

## **STUDENT-WIDE JUDICIARY RULES OF PROCEDURE**

### **I. SCOPE**

- A. All students and all student clubs, organizations, and governments of the State University of New York at Buffalo, charged with violating the Student Code of Conduct or any other non-academic University regulation not specifically excluded by other statutory regulations or any state law or regulation may be subject to the jurisdiction of the Student-Wide Judiciary and to the procedures and sanctions herein.
- B. The Director of Student Conduct & Advocacy shall decide the appropriate judicial body for all student disciplinary matters e.g., Campus Living, Student-Wide Judiciary, or Administrative Hearing. All sexual assault and sexual misconduct offenses are heard only by Administrative Hearings.
- C. At the Discretion of the Director of Student Conduct & Advocacy, and regardless of the recognizing body, the Student-Wide Judiciary also has jurisdiction over disputes within and/or challenges against Student Governments; as well as appellate and final jurisdiction over Student Government election disputes and recall proceedings.
- D. The Student-Wide Judiciary is comprised of University Hearing Representatives, who represent the interests of the University at Buffalo, and Student Justices, who provide an additional level of scrutiny.
- E. The Student-Wide Judiciary process is neither a legal hearing nor is it designed to operate with a legal court's rule of procedure. It was designed to give students a chance to be heard by other students. As such, the student is responsible for speaking (or not speaking, if they wish) for themselves. A student may have an advisor with them at any or all points in the process, but that person may not represent them.

### **II. COMPOSITION OF STUDENT-WIDE JUDICIARY**

- A. University Hearing Representatives – The University Hearing Representatives are law students currently enrolled at SUNY Buffalo Law School and shall be responsible for drafting complaints, and conducting hearings with students. The Chief University Hearing Representative has discretion of how many Hearing Representatives to hire, but no more than 10. Student Conduct & Advocacy serves in a supervisory role of the Hearing Representatives.
- B. Chief University Hearing Representative – The Chief University Hearing Representative shall serve as the direct supervisor of the University Hearing Representatives. The Chief is responsible for recruiting, hiring, and training University Hearing Representatives. The Chief is also responsible for the administrative functions of the Hearing Representatives, including scheduling and other day-to-day functions. The Chief is selected each year and supervised by the Director of Student Conduct & Advocacy or designee.
- C. Assistant Chief University Hearing Representative – The Assistant Chief University Hearing Representative shall assist the Chief University Hearing Representatives in his/her

duties. The Assistant Chief is selected each year by the Director of Student Conduct & Advocacy or designee.

- D. Justices – The Justices are students currently enrolled at any school at SUNY Buffalo, and are responsible for conducting justice reviews or conducting hearing panels with students. Once appointed, Justices continue to serve until they graduate, resign or are removed. The Chief Justice has discretion of how many Justices to hire, but no more than 15. Student Conduct & Advocacy serves in an administrative advisory role of the Justices.
- E. Chief Justice – The Chief Justice shall serve as the direct supervisor of the Justices, and is responsible for recruiting, hiring and training them. The Chief is also responsible for the administrative functions of the Justices, including scheduling and other day-to-day functions. The Chief is elected each year by the other Justices, at the close of the academic year, to serve a 1 year term.
- F. Assistant Chief Justice(s) – The Assistant Chief Justice(s) shall assist the Chief Justice in his/her duties. The Assistant Chief is selected each year by the Chief Justice, who may select 1 or 2 Assistant Chiefs. In the event that a Chief Justice resigns, then the Assistant Chief will assume the Chiefs responsibility until the next election. If there are 2 Assistant Chiefs, then the longest tenured Assistant Chief will have priority.
- G. Succession of Justices – In the event that the Chief Justice is removed from a matter, then the Assistant Chief Justice will assume responsibilities for that matter. If there are 2 Assistant Chiefs, then the longest tenured Assistant Chief will have priority. In the event that both the Chief Justice and the Assistant Chief Justice(s) are removed from a matter, then the Justice with the longest tenure, who is not also removed, will assume responsibilities for that matter.
- H. Advisors - Every student has the right to assistance throughout the Student-Wide Judiciary process by an advisor of his/her choosing. The role of the advisor is solely to assist the student in the Student-Wide Judiciary process. This may include, but is not limited to, speaking with the student, appearing at meetings and hearing with the student, advising the student, reviewing documents with the student, and assisting in the student’s preparation for meetings and hearings. However, an advisor may not speak, advocate, or appear on behalf of the student in any capacity for any matter before the Student-Wide Judiciary. That is the student’s responsibility.

