

Information Sheet for Respondents¹ and Campus Advisers

<http://judicialaffairs.rutgers.edu/docs/respondent.pdf>

The University's judicial process is initiated when a complaint of a possible violation of the University Code of Student Conduct (Code) is filed against a student. Complaints may be filed with the Office of Student Judicial Affairs (OSJA) or any Dean of Students.

Complainants² must be members of the Rutgers community. Non-members of the Rutgers community may bring alleged violations to the attention of the Office of Student Judicial Affairs or to a Dean of Students. The Office of Student Judicial Affairs will assign a member of the University community to act as the complainant if the complaint is credible and the interests of the University community are involved.

Once a complaint has been received a judicial officer will conduct an investigation, called a preliminary review. The judicial officer will collect information from the complainant, the respondent(s), and appropriate witnesses. The judicial officer will provide the complainant and respondent(s) with a list of trained campus advisers who can assist in navigating the judicial system and preparing for a disciplinary proceeding.

If the judicial officer determines, as a result of the preliminary review, that there is sufficient evidence to charge the respondent with a violation of the Code, the respondent(s) will be asked to plead "responsible" or "not responsible" to the charge(s). If the respondent accepts responsibility for the violation(s), the judicial officer will decide the appropriate sanction. When the judicial officer determines that separation (suspension or expulsion) is the appropriate sanction, that determination represents a recommendation to the Vice President for Student Affairs (for conduct violations or graduate level academic integrity violations) or to the Vice President for Undergraduate Education (for undergraduate level academic integrity violations), who have the authority for issuing separation sanctions.

If the respondent denies responsibility for the violation, the case will be referred to a University Hearing or Disciplinary Conference. Students charged with separable offenses may choose either a University Hearing or a Disciplinary Conference. Students charged with non-separable offenses will have their cases heard in a Disciplinary Conference.

A University Hearing involves separable offenses. University Hearings are conducted by a hearing board of students and faculty under the direction of a hearing officer. Both the complainant and respondent have the opportunity to present evidence and witnesses and to question the opposing party and his or her witnesses. Once the hearing board has considered the evidence and testimony, the panel determines whether the respondent is responsible or not responsible for the violation. If the board finds the respondent responsible, it recommends a

¹ The respondent is the individual accused of violating the University Code of Student Conduct.

² The complainant is the individual bringing the complaint against the accused student.

sanction to the Vice President for Student Affairs (for conduct violations or graduate level academic integrity violations) or to the Vice President for Undergraduate Education (for undergraduate level academic integrity violations).

A Disciplinary Conference involves a review of evidence and testimony similar to a University Hearing, but is less formal and is conducted solely by a judicial officer. For separable offenses, a Disciplinary Conference may only take place if the respondent requests it and the complainant and victim (if not the complainant) agree to it. If the judicial officer finds the respondent responsible for the charge(s), he or she then determines a sanction. If the judicial officer determines that suspension or expulsion is the appropriate sanction, that determination represents a recommendation to the Vice President for Student Affairs (for conduct violations or graduate level academic integrity violations) or Vice President for Undergraduate Education (for undergraduate level academic integrity violations).

Respondents and campus advisers should consult the Code when dealing with a disciplinary charge. It is the authority in these matters. This information sheet summarizes the process more fully described in the Code.

The Preliminary Review

Throughout the judicial process the respondent has the right to:

1. Remain silent or to discuss his/her view of the facts when speaking with a judicial officer. As information given to the judicial officer during the preliminary review may be used as evidence in a hearing or conference, a respondent can choose to remain silent. This choice will not be considered evidence of guilt, nor will a negative inference be drawn from it. While a student has a right not to incriminate him/herself by speaking, if a student chooses to speak, s/he is required to tell the truth and may not elect to answer some questions and refuse to answer other questions (this applies at both the preliminary review and at a hearing or conference).
2. Be presumed innocent and treated with respect during the judicial process. The burden of proof rests with the complainant. A respondent can be found responsible for a violation of the Code only if the complainant has proven the allegations through clear and convincing evidence.
3. Make decisions regarding the judicial process without any duress, threats or coercion from any authority. No person is authorized to make a binding judicial agreement with a student outside of the formal judicial process.

