

Student-Faculty Hearing Board Procedures
Approved by University Faculty, May 2, 2011

Washington and Lee University does not tolerate prohibited discrimination, harassment, sexual misconduct, retaliation or hazing of any kind. The University, by providing resources for prevention, intervention, education and a fair conduct process, seeks to eliminate all forms of prohibited discrimination, harassment, sexual misconduct, retaliation and hazing.

Jurisdiction: The Student-Faculty Hearing Board (SFHB) has jurisdiction over the following matters:

- Allegations of student conduct in violation of the University's Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation ("Policy") at www.wlu.edu/x32882.xml . The Policy prohibits discrimination, including harassment, on the basis of race, color, religion, national or ethnic origin, sex, sexual orientation, age, disability, veteran's status, and genetic information in its educational programs;
- Allegations of hazing by individuals or by non-Greek organizations. (Cases of hazing by Greek-letter organizations are handled by the Interfraternity Council or Panhellenic Council.)

Applicable University Policies: The SFHB will refer to the University's Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation when reviewing cases brought before it (www.wlu.edu/x32882.xml). It will refer to the Policy on Hazing from the Student Handbook when reviewing cases brought under that policy.

The procedures herein apply to the adjudication of conduct violations that fall within the SFHB's jurisdiction.

Definitions

When reviewing the procedures of the Student-Faculty Hearing Board, the following terms are defined below to supplement those found in the Policy:

Discrimination and Harassment: Prohibited discrimination and harassment are defined in the Policy (www.wlu.edu/x32882.xml).

Hazing: Hazing includes harassing and excessive tasks associated with initiation or membership in an organization. It involves mistreatment of prospective members by those who exercise control over them. Hazing is further defined at section V of the Student Handbook (http://issuu.com/wlumag/docs/2011-12_wlu_student_handbook).

Retaliation: Retaliation, whether by an individual, a group of individuals, or an organization, against anyone who makes an inquiry about discrimination, harassment, or sexual misconduct, or who is involved in a complaint process, is illegal and constitutes a violation of the Policy.

Sexual Misconduct: Sexual Misconduct includes Sexual Misconduct Constituting Rape, Sexual Misconduct Not Constituting Rape, Unwanted Sexual Touching and Non-Physical Sexual Harassment.¹

¹ For more information about sexual misconduct, violence, resources for students and prevention and intervention, please see <http://go.wlu.edu/VIP> .

Sexual Misconduct Constituting Rape: (1) Sexual penetration, however slight, of the complainant's genitalia or anus by any inanimate object or animate object (including but not limited to a penis, finger, or tongue) without effective consent; or (2) any instance of cunnilingus or fellatio, without effective consent."

Sexual Misconduct Constituting Rape: Any act of penetration, however slight, between an object or the genitalia or anus of one person, and the mouth, anus or genitalia of another person, without effective consent.

Sexual Misconduct Not Constituting Rape: Touching of a sexual nature, not constituting rape, without effective consent. When such conduct involves physical force, violence, threat, intimidation or ignoring or taking advantage of another person's intoxication, incapacity, state of intimidation, helplessness, or other inability to consent, the conduct shall be deemed Sexual Misconduct Not Constituting Rape, not Unwanted Sexual Touching, and will be treated as such under these procedures.

Examples include:

- Attempted rape
- Touching a person's intimate parts
- Compelling a person to touch his or her own or another person's intimate parts
- Unwanted kissing
- Unwanted hugging or massaging

These examples should not be considered inclusive of all types of conduct that could be considered Sexual Misconduct Not Constituting Rape in cases considered by the SFHB.

Unwanted Sexual Touching: Touching which would otherwise be Sexual Misconduct Not Constituting Rape, when the conduct is committed without intent to harm another and where, by failing to correctly assess the circumstances, a person believes unreasonably that effective consent was given without having met his/her responsibility to gain effective consent.

Non-physical Sexual Harassment: Non-physical harassment, including unwelcome non-physical sexual advances or harassment on any basis prohibited by University Policy. Examples include:

- Pressure for a dating, romantic or intimate relationship
- Unnecessary and unwelcome references to various parts of the body
- Belittling remarks about a person's gender or sexual orientation
- Inappropriate sexual innuendos or humor
- Obscene gestures
- Offensive sexual graffiti, pictures or posters
- Sexually explicit profanity
- Use of e-mail, Internet, texting or other electronic communications to behave in ways that violate this policy

These examples should not be considered inclusive of all types of conduct that could be considered Non-Physical Sexual Harassment in cases considered by the SFHB.