### **III. APPEARANCE REFERRALS, INITIAL HEARING & PLEA AGREEMENTS**

#### **A. Appearance Referrals**

1. Students accused of violating the Student Code of Conduct are referred to the Student-Wide Judiciary through “Appearance Referrals” which are typically given to the student by the University Police or other University administrators/staff. If the report does not indicate that the student has already received an Appearance Referral, a University Hearing Representative shall send one to the student by e-mail.
2. The Appearance Referral shall include the contact information and a date at which to contact the Student-Wide Judiciary to schedule an appointment. The referral shall also

- notify the student of his/her right to an advisor throughout the Student-Wide Judiciary process.
3. Once issued an Appearance Referral, the student is responsible for contacting the Student-Wide Judiciary to schedule an appointment.
    - i. If a student fails to contact the Student-Wide Judiciary within 7 days of being given an Appearance Referral, or otherwise stops responding, a Disciplinary Hold may be placed on the student's registration account until the matter is resolved. The decision to place and/or remove the Hold is at the discretion of Student-Conduct & Advocacy.
    - ii. If, after the placement of a Disciplinary Hold and reasonable efforts are made to contact the student, the student continues to fail to contact the Student-Wide Judiciary, the case may be adjudicated in their absence. Adjudicating a Student-Wide Judiciary case in a student's absence is at the discretion of the University Hearing Representative or Justice handling the matter.

#### B. Complaints

1. Complaints shall be drafted by a University Hearing Representative, and shall include the date(s) of incident, the alleged violation(s) or "charges" and an explanation of what the student allegedly did.
2. University Hearing Representatives retain the right to add, remove, or modify charges until a Plea Agreement is reached or until a Pre-Panel Informational Meeting. Once a Plea Agreement is signed or a Pre-Panel Informational Meeting is held, the charges are final and cannot be modified.
3. The University Hearing Representative shall give the student a copy of the Complaint at the Initial Hearing. Students may also request a copy of their Complaint prior to their Initial Hearing.

#### C. Initial Hearing

1. After being referred to the Student-Wide Judiciary, the student will meet with a University Hearing Representative for an Initial Hearing. At the Initial Hearing, the student will be given a copy of the Complaint (with the charges), learn about the process and their rights, and have an opportunity to be heard about the incident.
2. After hearing from the student, the University Hearing Representative will make recommendations to the student about their findings (responsible/not responsible for each charge) and proposed sanctions (if appropriate).
  - i. If the student agrees with these recommendations, the student and University Hearing Representative can enter into Plea Agreement, subject to a Judicial Review. The student and University Hearing Representative are welcome to further discuss and/or change these recommendations to come to an agreement.
  - ii. If the student and University Hearing Representative cannot agree on the findings and/or sanctions, the student may request a Hearing Panel or an Administrative Hearing. For a disagreement on sanctions only, the matter should be submitted to a Justice to see if they could facilitate an agreement.

3. Initial Hearings should be held in person, but may be held by telephone if the circumstances warrant. In addition, the Initial Hearing may occur over multiple appointments. Either the student or University Hearing Representative may request an additional appointment if they wish for additional time to consider what was discussed, the recommendations, or if they need to gather more information.