During the preliminary review process the respondent should:

1. Read the University Code of Student Conduct and clearly understand all hearing and conference procedures. Questions about the judicial process should be directed to the Office of Student Judicial Affairs (732-932-9414).
2. Choose a campus adviser from a list of trained advisers, which can be obtained from the judicial officer. The respondent can, instead, choose any member of the University community as an adviser, but should be aware that only campus advisers on the list have received formal training in the specifics of the judicial process. If the respondent selects a campus adviser who has a law degree, the complainant may do so as well, but not otherwise. The University will treat all conversations between respondent and campus adviser as confidential. The University cannot guarantee that external authorities will likewise respect this confidentiality.
3. Clearly understand:
 - Which offense(s) is alleged to have been committed.
 - Who the complainant is.
 - What evidence exists relating to the charge.
 - What witnesses and documents (e.g. police or incident reports) may be introduced at the hearing or conference by the complainant.
 - The consequences of accepting or denying responsibility.
 - Whether there is an option for a Disciplinary Conference instead of a University Hearing and the difference between the two proceedings.
4. Provide the judicial officer with all relevant evidence and the names of any witnesses, if the respondent has chosen not to remain silent.
5. Consult an attorney, if he or she wishes. In addition to the use of campus advisers, both respondents and complainants can, if they choose, retain an outside attorney at their own expense to advise them. However, attorneys may only give advice and will not be allowed to speak in a conference or hearing or negotiate for either party. The only person who can speak in place of the respondent or the complainant is the campus adviser. The respondent may always, of course, elect to speak for him- or herself. If the respondent chooses to retain counsel, he or she should share the Attorney's Guide to the Student Judicial Process (<http://judicialaffairs.rutgers.edu/docs/AttyBrochure.pdf>) with the attorney.

The Disciplinary Conference

If the case will be heard at a Disciplinary Conference, the complainant may not be required to attend the conference. The judicial officer conducting the conference will determine whether the complainant's presence is required. Generally, the complainant will only be expected to attend if his or her testimony is needed to resolve a factual issue.

Before the conference the respondent and his or her campus adviser should:

1. Make an appointment with the Office of Student Judicial Affairs (732-932-9414) to review the case file.
2. Review the judicial officer's preliminary review report, which will be presented at the conference.
3. Develop a list of evidence that helps to prove the respondent's version of events. Provide this list and copies of the evidence to the judicial officer conducting the conference no later than five working days before the conference.
4. Develop a list of witnesses whose testimony supports the respondent's version of the facts. This list should:
 - Include the witnesses' names, telephone numbers, and e-mail addresses
 - Indicate whether each witness is a ***factual witness*** (an individual who has direct, relevant knowledge of the matter in question) or a ***character witness*** (an individual who will testify to the respondent's character)
 - Include a brief summary of the facts each witness will testify to.

Present this list to the judicial officer no later than five working days before the conference.

5. Interview these witnesses before the conference and review their testimony. Share the *Guide for Witnesses in the Rutgers Student Judicial System* (<http://judicialaffairs.rutgers.edu/docs/witness.pdf>) with the witnesses.

6. Confirm the witnesses' attendance and be sure that they are aware of the time and location of the conference.

7. Obtain an affidavit from any witness who cannot attend the conference. In order to be admissible, the affidavit must be witnessed by a Dean of Students or by a notary public. For information on preparing affidavits, visit <http://judicialaffairs.rutgers.edu/affidavit.shtml>. Submit any affidavits to the judicial officer no later than five working days before the conference.

8. Review the list of witnesses that the complainant has submitted. Anticipate the testimony that may be presented by these witnesses and prepare questions for them that will elicit information in support of the respondent's case.