Effective Consent: Mutually understandable words or actions indicating a willingness to engage in mutually agreed-upon sexual activity. In determining whether effective consent has occurred, the following considerations apply:

- Mutually understandable consent must be obtained by both parties.
- It is the responsibility of the person initiating physical sexual contact to obtain consent.
- To be effective, consent must be given freely.

- Consent obtained through the following means is not effective consent: a) use of fraud, physical force, violence, threat, intimidation or coercion; b) ignoring the objections of another person; c) causing another's intoxication or impairment through the use of alcohol or other drugs; d) ignoring or taking advantage of another person's intoxication, incapacity, state of intimidation, helplessness, or other inability to consent.
- Lack of physical or other resistance by a person who is the object of sexual aggression does not constitute consent.
- Consent to sexual activity may be revoked at any time, as long as the revocation is communicated clearly, at which point sexual activity must cease immediately.
- Previous sexual relationships and/or a current relationship with the respondent (or anyone else) are usually irrelevant and, therefore, may not be taken to imply consent.
- A person who is incapacitated as a result of alcohol or other drug consumption (voluntary and/or involuntary), or who is unconscious, asleep or otherwise physically or cognitively helpless, is incapable of giving consent.
- Consent may never be given by a minor (someone under the age of 18 in the Commonwealth of Virginia) to an adult.

Composition, Selection and Training of the SFHB:

Composition of the SFHB: The SFHB is composed of four student members, four faculty members and one administrator. The administrator serves as Chair of the SFHB.

Role of the Chair: The Chair manages the SFHB and administers the hearing process and schedules and presides over each hearing, but does not participate in deliberations and does not vote on matters before the SFHB

Appointment of Student Members: In accordance with the following procedures, the Executive Committee of the Student Body (EC) shall appoint four student members to a one-year term on the SFHB. The student members will be representative of the student body and upon appointment will be trained to adjudicate the sensitive cases heard by the SFHB. In selecting student members to serve on the SFHB, the EC will make every effort to create diverse representation.

The appointment procedures of the EC shall be reviewed by the Student Affairs Committee (SAC) before the application process commences. The application process will elicit participation of stakeholder groups on campus that may not be represented on the EC, including groups that promote the prevention of sexual violence, groups that respond to those situations, and groups representing women and minority students. The EC shall require applications and conduct interviews of applicants for SFHB positions apart from other Spring Term appointments. Applications shall include discussion of knowledge or experience relevant to the mission of the SFHB and confidential recommendations of two non-student members of the Washington and Lee University community. After receiving applications and before the interview, the EC shall send the list of applicants to the Vice President for Student Affairs to gather additional information.

Appointment of Faculty Members: The University Provost shall appoint four faculty members to three-year, staggered terms on the SFHB. The EC may nominate faculty members for the Provost's consideration. In selecting faculty members to serve on the SFHB, the University will make every effort to create diverse representation.

Appointment of Administrator Member: The Vice President for Student Affairs shall appoint the administrator member to serve as Chair of the SFHB.

Training: Members of the SFHB shall be trained in both broad conduct procedures and in understanding specific prohibited discrimination, harassment (including all forms of sexual misconduct), retaliation and hazing. The Chair

of the SFHB shall organize the training, which shall occur at the beginning of the academic year. The University will make every effort to train those student members at the same time as the faculty members.

SFHB Pre-Hearing and Hearing Procedures:

Initiating a Proceeding – the Charge: An SFHB proceeding may be initiated by any member of the University community by filing a complaint with the SFHB Chair. A complainant outside the University community, for example, a student from another college or university, may also file a complaint and the case will be considered at the discretion of the Board.

Content of the Charge: The formal charge(s) will state the subject matter of the complaint (e.g. "Sexual Misconduct," "Discrimination," "Harassment," "Retaliation," and/or "Hazing"), the name of the complainant, and the approximate date and/or timeframe for the alleged conduct. The formal charge need not include details on the sub-categories of behavior within each charge. Thus, for example, in a given case, and without elaboration on the face of the charge, a charge of Sexual Misconduct may be deemed to encompass Sexual Misconduct Constituting Rape, Sexual Misconduct Not Constituting Rape, Unwanted Sexual Touching and/or Non-Physical Sexual Harassment.