#### D. Judicial Review

1. If the student and University Hearing Representative reach a Plea Agreement, they will submit it to a Justice for a Judicial Review. The Justice will review the proposed Plea Agreement and talk with the student and University Hearing Representative to ensure equity and fairness.
2. After reviewing the Plea Agreement, the Justice may accept it as stated, or they may reject it on one or more of the following grounds:
  - i. The agreement in the estimation of the Justice is patently unfair;
  - ii. The Justice is given the impression that the student is not fully aware of his/her rights in the matter; or
  - iii. The student asks for an advisor during the Judicial Review.
3. If a Plea Agreement is rejected, the Justice must inform both the University Hearing Representative and student of the reasoning for the rejection. The student and the University Hearing Representative may then attempt to reach another agreement. If appropriate, the Justice may participate in that conversation to help facilitate an acceptable agreement.
4. If a Plea Agreement is rejected, and an acceptable Plea Agreement cannot be reached, the student may request one of the following options: (i) that the Justice, or Chief Justice, reconsider the rejected Plea Agreement, (ii) a Hearing Panel or (iii) an Administrative Hearing.
5. If no Justice is available for a Judicial Review, the student may choose to reschedule or to waive the Judicial Review by signing a Judicial Review Waiver.

### IV. HEARING PANELS

#### A. Background

1. A Hearing Panel is another phase of due process that may be invoked by a student who feels as though they are not responsible for a violation of the Student Code of Conduct, or do not agree with a recommendations made by University Hearing Representative during his/her Initial Hearing.
2. The Hearing Panel is also how the Student-Wide Judiciary exercises its jurisdiction over disputes within and/or challenges against Student Governments; as well as appellate and final jurisdiction over Student Government election disputes and recall proceedings.
3. A Hearing Panel is designed as an informational, not adversarial, process for participants, whether the University Hearing Representative and a student in a

disciplinary matter or students involved in a Student Government dispute, to provide pertinent information to the Justices who will then make decisions regarding the matter.

**B. Composition**

1. A Hearing Panel is comprised of an odd number of current Justices, with a minimum of 3 and maximum of 7. A decision must result from a Justice Panel, and all decisions are by a simple majority. The Chief Justice is responsible for coordinating and conducting the Hearing Panel, and is not a voting member of the Hearing Panel.

**C. Complaints for Student Government Disputes**

1. A student wishing to bring a Student Government dispute to the attention of the Student-Wide Judiciary must submit a written statement, together with any supporting documentation, to the Chief Justice. Absent extraordinary circumstances, the complaint must be submitted to the Chief Justice within 30 days of the contested act.
2. Upon receipt of a complaint, the Chief Justice will determine the appropriate student(s) to respond, either individually or representing a Student Government, and will provide that student(s) with an opportunity to submit a written response.
  - i. Generally, the Chief Justice has the discretion to determine the appropriate time to submit a written response based upon the complexity of the matter. In the case of an election dispute decision, notification to the responding party must be made within 3 days of receiving the complaint, and the responding party shall have no more than 3 days to respond. Otherwise, a response period should not be longer than 10 days.

**D. Pre-Panel Information Meeting**

1. Prior to a Hearing Panel, the Chief Justice will hold a Pre-Panel Information Meeting with all of the participants, whether the University Hearing Representative and a student in a disciplinary matter or students involved in a Student Government dispute.
  - i. Due to potential time constraints regarding Student Government election matters, the Chief Justice may waive the need for a Pre-Panel Information meeting. Instead, the Chief Justice will inform the participating students what the format will be in advance of the hearing.
2. The purpose of the Pre-Panel Information Meeting is to discuss and determine the format of the Hearing Panel, the information each participant plans to present and the questions that will be posed to the Justices. Preferably, the participants will agree on the following format/procedural issues. In the absence of an agreement, the Chief Justice will have discretion over all Hearing Panel format/procedural issues not otherwise specifically enumerated.
  - i. Date/Time/Location of the Hearing Panel;
  - ii. Prior exchange of information to be presented at the Hearing Panel, a finalized packet of materials to be provided to the Justices and any applicable deadlines for submitting additional information;