9. Determine whether the respondent or campus adviser will question witnesses at the conference.

10. Prepare a statement on an appropriate sanction, in the event that the judicial officer returns a finding of responsibility. Should he or she be found responsible for the charges, the respondent will have the opportunity to comment on the sanction. Therefore, the

respondent should prepare a statement and any supporting materials (such as letters from character witnesses) that s/he would like the judicial officer to consider when determining the sanction.

During the conference the respondent should:

1. Arrive on time with his or her witnesses.
2. Inform the judicial officer who will be questioning witnesses (the respondent or the campus adviser).
3. Testify truthfully (if choosing to testify).
4. Treat all parties civilly and with respect.
5. Ask the judicial officer to clarify anything that is said or occurs at the conference that is not understood.

In a Disciplinary Conference, the judicial officer is the sole finder of fact. He or she will question the complainant, respondent, and witnesses. The complainant and respondent may also question the opposing party and his or her witnesses. When all testimony and evidence has been presented, the judicial officer makes a determination of responsibility.

If the judicial officer finds the respondent not responsible for violating the Code, the disciplinary process is concluded and the respondent's file will be expunged and cleared of any disciplinary charges.

If a respondent is found responsible for violating the Code, the judicial officer will determine an appropriate sanction, taking into consideration any past disciplinary offenses committed by the respondent and any statements submitted by the complainant, the victim (if not the complainant), the respondent, and the judicial officer who conducted the preliminary review.

The finding and the sanction recommended by the judicial officer will be shared with the respondent and complainant. If the judicial officer determines that a sanction less than suspension or expulsion is appropriate, that determination is final. If the recommended sanction is suspension or expulsion, it will be forwarded to the appropriate Vice President, who will make the final decision regarding the sanction. Any comments about the sanction that the respondent wishes the Vice President to consider should be sent in writing to him/her no later than five (5) working days after being notified of the judicial officer's recommendation. The respondent will receive notice of the Vice President's decision by mail.

The University Hearing

If the case will be heard at a University Hearing, the complainant is required to attend the hearing and to present the case against the respondent.

Before the hearing the respondent and his or her campus adviser should:

1. Make an appointment with the Office of Student Judicial Affairs (732-932-9414) to review the case file.
2. Review the judicial officer's preliminary review report, which will be presented at the hearing.
3. Develop a list of the evidence helps to prove the respondent's version of events. Provide this list and copies of the evidence to the Office of Student Judicial Affairs no later than five working days before the hearing.
4. Develop a list of witnesses whose testimony supports the respondent's version of the facts. This list should:
 - Include the witnesses' names, telephone numbers, and e-mail addresses
 - Indicate whether each witness is a ***factual witness*** (an individual who has direct, relevant knowledge of the matter in question) or a ***character witness*** (an individual who will testify to the respondent's character)
 - Include a brief summary of the facts each witness will testify to.

Present this list to the Office of Student Judicial Affairs no later than five working days before the hearing.

5. Interview these witnesses before the hearing and review their testimony. Share the *Guide for Witnesses in the Rutgers Student Judicial System* (<http://judicialaffairs.rutgers.edu/docs/witness.pdf>) with the witnesses.
6. Confirm the witnesses' attendance and be sure that they are aware of the time and location of the hearing.
7. Obtain an affidavit from any witness who cannot attend the hearing. In order to be admissible, the affidavit must be witnessed by a Dean of Students or by a notary public. For information on preparing affidavits, visit <http://judicialaffairs.rutgers.edu/affidavit.shtml>. Submit any affidavits to the Office of Student Judicial Affairs no later than five working days before the hearing.
8. Review the list of witnesses that the complainant has submitted. Anticipate the testimony that may be presented by these witnesses and prepare questions for them that will elicit information in support of the respondent's case.
9. Determine whether the respondent or campus adviser will question witnesses and present the opening and closing statements at the hearing.
10. Review the "Order of Events at a University Hearing" (see Figure 1).
11. Develop a clear, concise opening statement that provides an overview of the case.

The opening statement should be a brief summary of the evidence and testimony the respondent will present and the facts the he or she hopes to prove. Either the respondent or his or her campus adviser can make the opening statement at the hearing. The opening statement is optional.

