

PROCEDURES FOR STUDENT DISCIPLINARY CASES INVOLVING CONTRIBUTORY HEALTH IMPAIRMENTS

A. INTRODUCTION AND DEFINITIONS

As stated in the University Judiciary Committee (the “UJC”) Constitution, the UJC lacks jurisdiction over “persons who are determined under procedures adopted by the President of the University to have contributory health impairments.” These procedures (these “Procedures”) are designed to provide an orderly process for making such determinations. These Procedures do not inhibit or impair existing authority of University officials to invoke interim suspensions in appropriate cases or to exercise other administrative authority.

1. As used in these Procedures, the following terms shall have the meanings indicated:

- a) *Contributory Health Impairment or “CHI.”* A psychiatric or psychological condition which caused or significantly contributed to or substantially influenced the conduct charged in a UJC complaint. The nature of the CHI in a particular case will be taken into account by the Panel in its decision to impose Restrictions, and in the nature and duration of any Restrictions imposed.
- b) *Dean.* The University's Dean of Students or the Dean's designee, or such other office or person authorized by the Vice President to act on behalf of the Dean under these Procedures.
- c) *Evaluation Hearing or Hearing.* A hearing as described in these Procedures convened to evaluate a CHI and any subsequent hearing convened to re-evaluate the issue of Significant Risk.
- d) *Expert Assessment.* A written assessment regarding the Student's alleged CHI, including any relevant history of mental or physical health services or treatment. The Expert Assessment shall be rendered by a qualified person with relevant professional credentials and knowledge, skill, experience, training or education in the assessment and treatment of the condition(s) in question.
- e) *Panel.* The Evaluation Hearing panel of one or more persons selected by the Vice President, as described below.
- f) *Representative.* The person, if any, selected by the Student to provide advice and support in connection with the Evaluation Hearing. A Representative may be any person, including an attorney, who is not a witness in the Hearing. The Student may be accompanied by the Representative at the Hearing, where the Representative may provide support and advice, but may not speak on behalf of the Student or otherwise participate in the Hearing, except as may be requested or permitted by the Panel Chair.

- g) Restrictions. The suspension from the University or from certain University activities, or other protective actions, conditions, and/or restrictions, collectively, which may be imposed by the Panel upon a Student whom the Panel has determined poses a Significant Risk. Restrictions will be based on an individualized assessment, taking into consideration the nature, duration and severity of the established CHI.
- h) Significant Risk. The likelihood that a Student poses a threat to themselves, to the health or safety of other members of the University community, to University property, or to the educational process. Findings on the issue of Significant Risk will be based on an individualized assessment, taking into consideration the nature, duration and severity of the established CHI. In making this assessment, the Panel will rely on the testimony of the Student and other witnesses, if any, at the Hearing; the Expert Assessment, if any; any other records supplied by the UJC and/or the Office of the Dean of Students; and other available and relevant medical, psychiatric, and/or psychological information, as well as any information regarding reasonable accommodations to which the Student is entitled that would mitigate the risk.
- i) Standards of Conduct. The University's Standards of Conduct adopted by the Board of Visitors.
- j) Student. Any person registered or enrolled at the University as a student, or a former student who seeks to re-enroll with any unresolved or pending UJC complaint, or any person applying for readmission when an Evaluation Hearing is authorized by these Procedures or otherwise approved or requested by the Vice President.
- k) UJC. The University Judiciary Committee.
- l) UJC Participant. An individual selected by the Chair of the UJC to participate in or observe the Evaluation Hearing.
- m) Vice President. The University's Vice President and Chief Student Affairs Officer or designee.

B. INITIAL PROCEDURES: REQUESTS FOR AN EVALUATION HEARING

1. Requests/Referrals for an Evaluation Hearing

An Evaluation Hearing may be requested by a Student or by the Dean, in the following circumstances:

- a) Requests by the Student. A Student charged with violating the Standards of Conduct may make a good faith claim that the Student had a CHI at the time of the alleged offense by submitting a written "Request for Evaluation Hearing," in the form attached to these Procedures as Appendix A. Such a Request must be submitted to the UJC Chair within fourteen (14) calendar days following the date the Student received the UJC complaint, subject to reasonable extension by the UJC Chair for good cause

shown. The UJC shall deliver a copy of the complete and timely Request to the Vice President, together with copies of any relevant case records created or maintained by the UJC.