- iii. Potential witness list, whether live witnesses are necessary or if their information may be reduced to written statements;
  - iv. Time allotments or other considerations for each participants presentation;
  - v. Who is permitted in the room during the Hearing Panel;
  - vi. How questions between participants and/or from the Justices will be handled.
3. The Pre-Panel Informational Meeting shall be held no more than 10 days after: (i) the Chief Justice has been notified of the requested Hearing Panel by the University Hearing Representatives for a disciplinary matter, or (ii) after the Chief Justice has received the complaint and any applicable responses for Student Government disputes.
  4. If the student fails to respond to the Chief Justice or fails to attend the Pre-Panel Informational Meeting regarding a disciplinary matter, they will waive their right to a Hearing Panel, and the case will have to be resolved by either: (i) further Initial Hearings with the University Hearing Representatives, (ii) an Administrative Hearing or (iii) adjudication in the students absence.

E. Hearing Panel Procedure

1. The Hearing Panels are closed to the public, and absent agreement among all of the participants, only persons that have a direct link to the current case are permitted in the room. Typically, this includes the Justices, University Hearing Representatives, accused student, complaining student(s), responding student(s), and advisors.
2. Students may have an advisor present with them during a Hearing Panel, but the student must speak for themselves. Students are not required to speak if they do not wish to. However, decisions will still be made based upon the information available. For disciplinary Hearing Panels, a decision regarding the student's responsibility and sanctions must be made regardless of whether the student chooses to speak or not.
3. Hearing Panels for Student Government disputes often have unique complexities that are impossible to predict. Therefore, format issues are determined on a case-by-case basis at the Pre-Hearing Informational Meeting, either by agreement or at the discretion of the Chief Justice. When practicable, all Hearing Panels will generally follow the procedures listed here.
4. The Chief Justice will begin a Hearing Panel with introductions, welcoming remarks and a reiteration of the format of the hearing. The Chief Justice will supervise the Hearing Panel with the discretion to determine questions of form or format.
5. For disciplinary Hearing Panels, the University Hearing Representative will then be allowed to present the charges and explain why they believe the behavior meets or exceeds a preponderance of the evidence, which is necessary to find the student responsible. The Hearing Representative may instruct the panel on what sanctions were previously offered to the student.
6. The accused student will then be allowed to respond and to explain why they believe there are not responsible for the allegations. Again, students are not required to speak if they do not wish to.

7. The participants are not allowed to address each other directly, but must always address their presentations to the Justices. After the presentations, the Chief Justice will gather any questions that the University Hearing Representative and/or accused student have for each other. The Chief Justice will then ask the questions to the respective party, and allow each party an opportunity to answer to the questions, clarify, expand on or respond on any information presented. The Chief Justice may discard any inappropriate or irrelevant questions.
8. The Hearing Panel Justices may ask questions of any persons involved at any time during the Hearing Panel.
9. At the conclusion of the Hearing Panel, the Justices will then deliberate confidentially. All decisions made by a Justice Panel shall be determined by a majority vote. For disciplinary matters, the standard of proof for a finding of responsibility is by a preponderance of the evidence.
10. The Justices will provide their decision to the Chief Justice, who will send a written notice by e-mail to the relevant parties. The decision must be sent to the parties by e-mail no more than 3 days from the date of the Hearing Panel. For disciplinary matters, each charge must be considered separately and the decision must include the findings, reasoning and any sanctions assigned. All decisions must also include instructions for appealing based upon due process violations only.
11. For disciplinary matters, the accused student may accept the most recent recommendations offered (Plea Agreement) from the University Hearing Representatives at any point in time prior to the decision of the Hearing Panel.
12. Hearing Panel decisions are final and appeals may only be made on due process grounds; the findings themselves cannot be challenged. Appeals are due within 5 days of receiving the Hearing Panel decision, and are submitted to the Chief Justice. If appropriate, the other participants may submit responses to the appeal. The Chief Justice will issue a decision regarding an appeal to all participants within 5 days after receiving the appeal. If an appeal has merit and a potentially adverse effect on the decision, the only remedy would be to hold a new Hearing Panel with different Justices.

