

**STUDENT SEXUAL MISCONDUCT SUBCOMMITTEE
HEARING PROCEDURES¹**

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STUDENT SEXUAL MISCONDUCT SUBCOMMITTEE
HEARING PROCEDURES

A. INTRODUCTION

The Student Sexual Misconduct Subcommittee (SSMS) assists in implementing the Board of Regents Policy: *Student Conduct Code* at the University of Minnesota on the Twin Cities Campus. The SSMS provides a fair hearing to determine if a student's behavior has violated the Student Conduct Code and to determine what, if any, sanction should be imposed. Alleged student sexual misconduct violations under the Student Conduct Code are referred to the SSMS for a hearing by the Office for Community Standards. The SSMS Secretary receives the complaints and assists the SSMS Chairs in managing the hearing process.

B. PARTIES TO THE COMPLAINT

In SSMS cases, the University is the formal complainant and the respondent is the individual alleged by the University to be in violation of the Student Conduct Code. For the purpose of these procedures, the parties are identified as the University Presenter and the respondent. The complainant is the individual who believes that they experienced sexual misconduct by the respondent.

The University appoints a staff member from the Office for Community Standards to bring the University's case before the SSMS. If a respondent is represented by an attorney, the University's Office of the General Counsel assigns an attorney to serve as the University Presenter.

The complainant and respondent may each be accompanied to the pre-hearing conference and hearing by two advisors of their choice. An advisor may be an attorney, advocate, support person or other individual who is not a fact witness in the matter. One advisor may serve in a speaking role, and the other may serve in a supporting, non-speaking role.

The University's Student Advocate Services provides advisors in a student advocate capacity to respondents who are not represented by an attorney to help them prepare and present their case before the SSMS. Advisors through Student Advocate Services would assume a speaking role. This service is free of charge to the respondent.

The Aurora Center offers advisors to support complainants through the SSMS process. Advisors in this capacity provide support to the complainant and would typically assume a non-speaking role in the hearing process. This service is free of charge to the complainant.

The respondent must submit the name of any advisor(s) to the SSMS Secretary before the prehearing conference, and must give immediate notice to the SSMS Secretary if there is any change in their advisor(s).

C. COMMITTEE AND PANELS

The SSMS Selection Committee appoints faculty, academic professional, and student members to the SSMS.

Panels are drawn from the SSMS to hear individual cases. A Panel consists of three (3) voting members and is formed with one University faculty member, one staff person, and one student. One alternate panelist is also appointed. The alternate will only participate in the SSMS hearing if one of the Panel members is removed due to conflict of interest or bias or a Panel member has a conflict on the date of the hearing. If the alternate member is needed, this may change the initial composition of the Panel from one faculty, one staff, and one student. One of the SSMS Chairs typically serves as the Panel Chair but may delegate that role to another SSMS member. The Panel Chair and the SSMS Secretary have no vote in the hearing outcome.

Panel members are not advocates for either party. The Panel shall fairly consider the information presented at the hearing and may ask questions of the witnesses. The Panel shall

decide whether the respondent violated the Student Conduct Code and, if so, what sanctions are appropriate. The Panel may not talk privately (outside of the hearing room) about the complaint with the parties or their advocates.

D. THE COMPLAINT AND SCHEDULING

When a complaint is not resolved informally, the Office for Community Standards forwards it to the SSMS Secretary for a hearing. The SSMS Secretary will notify a Panel Chair, the University Presenter, the respondent, and the complainant of the statement of the complaint, the Student Conduct Code, and the SSMS Hearing procedures. Where more than one student is alleged to have violated the Student Conduct Code in a related incident, SSMS proceedings generally will be held together. The Panel Chair has discretion to hold separate hearings upon a student's request prior to the prehearing conference.

The SSMS strives to complete a hearing within one month of the student's request for a hearing. The SSMS Secretary is responsible for scheduling a prehearing conference and the hearing, taking into account the parties' availability on pre-selected dates as appropriate.

E. STUDENT STATUS DURING THE PROCESS

A respondent ordinarily is allowed to continue the status of a student-in-good-standing pending the outcome of the SSMS hearing. However, in certain cases, the President or delegate may suspend a student temporarily, pending the SSMS's hearing and decision, as provided in the Student Conduct Code.

F. PREHEARING CONFERENCE

The Panel Chair will convene a prehearing conference to plan for the hearing and discuss the topics outlined in Appendix A of these procedures. The University Presenter, the respondent, and their advocate, the SSMS Secretary, and the Panel Chair attend the prehearing conference. The complainant and their advisor(s) has the right to attend the prehearing conference, but is not required to do so. If either party does not attend the prehearing conference, the Panel Chair

will determine whether and how that absence affects the witnesses and time limits at the hearing.