Multiple Charges: While only a single charge is required for any category of prohibited conduct within the jurisdiction of the SFHB, a complainant may bring multiple charges if the conduct complained of constitutes more than one form of misconduct. Thus, for example, a student may be charged with both "sexual misconduct" and "harassment" from the same series of events, if the complainant claims that the student's behavior constitutes both forms of misconduct.

Charge for Subsequent Retaliatory Behavior: Any type of retaliatory behavior occurring following a charge may result in an additional charge.

Charge for Conduct Unbecoming a Washington and Lee Student: A charge of "conduct unbecoming" may accompany any other charge. Thus, for example, a student might be charged with both "sexual misconduct" and "conduct unbecoming" from the same series of events.

Safe Haven in Cases of Sexual Misconduct: Students who seek assistance as a result of experiencing sexual misconduct are not subject to sanction by a University authority for being in violation, at the time the student experienced the sexual misconduct, of University policy on consumption of alcohol or other drugs, when consumption is personal and without intent to distribute. In such circumstances, the University will not refer the student seeking assistance for investigation by a student conduct body or to any state, local or other law enforcement agency and will not contact parents, family members or guardians solely because of the student's consumption of alcohol or other drugs or possession of alcohol or other drugs consistent with personal use.

Pendency of Criminal Charges: If criminal charges, or a civil suit, has been filed against a student with respect to conduct which is also the subject of a complaint before the SFHB, the SFHB Chair will consult with the Office of the Dean of Students to determine if SFHB action should be postponed until resolution of the criminal case. Pending criminal charges or civil suits shall not prevent the SFHB from proceeding.

Confidentiality: SFHB hearings are confidential. The facts about individual cases and the outcomes are to remain as confidential as possible, except for the notification of the outcome to the University community. In order to protect the privacy of those involved, and to protect the integrity of the process, no one involved in a complaint should discuss any information regarding the case except with participants in the hearing, University faculty and staff with a need to know, family members and those to whom a party needs to disclose information necessary to obtain support without otherwise making information about the matter known to the public. All individuals involved in proceedings shall read the SFHB's confidentiality policy and sign a statement acknowledging the policy.

No-Contact Directive: The SFHB Chair may issue a no-contact directive between or among the parties or witnesses to create a level of reassurance throughout the process.

SFHB Hearing Panel: Upon receipt of a charge that falls within the jurisdiction of the SFHB, the SFHB Chair shall select and convene a Hearing Panel in accordance with the following procedures:

Composition of the Hearing Panel: A Hearing Panel is composed of five SFHB members: two student members, two faculty members and the Chair. The remaining student and faculty members are alternates.

Selection of the Hearing Panel: In selecting the Hearing Panel, the Chair shall strive as much as possible for diverse representation and will be aware of the Recusal and Conflict of Interest Guidelines Pertaining the University Conduct.

Notice to the Parties and Opportunity to Object: The complainant and respondent shall be informed of the Panel's composition at least 48 hours in advance of the hearing. Either party may object to the appointment of any member of the Panel. That objection should be directed to the Chair, and should state the basis for the objection. The Chair will make the final determination on a member's ability to serve on the Panel.

Advisory Advocates and Honor Advocates: During an SFHB proceeding, the complainant and the respondent may each be accompanied by an Advisory Advocate and/or an Honor Advocate of her/his choice (referred to collectively as "advocate(s)").

Advisory Advocates: Advisory Advocates must be members of the University community. The Advisory Advocate may be a member of the Confidential and Impartial Resolution Resources (CAIR) staff, an individual within the W&L community with special training for this role, or may be another faculty or staff member.

Honor Advocates: Honor Advocates appearing before the SFHB must be members of the Honor Advocate Program (HAP) with special training for this role.

Role of Advocates. The advocates' role is to advise the complainant/respondent of SFHB procedures, to assist the complainant/respondent in developing opening and closing statements, and to advise the complainant/respondent on the specifics of a written appeal, if applicable. Advocates are also available to offer support for students and to provide information on additional resources. Advocates may hear all testimony, and examine all information and evidence presented to the Panel. Additionally, Advocates may direct, to the Chair, questions for any person testifying. Parties and SFHB panel members also may, at their discretion, invite either the Advisory Advocates or Honor Advocates to express views as the SFHB panel members deem appropriate.

Support for Complainants from Outside the Washington and Lee Community: In addition to an Honor Advocate, if the complainant is a member of another community, the complainant may also be accompanied by a member of that community, subject to approval of the SFHB Chair.