## **V. GENERAL RULES**

### **A. Evidence**

1. A proceeding before the Student-Wide Judiciary is a student disciplinary proceeding. The “rules of evidence” are not to be construed as strict requirements, but merely guidelines of “fair play.” It is important to remember that all information and evidence directly related to the matter is admissible, and that the Hearing Panel Justices have the power to weigh the evidence accordingly based upon its relevance and reliability.
2. For disciplinary matters, the burden of proof is on the University Hearing Representatives to provide information that shows, by a preponderance of the

evidence, that it was more likely than not that the accused student did commit the alleged Student Code of Conduct violation(s).

3. If a student believes that there is other evidence to support their claim, they are allowed and encouraged to bring that evidence in.

B. Witnesses

1. Witnesses are relevant if they have personal knowledge of the matter. Witness are not permitted to offer their opinion, unless it helpful in their description. All witnesses are subject to questioning, and the credibility of a witness may be questioned.
2. The appearance of witnesses is at the discretion of the University Hearing Representative during an Initial Hearing and the Chief Justice during a Hearing Panel. Students are welcome to submit written statements from their proposed witnesses, and the University Hearing Representative or Chief Justice will determine if additional follow-up is necessary with any particular witness.
3. The University Hearing Representative or Chief Justice may request that any relevant student make a statement or appear if the witness' information would be helpful for the case.

C. Dishonesty – The Student-Wide Judiciary relies on the veracity of the information provided to it. Students discovered to be lying, either in written statements that they provide or in their testimony, may be subject to a Dishonesty violation of the Student Code of Conduct.

D. Record

1. The University Hearing Representatives shall make and preserve a record of each case. This shall consist of the complaint, all documentation received, and a copy of the Plea Agreement or Hearing Panel decision.
2. All documents, records, and discussions had during Student-Wide Judiciary proceedings shall be considered confidential and treated accordingly. Such records are confidential and are maintained in Student Conduct & Advocacy for seven (7) years. Students are entitled to examine their record consistent with the policies of Student Conduct & Advocacy.
3. Audio recordings of the Initial Hearing are at the discretion of the University Hearing Officer, and audio recordings of the Hearing Panel are at the discretion of the Chief Justice.

E. Sanctions – The Student-Wide Judiciary has the power to assign sanctions as appropriate and consistent with the Student-Code of Conduct. However, the Student-Wide Judiciary may not recommend long-term suspension, expulsion or a permanent transcript notation.

F. Day(s) – The term “day(s)” means weekdays when classes are in session, not including the summer or winter sessions.

G. Professionalism – All participants in the Student-Wide Judiciary process are expected to conduct themselves and engage with others with respect and maturity. Depending on the circumstance, University Hearing Representatives during an Initial Hearing and the Chief



Justice during a Hearing Panel may address inappropriate behavior progressively by: issuing instructions and a warning, terminating the meeting or removing the offending party from the meeting, referring the offending party to an administrator of Student Conduct & Advocacy.

- H. Conflicts & Bias – All participants in the Student-Wide Judiciary process may object to specific University Hearing Representatives or Justices if they believe that a conflict or bias exists which would prevent fairness and equity in the process. Persons with a reasonably demonstrable conflict or bias will be excused and replaced. Concerns about conflicts and bias should be addressed to the Chief University Hearing Representative or Chief Justice, respectively. Concerns about the Chief University Hearing Representative or Chief Justice should be addressed to a Student-Conduct & Advocacy administrator.
- I. Victim Impact Statements – If the incident involves a specific victim, the victim may submit a Victim Impact Statement, to be considered by the University Hearing Representative during the Initial Hearing, or by the Justices during a Hearing Panel. The Justices may only consider a Victim Impact Statement for sanctioning, and after they have determined that an accused student is responsible for violating the Student Code of Conduct. The Chief Justice shall be responsible for ensuring that the Justices do not have knowledge of or access to a Victim Impact Statement unless there is a finding or responsibility.

