provided below.
5. Time Deadlines: If the Hearing Officer needs more than ten Daystime to issue the decision ~~due to extenuating circumstances, the 10 Day time period may be extended for up to an additional ten Days, by providing Notice to the dean of students and to the parties of the adjusted date for the decision. After, a total of 20 Days beyond the hearing date, if additional time is required to issue a decision, the Hearing Officer must seek an extension of time from the vice president for student success. may be requested. (See PART 1 above).~~

F. **Maintenance of Hearing Record:** The Hearing Officer organizes and preserves the record of the fact finding hearing, including pre-hearing correspondence and notices, the audio recording, and exhibits or other evidence, labelled by the party who introduced it. The hearing record is transferred to the Dean of Students and is maintained as required by the state's record retention laws and NMSU policy.

## **PART 7: SANCTIONING CONFERENCE IN 3.25 CASES**

In 3.25 cases, in lieu of the hearing process described above in PART 6, once the Office of Institutional Equity has issued findings and a determination in support of a violation of ARP 3.25,

the case is referred to the dean of students for a sanctioning conference with a designated Hearing Officer.

- A. **Purpose of Sanctioning Conference:** The focus of the sanctioning conference shall be the determination of an appropriate Sanction(s) for a violation of ARP 5.22 Sections F.(Discrimination), G. (Discriminatory Harassment) or W. (Sexual Misconduct).
- B. **Notice of Sanctioning Conference:** Unless a shorter time is consented to by the parties, a minimum of ten (10) Days' notice of the sanctioning conference date, time and location will be provided to the Respondent.
- C. **Conduct of Sanctioning Conference:** At the conference, the Hearing Officer, summarizes the information in the Report of Inquiry and facilitates a conversation with the Respondent to as to the circumstances of the case.
- D. **Sanction Decision and Delivery:** The Hearing Officer will take into consideration information shared by the Report of Inquiry, information provided by the Respondent, nature of the incident, aggravating or mitigating circumstances, prior disciplinary history, similar cases and Sanctions imposed, educational and developmental impact for the student, and factors listed in ARP 5.21.
  - 1. The Sanction decision will be delivered to all parties (respondent and complainant) simultaneously, meaning without substantial delay between the notifications to each.
  - 2. Notification will be made in writing and may be delivered by one or more of the following methods: in person by the Haring Officer (or designee); mailed to the local or permanent address of the student as indicated in NMSU records; or emailed to the student's NMSU issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- E. **Appeal Rights:** The Hearing Officer's decision must inform the Respondent and the Complainant of their right to appeal the Sanction decision as provided below (Part 8).

## **PART 8: APPEAL PROCEDURES**

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- A. **Notice of Appeal; Time Limit:** A Respondent or a Complainant may appeal the Hearing Officer's decision by sending a Notice of Appeal in writing to the dean of students, within ~~ten (10)~~ five (5) Days from receipt of ~~Notice of~~ the Hearing Officer's ~~decision~~ determination in either a PART 6 fact finding hearing or a PART 7 sanctioning conference. The dean of students submits the Notice of Appeal to the NMSU official designated to serve as the Appeal Officer, and ~~provides the Respondent with~~ ensures that each party receives a copy of ~~any~~ the Notice of Appeal ~~from a Complainant.~~
- B. **Grounds for Appeal/Standard of Review:** The purpose of the appeal process is to provide a limited, final review ~~of~~ based on the hearing record, to determine if there was a substantial miscarriage of justice in the resolution of the case. To avoid summary dismissal, the appealing party must assert at least one of the following grounds for appeal, and establish that, but for the asserted grounds, a different outcome would have resulted.

  - 1. Procedural error: ~~Procedural~~ Significant procedural error occurred in the ~~conduct~~ processing of the case, ~~or the hearing,~~ that ~~was so significant and prejudicial that there is~~ resulted in a substantial likelihood that the ~~decision~~ outcome was affected.

2. Conflict of Interest or Bias: Objective facts demonstrate that a decision-maker was biased or had a conflict of interest of such significance that a reasonable person would not believe that the decision maker could be objective in making the decisions regarding the case.
3. Arbitrary or Capricious: The record does not reveal evidence from which a reasonable person could find that the Student engaged in the alleged misconduct by a Preponderance of the Evidence; accordingly, the decision appears to be arbitrary or capricious.
4. New Evidence: New significant evidence was discovered that was not reasonably available or discoverable at the time of the hearing, which presents a substantial likelihood that it would have affected the decision.

5. Nature/Level of Sanction: The level or nature of the Sanction imposed is not appropriate for the level or nature of the violation the Respondent is found responsible for.

- C. **Opportunity for Non-Appealing Party to Respond:** The non-appealing ~~Complainant or Respondent~~ party may, but is not required to, submit a responsive document to the Appeal Officer providing their position on any issue raised in the ~~appeal~~ Notice of Appeal within ten (10) Days from their receipt of the copy of the Notice of Appeal. The Appeal Officer considers any response from a non-appealing party before deciding whether to accept the appeal. ~~for the record review.~~

~~D. Summary Dismissal:~~ The Appeal Officer determines if the Notice of Appeal was timely submitted, and whether the Notice sufficiently states appropriate grounds for review of the hearing decision. If the Notice of

D. Appeal is not timely or does not provide any description of how one of the required grounds for appeal applies to their SSCC conduct case, the appeal is summarily dismissed.

- E. **Appeal Review:** If the appeal is accepted for a record review, the following procedures will apply:

1. The Appeal Officer notifies the Dean of Students, the Respondent and the Complainant, if any, that the appeal is accepted for review.
2. The Dean of Students ensures that the hearing record is transmitted to the Appeal Officer within ~~5~~ three (3) days of receiving the notification.
3. The Appeal Officer reviews the hearing record, including the evidence submitted by the parties, any relevant policies or law, and the arguments raised in the Notice of Appeal and any ~~other~~ response submitted by the non-appealing party.
4. Within ~~thirty (30)~~ twenty (20) Days from the date of receipt of the SSCC hearing record, the Appeal Officer issues a final appeal decision based upon evidence in the record. The decision may uphold, modify or reverse the decision of the Hearing Officer, or in extraordinary circumstances, if necessary to ensure a just and impartial resolution, may remand the matter for a new hearing. The decision of the Appeal Officer is final.
5. The Appeal Officer provides Notice of the decision to the Respondent, the Complainant (if any) and the Dean of Students. The Appeal Officer assembles the appeal record and transfers both the hearing record and the appeal record to the Dean of Students for record retention purposes.

6. The Dean of Students is responsible for taking necessary steps to implement the decision of the Appeal Officer.