Notice to Respondent of Specific Allegations of the Complaint: At least five business days prior to the hearing, the respondent will be provided with written/electronic notice of the specific factual allegations made by the complainant. This will occur through communication between and among the Chair, the advocates, the complainant and the respondent.

Notice to Complainant of Service of Notice of Allegations on Respondent: Prior to service upon the respondent of notice, the complainant will be notified regarding when service upon the respondent will occur.

Formal Response to Specific Allegations of the Complaint: The respondent is encouraged but not required to submit, in advance of the hearing, a formal, written response to the written notice of specific factual allegations that was served upon him or her. Any formal, written response will be shared with the complainant in advance of the hearing.

Pre-Hearing Conference: The SFHB Chair will hold a pre-hearing conference with the parties and their advocates to resolve evidentiary or other matters.

Disclosure of Witnesses and Evidence in Advance of the Hearing: Upon request of either party, at least 48 hours in advance of the hearing each party shall be provided a list of all witnesses and shall be provided an opportunity to examine all information and evidence to be presented to the hearing.

Conducting the Hearing:

Timing: Hearings will be held in a timely manner, assuming no extraordinary circumstances, within 45 working days of the initial complaint.

Closed Hearings: All hearings are closed to the public. Witnesses should be kept in separate rooms, entering the hearing room only to provide testimony. Witnesses should not have contact with one another outside of the hearing room.

Presence of the Parties: The complainant and the respondent have a right to be present during the hearing.

Use of a Privacy Screen: Although both the complainant and respondent are entitled to be present throughout the hearing, a privacy screen may be erected at the request of either party to provide a sense of privacy during testimony.

Witnesses and Evidence:

The Hearing Panel: Members of the Hearing Panel may call and question witnesses and examine related information and evidence.

The Parties: The complainant and the respondent are permitted to summon and question witnesses and offer tangible evidence. The complainant and respondent may direct questions to one another through the Chair.

Evidence and Witnesses Not Reasonably Anticipated: Notwithstanding the prehearing disclosure requirements, if information produced during the hearing discloses additional tangible evidence or witnesses with relevant information, the Chair may obtain that evidence or call those witnesses to testify.

Relevant Evidence: Questioning of witnesses and admission of information and evidence shall be restricted to matters that the Chair deems relevant to the specific case.

Sexual Misconduct Cases – Evidence of Prior Sexual Behavior: Past sexual behavior of either party is usually not relevant to determining whether sexual misconduct occurred. As such, the SFHB will not explore such behavior as part of the hearing unless, under very limited circumstances, the Chair deems it relevant to decide the principal issue.

Sexual Misconduct Constituting Rape – Evidence of Intent: Evidence of intent is not required in cases of Sexual Misconduct Constituting Rape.

Alcohol or Other Drug Use – Not an Excuse: Behavior that would otherwise be misconduct in violation of University policy is not excused or exonerated because the individual engaging in such conduct was under the influence of alcohol or other drugs.

Decisions of the SFHB:

Votes Required for Finding of Responsibility: In all cases that the SFHB hears, at least three panel members must vote "responsible" for a finding of responsibility

Standard of Evidence for a Finding of Responsibility: Each case brought before the SFHB is unique and must be decided after the SFHB's review of all the facts and circumstances presented at the hearing. The SFHB shall base its decisions on a preponderance of the evidence; that is, the panel must decide whether it is more likely than not that the conduct under question violates the University policy.

Findings in SFHB Cases: The SFHB shall examine all relevant evidence, and shall determine, as applicable:

- the nature of the conduct;
- whether each party provided effective consent to the conduct, if a sexual misconduct case; and whether there are extenuating or mitigating circumstances involved.
- for complaints of Non-Physical Sexual Harassment, whether the sexual advances were unwelcome, and the severity and pervasiveness of the conduct.
- for complaints of harassment based on other protected categories, whether a protected category was involved, whether the conduct was unwelcome, and the severity and pervasiveness of the conduct.

Finding of Conduct Unbecoming:

Normally, any finding of responsibility by the SFHB will include a finding of "conduct unbecoming of a Washington and Lee University student." If the SFHB does not find that the respondent violated the University's Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation, but finds that the respondent's conduct was unacceptable and contrary to that expected of a Washington and Lee student, it may make a finding of "conduct unbecoming," if separately charged.