**VI. RECALL PROCEEDINGS** *The following procedures shall apply only to recall proceedings brought against elected officials of the Undergraduate Student Association. Recall proceedings for elected officials of other Student Governments shall take place in accordance with their respective constitutions.*

- A. The Student-Wide Judiciary shall facilitate recall proceedings against any elected officials of the Undergraduate Student Association upon receipt of valid petitions from an aggrieved party alleging violations of the Undergraduate Student Association Constitution and/or the Student Code of Conduct by the elected official.
- B. A recall petition shall be deemed valid if it:
  - 1. Contains signatures of 10% of the current constituency or contains a number of signatures equal to the number of voting constituents in the previous general election if larger than 10% of the current constituency.
  - 2. Can be determined to have merit by the Chief Justice.
- C. Upon receiving a recall petition, the Chief Justice shall determine its validity and notify the appropriate parties within 5 days. If the petition is determined to be valid, the Chief Justice shall begin the process for a Hearing Panel.
  - 1. Notification to the accused elected official(s) shall include a list of all allegations and/or charges brought against them, a copy of these Rules of Procedure and a statement of their right to an advisor.
- D. Specific to recall proceedings:

1. The burden rests on the petitioning party to set forth sufficient evidence to state a valid claim.
  2. With the filing of a petition, the petitioning party shall provide the Chief Justice with sufficient evidence to demonstrate:
    - i. A genuine impeachable offense on the part of the accused elected, and
    - ii. A strong likelihood of ultimate success in the action.
  3. During a recall proceeding, the Student-Wide Judiciary has the power to:
    - i. Adjudicate all charges of violation of the constitution of the Student Association
    - ii. Adjudicate all charges of violation of the Student Code of Conduct.
    - iii. Assign sanctions as appropriate and consistent with these Rules of Procedure.
    - iv. Remove elected official(s) from office.
- E. The Chief Justice may request a written brief from the Election and Credentials Committee outlining the charges against the elected official(s) and the findings of their investigation as to each charge. Any such brief must be requested no later than 5 days after a petition is determined to be valid, and submitted no more than 5 days thereafter. Any such brief shall be promptly shared with the participants and the Hearing Panel Justices. The accused elected official(s) shall have an opportunity to submit a response prior to the Hearing Panel.
- F. The Chief Justice may also request that the participants submit final briefs to the Hearing Panel. Any such briefs must be requested within 3 days from the conclusion of the Hearing Panel, and submitted no more than 5 days thereafter. The Chief Justice may determine a maximum limit of pages for the final briefs. Any such briefs shall be promptly shared with the participants and the Hearing Panel Justices.
- G. The Justices will provide their decision to the Chief Justice, who will send a written notice by e-mail to the relevant parties. The decision must be sent to the parties by e-mail no more than 5 days from the date of the Hearing Panel or from the deadline to submit final briefs, whichever is later.

## **VII. RULE MODIFICATION/VOTING**

- A. At any time, the Student-Wide Judiciary may approve the Rules of Procedure to be in effect for the current term. Rules of Procedure changes/modifications are effective the day they are approved by Director of Student-Conduct & Advocacy. All students with pending charges are subject to said changes/modifications from the time they are implemented, regardless of when the incident occurred or when the charges were filed.
- B. Rules of procedure changes/modifications are not considered retroactive and therefore will not be binding on any prior decisions or proceedings.
- C. All decisions made prior to any rule changes/modifications may not be appealed on the basis of said rule changes/modifications.

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