12. Prepare a narrative (if choosing to testify). The narrative is the respondent's full account of the event in question, supported by the respondent's evidence. The respondent cannot delegate the narrative to his or her campus adviser; if the respondent chooses not to testify, no narrative will be given.

13. Develop a clear, concise closing statement summarizing the evidence that has been presented in support of the respondent's claim (this may evolve as the hearing develops). Either the respondent or his or her campus adviser can make the closing statement at the hearing. As with the opening statement, the closing statement is optional and may be omitted if the respondent chooses. The complainant has the same options for opening and closing statements.

14. Prepare a statement on an appropriate sanction, in the event that the board returns a finding of responsibility. If the respondent is found responsible for the charges, the sanctioning portion of the hearing will normally directly follow the decision. The complainant and respondent will have the opportunity to recommend a sanction. Therefore, the respondent should bring with him/her a statement and any supporting materials (such as letters from character witnesses) that s/he would like the hearing board to consider when deciding what sanction to recommend.

During the hearing the respondent should:

1. Arrive on time with his or her witnesses.
2. Inform the hearing officer who will be questioning witnesses and presenting the opening and closing statements (the respondent or the campus adviser).
3. Testify truthfully (if choosing to testify).
4. Treat all parties civilly and with respect.
5. Ask the hearing officer to clarify anything that is said or occurs at the hearing that is not understood.

In a hearing, the members of the board are the finders of fact. The board members will question the complainant, respondent, and witnesses. The complainant and respondent have the opportunity to question the opposing party and his or her witnesses. The hearing officer may also question any of the participants. When all testimony and evidence has been presented, the hearing board makes a determination of responsibility.

If the board finds the respondent not responsible for violating the Code, the disciplinary process is concluded and the respondent's file will be expunged and cleared of any disciplinary charges.

If a respondent is found responsible for a violation of the Code, a sanctioning proceeding will follow the finding. The board will recommend an appropriate sanction after hearing statements from the complainant, the victim (if not the complainant), the respondent, and the judicial officer who conducted the preliminary review. The respondent's past disciplinary history (if any) will be shared with the board at this time.

The finding and sanction recommended by the board will be shared with the respondent and complainant and forwarded to the appropriate Vice President, who will make the final decision regarding the sanction. Any comments about the recommended sanction that the respondent wishes the Vice President to consider should be sent in writing to him/her no later than five (5) working days after being notified of the board's recommendation. The respondent will receive notice of the Vice President's decision by mail.

Appeals

A respondent found responsible for a violation of the Code has a right to appeal the decision and sanction through the process noted in the University Code of Student Conduct in sections 56 through 66. Complainants have no right of appeal.

The Office of Student Judicial Affairs will advise the complainant of the outcome of the appeals process. The complainant should consider this information to be confidential and should not share this information with third parties.

Figure 1: Order of Events at a University Hearing

1. The Hearing Officer briefs the Hearing Board 30 minutes prior to the hearing.
2. The Hearing Officer calls the hearing to order and summarizes the procedures to be followed.
3. The judicial officer presents the preliminary review report.
4. The complainant (or adviser) makes his/her opening statement.
5. The complainant presents his/her narrative.
6. The respondent (or adviser) makes his/her opening statement.
7. The respondent presents his/her narrative.
8. The complainant is questioned.
9. The respondent is questioned.
10. The complainant's witnesses present their narratives and are questioned.
11. The respondent's witnesses present their narratives and are questioned.
12. The respondent (or adviser) makes his/her closing statement.
13. The complainant (or adviser) makes his/her closing statement.
14. The Hearing Officer instructs the Hearing Board regarding their deliberation and finding.

15. The Hearing Board deliberates.
16. The Hearing Board announces its finding.
17. *(If the respondent is found responsible)* The complainant, respondent, and judicial officer make statements regarding the sanction; character witnesses are presented.
18. The Hearing Board deliberates.
19. The Hearing Board announces its recommended sanction.