The parties shall be informed of the names of the Panel Chair and potential members of the Panel prior to the prehearing conference. At that time, either party or the complainant may ask that the Panel Chair or Panel member(s) be recused from the hearing due to a direct relationship with the case. At that same time, either party or the reporting individual may challenge the Panel member(s) on the ground of conflict of interest or bias. The Panel Chair, after hearing arguments, will decide whether a Panel member should be removed from the Panel. If a challenge is successful, a new person will be appointed from the SSMS. If the challenge is to the Panel Chair, another SSMS Panel Chair, after hearing arguments, will decide whether the assigned Panel Chair should be removed. If a challenge to the Panel Chair is successful, the SSMS Secretary will assign another Chair. A party or the complainant who learns after the prehearing conference of a potential conflict must immediately notify the SSMS Secretary of an objection.

The parties will identify the witnesses they intend to present at the hearing. The Panel Chair may, in its discretion, exclude from the hearing witnesses who were not previously identified to the other party.

The parties will also submit exhibits at the prehearing conference. Each side will have 24 hours to review the exhibits prior to the secretary distributing materials to the panelists. Either party may object to submitted materials. The Panel Chair, with or without an objection by a party, has discretion to determine whether an exhibit, in whole or in part, should fairly be included or excluded in the hearing process.

The University is committed to informal resolution of complaints whenever possible. During the prehearing conference and up to 24 hours prior to a hearing, the respondent and

complainant can propose or accept an informal resolution from the Office for Community Standards.

G. THE HEARING

1.) Decorum

The Panel Chair is responsible for maintaining an orderly, fair, and respectful hearing. The Chair has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. All electronic devices must be turned off or silenced during the entire hearing.

2.) Record of Hearing

SSMS complaints, prehearing conferences, and hearings are closed to the public. Guests may be permitted to attend with agreement from both parties, the complainant, and the Panel Chair. The SSMS Secretary shall keep an official recording of each hearing. No camera, TV, or other equipment, other than that used or approved by the Secretary, will be permitted in the hearing room.

A copy of the correspondence, the complaint and response, the exhibits presented at the hearing, the recording of the hearing, and the SSMS disposition shall be maintained in a file in the Office for Community Standards.

3.) Appearance

If the respondent does not appear in person at the hearing, the Panel may elect to either (1) vote to suspend the respondent until a hearing is held; or (2) vote to proceed with the hearing in the absence of the student. A respondent choosing not to appear may provide the Panel with a written statement signed by the respondent.

4.) Standard of Proof

In all cases before this subcommittee, the standard of proof is a preponderance of the evidence. To establish that a respondent violated the Student Conduct Code, the University Presenter must persuade a majority of the Panel that it is more likely than not that the student violated the subdivision(s) of the Student Conduct Code.

5.) Evidence Review Prior to the Hearing

Prior to each hearing, Panel members are expected to review the investigation report prepared by the Office of Equal Opportunity and Affirmative Action and the Office for Community Standards' letter(s) indicating the outcome of the investigation with the offer of an informal resolution, in addition to any other exhibits submitted by the parties at the pre-hearing conference. The person(s) who requested the hearing (the respondent and/or the complainant) may provide a written rebuttal to the EOAA report or the Office for Community Standards' letter(s). The written rebuttal must be received by the SSMS Secretary at least five calendar days before the hearing. Panel members are also expected to review any submitted rebuttal prior to the hearing.

6.) Case Presentation

The parties should prepare for a clear, complete, yet economical presentation of their cases. Each party will, in most cases, be limited to a maximum of three hours for presentation of their case. However, the Panel Chair may, in their discretion, alter this limitation.

Each party may offer reliable information relevant to the issue and may object to the information offered by the other party. The Panel Chair has discretion to determine what evidence should fairly be included and excluded in the hearing process and the Panel is responsible for weighing the relevance of the evidence presented.

The parties may also introduce relevant written documents, objects, films, or other materials as exhibits. Each party is responsible for bringing copies of written materials in sufficient number for distribution to the pre-hearing conference. The SSMS Secretary will communicate the

required number of copies by letter prior to the pre-hearing conference. Exhibits will be distributed to Panel members in advance of the hearing.

Parties should offer witnesses in person whenever possible. Each party is responsible for getting its own witnesses to the hearing. The unavailability of a witness is not a ground for postponement of the hearing. If an important witness prefers not to testify, the parties may ask the Panel Chair to assist in encouraging the witness to testify. Witnesses may present information by telephone, video, or written statement. After a party's witness presents information, the other party may ask questions, and then Panel members may ask questions.