- b) Requests by the Dean. The Dean may request an Evaluation Hearing where a Student is charged with violating the Standards of Conduct and the Dean determines that there is good cause to believe that the Student had a CHI at the time of the alleged offense. The Dean's request, which shall set forth the circumstances, in the opinion of the Dean, justifying an Evaluation Hearing, shall be delivered to the Vice President, together with copies of any relevant case records created or maintained by the UJC and/or the Office of the Dean of Students.
- c) Requests by the UJC. The UJC may refer a case to the Dean for evaluation where a Student facing judicial charges has not alleged a CHI, but the UJC has good cause to believe that the Student may in fact have had a CHI at the time of the underlying conduct. The UJC's referral, which shall set forth the circumstances, in the opinion of the UJC, justifying an Evaluation Hearing, shall be delivered to the Dean, together with copies of the UJC's records relating to the underlying judicial charge(s). The Dean will evaluate the case referred by the UJC and will determine whether to request an Evaluation Hearing under these Procedures. If, in the opinion of the Dean, there is good cause to believe that the Student had a CHI at the time of the underlying conduct, the Dean shall make such request in the manner set forth set forth in subparagraph (b), above, and the request shall be considered a request by the Dean for all purposes under these Procedures. If the Dean determines that the circumstances do not justify an Evaluation Hearing, the case shall be returned to the UJC for resolution pursuant to its By-Laws.

2. Expert Assessment.

- a) Requests by the Student. As a condition of proceeding under these Procedures and to enable the Vice President to evaluate the request for an Evaluation Hearing, the requesting Student shall (i) provide an Expert Assessment, describing the nature, scope, duration, and extent of the condition(s) underlying the Student's alleged CHI, and (ii) agree to and sign all reasonably requested authorizations allowing the individual who provides an Expert Assessment to communicate with the University. The Expert Assessment shall be delivered to the Vice President, and shall reference the Student's Request for Evaluation Hearing. If the Student is unable to obtain an Expert Assessment, it is the Student's responsibility to promptly notify the Vice President and to work with the Vice President to obtain an Expert Assessment. The Expert Assessment requirement may be waived by the Vice President, provided that other independent and credible evidence exists to support the Student's Request for Hearing on CHI, as determined in the sole reasonable discretion of the Vice President.
- b) Requests by the Dean. In order to assist the Dean in determining the propriety of, and formulating a request for, an Evaluation Hearing under these Procedures, the Dean may request that the Student (i) provide an Expert Assessment, describing the nature, scope, duration, and extent of the condition(s) underlying the Student's alleged CHI,

and (ii) agree to and sign all reasonably requested authorizations allowing the individual who provides an Expert Assessment to communicate with the University. The decision to request or require an Expert Assessment in such circumstances is in the sole, reasonable discretion of the Dean.

3. Evaluation of Request for Hearing; Appeals. Each Request will be evaluated by a University official designated by the Vice President to determine whether there is good cause for convening an Evaluation Hearing. An adverse determination may be appealed to the Vice President, in writing, setting forth the specific grounds for appeal. Any such appeal must be delivered to the Vice President promptly, and no later than five (5) calendar days from notice of the adverse determination, unless extended by the Vice President for good cause shown. The Vice President's decision is final. The requesting party (i.e., the Student or the Dean) may be required to discuss the Request with the Office of the Vice President, and to provide supplemental information as may be reasonably requested by that Office to fully understand the nature, scope, duration, and extent of the alleged CHI.
4. Evaluation Hearing Denied. If the Request for Evaluation Hearing is denied (subject to the resolution of any appeal filed pursuant to subparagraph (3), above), the Vice President shall so notify the Student, the UJC, and the Dean, in writing, and the case shall be returned to the UJC for resolution pursuant to its By-Laws.
5. Evaluation Hearing Granted. If the Request for Evaluation Hearing is granted, the Vice President shall so notify the Student, the UJC, and the Dean, in writing. Such notice shall state that it is given under these Procedures, shall refer to the underlying UJC complaint, and shall enclose a copy of these Procedures.
6. Failure to Cooperate. A Student who refuses or fails to cooperate in the scheduling of an Evaluation Hearing or who otherwise unduly delays the Hearing or any related proceedings without good cause may forfeit the opportunity for review under these Procedures, and the Vice President may return the case to the UJC for resolution pursuant to its By-Laws. Such cooperation includes promptly responding to phone calls, emails, letters, and other communications directed to the Student or to their Representative; working affirmatively and diligently with persons the Student wishes to have present at the Hearing to facilitate their availability for the Panel's consideration; and working cooperatively in scheduling the Hearing date.