Evidence of Violations of Other University Policies: If the SFHB finds there is reasonable evidence that another University policy may have been violated, it may refer that information to the Office of the Dean of Students.

Sanctions: The Hearing Panel may, after considering factors relevant to each case and finding responsibility, determine the appropriate sanction.

Votes Required for Imposition of a Sanction: In all cases that the SFHB hears, at least three Panel members must vote in favor of the imposition of each sanction or combination of sanctions.

Sanctions for Violations of the University's Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation: In imposing sanctions for violations of the University's Policy, the Hearing Panel shall determine the appropriate sanction (or combination of sanctions) by referencing the Sanction Guideline Matrix. The SFHB may select among the sanctions within the range set forth in the Sanction Guideline Matrix for the types of violations described under these guidelines, as factors in each case may warrant. It may also combine various sanction options to produce a package of appropriate sanctions. The SFHB shall also consider the sanction recommendation of the complainant and respondent.

Sanctions for Hazing: Upon finding that an individual or non-Greek organization has engaged in hazing, the Hearing Panel shall determine the appropriate sanction (or combination of sanctions) by referencing the Sanction Guideline Matrix. The Hearing Panel may select among the sanctions within the range set forth within each sanction box for the types of violations described under these guidelines, as factors in each case may warrant. It

may also combine various sanction options to produce a package of appropriate sanctions. may impose an appropriate sanction. The sanction may include referral to other appropriate conduct bodies. If applicable, individuals may be reported to an appropriate national body. In cases of hazing by a non-Greek student organization, the sanction may include suspending the organization's activities.

Sanctions for Conduct Unbecoming In imposing sanctions for Conduct Unbecoming a Washington and Lee University student, the Hearing Panel shall determine the appropriate sanction (or combination of sanctions) as factors in each case may warrant. The SFHB shall also consider the sanction recommendation of the complainant and respondent. Possible sanctions include Dismissal, Suspension, Probation, Community Service, Education and/or Counseling.

Sanction Guideline Matrix:

The following matrix shall guide the SFHB in developing sanctions, and provide notice to the University community of the possible sanctions for an individual or non-Greek organization found responsible under the University's Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation or the University's policy prohibiting hazing.

Prohibited Behavior	Range of Sanctions
Sexual Misconduct Constituting Rape	Dismissal
Sexual Misconduct Not Constituting Rape	Dismissal Suspension Probation
Unwanted Sexual Touching	Dismissal Suspension Probation Community Service Educational/Counseling Consultation
Non-Physical Sexual Harassment	Dismissal Suspension Probation Community Service Educational/Counseling Consultation
Discrimination	Dismissal Suspension Probation Community Service Educational/Counseling Consultation
Hazing by an individual student	Dismissal Suspension Probation Community Service Educational/Counseling Consultation
Hazing by a non-Greek organization	Dismissal

Suspension
Probation
Community Service
Educational/Counseling Consultation

Retaliation

Dismissal
Suspension
Probation
Community Service
Educational/Counseling Consultation

Public Notice: The SFHB Chair shall post a public notice of the outcome of any SFHB case.

Content of Public Notice: The notice shall include the nature of the conduct and each charge for which the party was found responsible or not responsible. If there is a finding of responsibility, the public notice will include the sanction imposed for the charge and whether or not there were mitigating or aggravating circumstances that affected the choice of sanction. The notice will not indicate the circumstances or names of the parties or witnesses. The posting will be available in both written (with all other recent conduct body notices) and electronic (on the SFHB website) forms.

Time for Posting of Public Notice: The SFHB Chair shall post the notice within a reasonable time after the SFHB concludes the case, and shall keep the notice posted for a minimum of three years. The Office of the Vice President for Student Affairs will maintain copies of all public notices for 10 years. During that period, the notices will be available upon request.

Appeals: All outcomes of the SFHB, including decisions regarding the imposition of sanctions, may be appealed within 72 hours by either party, or by the University to the University Board of Appeals, in accordance with the policies that apply to that body.

Required Administrative Withdrawal for Non-Academic Reasons: Notwithstanding the pendency of a matter before the SFHB or a sanction imposed by the SFHB, in accordance with the University policy regarding Required Administrative Withdrawal for Non-Academic Reasons, the University may require a student to take an administrative withdrawal if there is a sufficient showing that the student is engaging, or is likely to engage in, behavior that presents a real danger of substantial harm to self or others, or substantially disrupts the learning environment and activities of the campus community.