Witnesses will only be allowed to appear at the hearing during their testimony. In SSMS hearings, the complainant may be present in the hearing room throughout the proceedings, not including the deliberative session.

H. PANEL DELIBERATIONS AND DECISION

At the end of the hearing the Panel will retire to deliberate in closed session. Only the Chair, Secretary and Panel members attend this session.

The task of the Panel is more than determining responsibility. It is one of assessing the qualifications of the respondent (if determined responsible for the conduct) for continuing membership in the University community in light of the individual's record of conduct and responsiveness to opportunities, advice, and counsel. The Panel decides the issues based on the information presented by the parties at the hearing and determines whether the University Presenter convinced them that the accused student violated specified subdivisions of the Student Conduct Code. The SSMS Panel must be prepared to make a judgment based on the information provided, even if it is not complete.

Each Panel member votes on whether or not the respondent is responsible for violating specified subdivision(s) of the Student Conduct Code for each alleged charge. A majority vote

of Panel members is required to find a violation. If a respondent is found responsible for one or more items, the Panel will next vote on sanctions, as listed in the Student Conduct Code.

The Panel's decision is communicated in writing to the parties and the complaint no later than one week following the hearing. No one participating in the deliberations will give any party verbal information about the decision or the deliberations prior to issuance of the decision.

I. APPEAL

A respondent and/or the impacted person who is dissatisfied with the decision of the SSMS may file an appeal with the appellate officer according to the Administrative Procedure - Student Conduct Code Procedures: Twin Cities.

STUDENT SEXUAL MISCONDUCT SUBCOMMITTEE PREHEARING CONFERENCE

University of Minnesota vs. Respondent

Date:

Time:

Place:

Purposes for the Prehearing Conference are:

1. To identify the advocates or attorneys of the parties.
2. To review the complaint.
3. To describe the procedures to be followed at the regular hearing (Appendix B).
4. To review the date, time, and place for the hearing.
5. To identify and challenge any of the Panel members (3 required for a quorum).
6. To identify and exchange the names of potential witnesses that may be scheduled to appear.
7. To resolve special considerations, answer other questions, or share information prior to the hearing.

STUDENT SEXUAL MISCONDUCT SUBCOMMITTEE ORDER OF PROCEEDINGS

Preliminary Note: The complainant and the respondent may have an advisor act on their behalf with respect to each of the items listed below with the following exceptions: (1) respondents must themselves state whether they are responsible or not; and (2) a respondent may not question a complainant directly, but rather must either (a) have an advisor do the questioning or (b) provide written questions to the Chair. For information on who may serve as an advisor, please see Administrative Policy: *Sexual Harassment, Sexual Assault, Stalking and Relationship Violence*.

1. Call to order by the Chair.
 - a. Reminder to turn off all electronic devices.
2. Announcements and opening remarks by the Chair.
 - a. Notice that the hearing is being recorded.
 - b. Identification of the parties attending the hearing.
 - c. Review of the standard of proof.
 - d. Understandings reached at the prehearing conference.
3. Witnesses are asked to leave the hearing room until recalled by the Chair.
4. Presentation of the complaint and alleged specific rules violation.
5. Respondent responds to the complaint (responsible or not responsible).
6. Opening comments. University presenter and/or Complainant up to 10 minutes total and then respondent up to 10 minutes.
7. University presenter and Complainant, through the University presenter, present witnesses and exhibits.
 - a. University presenter may question witness.
 - b. Complainant may provide questions for University presenter to ask witness.
 - c. Respondent may question witness.
 - d. Panel members may question witness.
8. Respondent presents witnesses and exhibits.
 - a. University presenter may question witness.
 - b. Complainant may provide questions for University presenter to ask witnesses.
 - c. Panel members may question witness.
9. A witness may be recalled to testify on specific issues:
 - a. At the request of either party.

- b. At the request of the Complainant.
 - c. At the request of a Panel member.
10. Closing comments. University presenter and/or Complainant up to 10 minutes total and then Respondent up to 10 minutes.
11. Hearing is closed by the Chair.
12. Panel retires to deliberate (closed meeting, not recorded).
- a. If the Respondent responds to the complaint by stating “not responsible,” the Panel finds the Respondent responsible or not responsible for each Student Conduct Code subdivision alleged in the complaint.
 - b. If the Panel finds the Respondent responsible, the Panel decides on appropriate sanctions.
 - c. If the Respondent responds to the complaint by stating “responsible,” the Panel decides on appropriate sanctions.
 - d. The Panel’s decision will be reported in writing to the parties by the SSMS Secretary.