C. EVALUATION HEARINGS AND FINDINGS

1. Hearing Panels, Notification, Documentation
 - a) Panel Appointment; Composition. A Panel shall preside over each Evaluation Hearing under these Procedures. The Vice President shall select the Panel members and shall notify the Student and the Dean (each, a "party," and "collectively, the "parties") of the names of the Panel members and of the Panel Chair. The Vice President shall seek to staff the Panel with one or more persons with appropriate

expertise, such as psychologists, psychiatrists, or both. Selection of Panel members may be made without any restriction or requirement as to the number of prior Panels on which a person has previously served.

- b) Notification of Hearing; Copies of Documentary Evidence. The Vice President shall notify the Student and the Dean as soon as possible regarding the date, time, and place of the Evaluation Hearing. The Vice President shall provide the Student and the Dean a copy of the case materials to be presented to the Panel not less than five (5) calendar days prior to the Hearing.
- c) Evaluations/Reports. In addition to the Expert Assessment supporting the Request for an Evaluation Hearing, if any, the Student may submit the opinions or recommendations of other licensed healthcare professionals for review by the Panel. If the Student wishes to do so, the Student shall provide to the Vice President a copy of the report(s) to be so submitted not less than two (2) calendar days prior to the Hearing.
- d) Hearing Panel not Bound by Expert Assessment or other Opinions/Recommendations. The Hearing Panel will not be bound by the opinions or conclusions set forth in the Expert Assessment or by the opinions or recommendations of other healthcare professionals submitted for or on behalf of the Student or the Dean.

2. General Hearing Procedures

- a) Attendees at the Hearing; Role of Representatives and Attorneys. The Dean, the Student, the Student's Representative, if any, and the UJC Representative, if any, may attend the Hearing, excluding the Panel's deliberations, which shall be conducted in private. Witnesses other than the Student and the Dean may remain in the Hearing room only while giving their testimony, unless the Panel Chair determines otherwise. The Student and the Dean are responsible for arranging the attendance of their respective witnesses at the Hearing. The Panel may arrange for the presence of a person or persons who may advise it, privately or otherwise. The Panel Chair shall determine the propriety of attendance at the Hearing by any other persons.
- b) Evidence. The Panel is not bound by the rules of procedure or evidence applicable to judicial proceedings and may adopt such rules of procedure and evidence as it deems appropriate, allow for flexibility in sequencing, and take into account any evidence it deems relevant, in the sole reasonable discretion of the Panel Chair.
- c) Decisions by Majority Vote. All decisions by the Panel shall be made by majority vote.
- d) Recordings and Transcripts. The Panel will make its best efforts to arrange for the Hearing to be accurately recorded and will arrange for transcription of the recording upon request by a party or if the Panel deems transcription appropriate. Such

recording and transcription may be made by any person(s), including University employees, that the Panel may designate and such persons will ensure the confidentiality of the information transcribed.

- e) Truthful Testimony: Each witness is expected to testify truthfully and, if a witness is a Student, such testimony will be given on the Student's honor pursuant to the University's Honor Code.
- f) Burden of Proof of CHI. The burden of proving the existence of the alleged CHI shall be borne by the party requesting the Evaluation Hearing (i.e., the Student or the Dean, as the case may be).
- g) Standard of Proof: Preponderance of the Evidence. The party bearing the burden of proof must persuade the Panel of the existence of the alleged CHI by a preponderance of the evidence. A "preponderance of the evidence" means the greater weight of the evidence; that is, to establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true, considering the totality of the evidence.
- h) Opening Statements; Witness Testimony; Documentary Evidence; Questions. The Student and the Dean may make opening statements at the beginning of the Hearing, and closing statements at the end of the Hearing. The party bearing the burden of proof may make the first opening statement and a rebuttal opening statement, and shall first present any witnesses, documents, and other relevant evidence. The responding party shall then have the opportunity to present relevant evidence. Additional evidence may be presented in the sole, reasonable discretion of the Panel Chair. The parties may question witnesses upon the completion of each witness's initial testimony. Panel members may question witnesses at any time. Documents and other exhibits offered shall be marked and, when received in evidence by the Panel, made a part of the Hearing record.
- i) Continuances. The Panel Chair may continue the Hearing from time to time, provided that the Hearing shall be completed within ten (10) days of its commencement, unless the parties agree otherwise or the Panel decides otherwise, for good cause in its sole, reasonable discretion. Once the Hearing has been completed, it may be reopened by the Panel at any time before the Panel renders its written decision, as described below.

3. Findings of the Panel on CHI and Significant Risk

- a) Determination of Existence of CHI. In the initial Evaluation Hearing, the Panel shall first determine whether the alleged CHI has been established, by a preponderance of the evidence, as described above.
 - (1) ***If the Panel determines that the CHI has not been established*** by a preponderance of the evidence, the UJC complaint pending against the Student

will remain pending, and the complaint will be returned to the UJC for resolution pursuant to its By-Laws.

- (2) ***If the Panel determines that the CHI has been established*** by a preponderance of the evidence, the UJC complaint pending against the Student will be considered resolved, and the Panel shall next consider whether the Student's presence at the University poses (or, where a Student is seeking readmission following suspension or withdrawal, would pose) a Significant Risk. (In cases where the underlying conduct caused loss or damage to the property of another person, the Panel may refer the Student and/or the aggrieved party [if they are a Student] to the Office of the Dean of Students for advice and consultation about the possibility of arranging for restitution.)
- (a) ***Finding of No Significant Risk. If the Panel determines that the Student does not pose a Significant Risk***, the Panel will not impose Restrictions of any kind. In Hearings requested by the Dean, however, the Panel may make recommendations to the Student regarding treatment and such recommendations may also be filed with the Office of the Dean of Students. The Dean may follow up with the Student to ascertain whether the Student has acted on those recommendations and to provide support to the Student.
- (b) ***Finding of Significant Risk: Restrictions. If the Panel determines that the Student does pose (or would, upon readmission, pose) a Significant Risk***, the Panel shall impose Restrictions in order to protect the Student and/or the University community. A Restriction involving suspension shall be enforced through a registration block applied by the Office of the Dean of Students.

Restrictions may also include conditions to be satisfied in order for the Student to remain enrolled at the University, if applicable, or in order to request re-evaluation by the Panel, at a subsequent Evaluation Hearing, on the issue of Significant Risk. Such conditions may include, among others, the lapse of a stated period of time; the requirement that a Student initiate or continue regular relationship(s) with certain healthcare providers; the requirement that a Student abstain from using certain substances and/or submit to periodic testing for such substances; the requirement that the Student meet regularly, as requested, with the Dean; and/or the requirement that the Student's healthcare provider(s) provide an updated written assessment describing the Student's treatment and progress since the initial Evaluation Hearing and, in the opinion of the assessor, whether or not the Student, if readmitted, would continue to pose a Significant Risk.

Upon the satisfaction of the Restrictions, if applicable, a Panel may convene to re-evaluate the issue of Significant Risk; may lift or modify

some or all of the Restrictions; and, in appropriate cases, may grant permission for the Student to seek re-enrollment at the University.

The effective date and termination date, if applicable, of Restrictions shall be in the sole, reasonable discretion of the Panel. A notice of all Restrictions shall be filed with the Office of the Dean of Students and the Vice President. The UJC Chair shall be informed of the outcome of the proceedings by the Office of the Vice President.

4. Panel Decision, Hearing Records

- a) Panel Decision. The Panel will announce its decision orally at the end of the Evaluation Hearing (or, if the Hearing is continued, at the end of the continued Hearing). In addition, the Panel will prepare a written decision letter that specifies its findings and conclusions, in detail. The decision letter also will specify any Restrictions imposed by the Panel, including their respective effective date(s) and duration, if applicable. The Panel will endeavor to provide a copy of its written decision to the Student, the Dean, and the Vice President as soon as reasonably practicable following the conclusion of the Hearing.
- b) Records. The Panel shall retain in confidence all records relating to Evaluation Hearings, as shall the Office of the Vice President, the Dean and the UJC Chair, and shall make no public disclosure except where disclosure is required or permitted by law.

D. APPEALS TO THE VICE PRESIDENT

1. Time for Appeal. The Student or the Dean may appeal the Panel's decision by so notifying the Vice President, in writing, within ten (10) calendar days following receipt of the Panel's written decision, subject to extension for good cause in the sole, reasonable discretion of the Vice President.
2. Form of Appeal; Arguments; Consultation with Panel. The appellant's notice to the Vice President shall include a statement of the specific portion(s) of the Panel's decision with which the appellant disagrees, any arguments in support of the appellant's position, and the appellant's proposed alternative to the conclusions of the portion(s) of the decision in question. The Vice President may afford the Student and the Dean an opportunity to present written arguments in support of their respective positions on the appeal. The Vice President may impose any reasonable time and length limitations on such presentations. The Vice President may question the Panel members about their decision and obtain and review any or all of the Evaluation Hearing transcripts and exhibits.
3. Appeals for Cause. Except in the case of New Evidence (as defined below), the Vice President will evaluate *whether the Panel's findings and conclusions are reasonably supported by evidence in the record* and, if so, shall affirm those findings and conclusions. If the Vice President concludes that the Panel's findings and conclusions

are *not* reasonably supported by evidence in the record, the Vice President may direct the Panel to reopen its Hearing and receive additional evidence, or the Vice President may appoint a new Panel to consider the case *de novo*.

4. Appeals for New Evidence. The Vice President will evaluate any additional evidence proffered by the appellant as “New Evidence” during the appeal period. For these purposes, “New Evidence” means evidence (i) of which the appellant was unaware, and could not reasonably have been aware through the exercise of due diligence, prior to the Evaluation Hearing, and (ii) the existence of which would very likely, in the sole, reasonable discretion of the Vice President, have affected the outcome of the Hearing. If the Vice President is persuaded that additional evidence submitted by the appellant constitutes New Evidence, the Vice President may direct the Panel to reopen its Hearing and receive such New Evidence, or the Vice President may appoint a new Panel to consider the case *de novo*.
5. Vice President’s Decision Final. The Vice President shall provide to the Student and the Dean a written decision on the appeal in as timely a fashion as the Vice President's schedule can accommodate. This decision is final and may not be appealed.

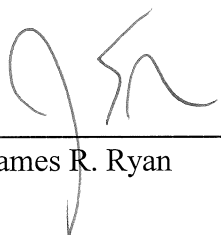
E. NOTICES

All notices to be given under these Procedures shall be deemed to have been given (a) to the Student, when sent to the student’s “Primary E-mail Address,” as outlined in the University Undergraduate Record, or upon delivery to the Student’s Representative, if any; (b) to the Dean or to the Vice President, when delivered to their regular University offices; and (c) to all other persons, upon actual receipt by or personal delivery to the person intended, or three (3) calendar days after mailing by U.S. mail to the person’s address of record, whichever shall first occur.

F. AMENDMENTS

These procedures may be amended at any time, in writing, by the President of the University. The Vice President is authorized to implement and clarify these Procedures and, with approval of University Counsel, authorize exceptions or deviations provided fundamental fairness guaranteed by the Due Process Clause of the United States Constitution is observed.

Adopted:



James R. Ryan

APR 26, 2019
Date

APPENDIX A

CONTRIBUTORY HEALTH IMPAIRMENT

REQUEST FOR EVALUATION HEARING

Student's Name: _____

UJC Case Number: _____

Date Student received UJC Complaint: _____

Date this Request received by UJC Chair: _____

I have read the Procedures for Student Disciplinary Cases Involving Contributory Health Impairments (the "Procedures") and have had the opportunity to seek assistance of others in understanding the Procedures. If an Evaluation Hearing is granted under the Procedures, I understand I may, if I wish, designate a Representative to advise me at the Hearing. A Representative may be any person, including an attorney, who is not a witness in the Hearing.

As provided by the Procedures, I am requesting an Evaluation Hearing in good faith in order to permit the evaluation of my claim of a Contributory Health Impairment in this case. **I represent on my Honor that I am not making this request in order to hinder or delay the UJC proceedings.**

I have or promptly will provide the Office of the Vice President and Chief Student Affairs Officer with an Expert Assessment, as described in the Procedures. I will authorize (a) the professional who has provided this Expert Assessment, and (b) any other healthcare provider with or from whom I have received consultation or treatment that may be related to my alleged CHI, to communicate directly and confidentially with the Office of the Vice President so that my condition can be fully and fairly assessed by the University. I agree to sign any requested authorizations for such communication to occur.

Student's Signature

Date

Witnessed by

Date