

**FINAL REPORT  
CODE OF STUDENT CONDUCT TASK FORCE**

**UNIVERSITY OF CALIFORNIA, BERKELEY  
FALL 2010 – SPRING 2011**

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## **EXECUTIVE SUMMARY**

In the fall of 2010 Executive Vice Chancellor and Provost George Breslauer charged the Code of Student Conduct Task Force to review aspects of Berkeley's Code of Student Conduct prompted by several disruptive protests on campus the previous academic year. The attached final report and recommendations of UC Berkeley's Code of Student Conduct Task Force reflect careful consideration of diverse opinions from members of the Task Force as well as input from student forums and general feedback members received from staff and faculty across the campus community. For two recommendations, multiple viewpoints are offered for consideration. The Task Force is confident that many of the recommendations, once implemented, will clarify both policy and practice related to the student conduct process.

### **Review Process**

#### **Membership**

The Task Force began in November 2010 with 20 members. In January, two students and one faculty member withdrew, and two additional students were appointed at the beginning of February.

#### **Meetings**

Ten two-hour full group meetings were held from November 8, 2010 to April 25 2011, with an average of 80% member attendance.

The Task Force was split into two subgroups which met on alternate weeks independently from large group meetings to work on specific issues of the Code revision specified in the charge letter.

The subgroups each met six times for 90 minutes. Subgroup A, with 9 members, was tasked to work on Timelines, Communication Process, and Consequences. Subgroup B, with 10 members, was tasked to work on Decision Rights/Representation, Capacity of Department. Subgroups and individual members drafted documents and Code revisions which they brought to the full group for review.

The group spent a majority of the first several meetings in exploration and discussion of issues and opinions. Later meetings were spent reviewing subgroups' work, making decisions on issues, and refine drafts of documents.

## FINAL RECOMMENDATIONS

### 1. ESTABLISH THE INDEPENDENT HEARING OFFICER POSITION

The Task Force identified a number of challenges in the operation of the current hearing process. Students have complained that no mechanism exists, other than through an appeal at the conclusion of the full hearing process, to raise perceived violations of Code procedures by the Center for Student Conduct and affiliated parties. Currently, hearing panels are not permitted to dismiss cases on the basis for claimed procedural errors. Furthermore, scheduling issues have caused long delays in the completion of some hearings. The lack of an independent authority, or for lack of a better word, a “judge,” to mediate issues and maintain adherence to schedules has resulted in significant antagonism and mistrust of the process from both students and staff with each party attributing blame to the other for the delay.

The conduct process is overseen by faculty chairs whose level of training, experience, understanding of the Code, and appreciation for rules of procedure and due process are highly variable. Inconsistent procedural rulings, including ones that have been argued to violate student rights, as well as instances of faculty chairs being unable to control proceedings have created an untenable situation. Due to the fact that faculty chairs and hearing panels are not experts either in the Code or more generally in hearing procedures, they must rely heavily on CSC for training and advice, creating a perception of unfairness. The perception of unfairness is exacerbated by the CSC management of the conduct process, including logistics, setting hearing dates and assigning panel members which creates a perception of a biased and close relationship between the CSC and student conduct panels. The Task Force recognized that training alone is unlikely to be a completely satisfactory solution.

Thereby, the Task Force recommends that a new position titled “Independent Hearing Officer” (IHO) be established in the Code. The IHO will be authorized to (1) rule on procedural disputes that arise during the conduct process, (2) rule on requests for extensions of time, (3) fashion appropriate remedies for procedural violations (including dismissal of charges, where appropriate), (4) preside over and make all procedural rulings at student conduct hearings, (5) manage logistics of the student conduct hearing process, such as scheduling of hearings and communications with and training of hearing panel members. Subject to specific procedural requirements set forth in the Code, the Hearing Officer should have discretion, similar to that enjoyed by judges in a trial setting, to manage pre-hearing and hearing procedures. CSC will continue to receive and investigate complaints of conduct violations, make determinations about whether to proceed with conduct charges, meet with students, enter into informal resolutions, and present conduct cases at hearings. In hearings involving hearing panels, the panels (made up, as currently, of students, faculty and staff) will continue to question witnesses and make the ultimate determination of responsibility and recommend penalties. The IHO will not participate in panel deliberations or in the drafting of panel findings. Panel members will be relieved only of the duty to make procedural or evidentiary rulings. The IHO will serve as the single hearing officer if the accused student requests an IHO hearing or does not reply to cases in which the proposed sanction is suspension or expulsion, or a sanction was not proposed. All decisions of the IHO will be subject to appeal to the Vice Chancellor for Student Affairs following a final decision by the Dean of Students as in the current Code.

The Task Force recognizes that the success of this recommendation depends on the skill of the IHO and the IHO’s ability to maintain real and perceived neutrality, consistency and fairness as well as to command the respect of participants in the process. Therefore, the Task Force recommends that implementation of the IHO in the Code be accompanied by a number of procedural safeguards aimed at

maintaining independence, and student representatives should be given a significant role in the IHO selection process. The Task Force also requests that in determining the viability of this recommendation, financial implications should be carefully reviewed in light of current budgetary constraints for the university. It should be noted that one member of the Task Force did not support this recommendation should it require any new funds allocated to the position.

[See Appendix A: Expanded Independent Hearing Officer Recommendation](#)

## 2. ESTABLISH CONDUCT PROCESS WITH FIXED TIMELINES

It became apparent to the Task Force that a significant challenge for both the students participating in the conduct process as well as the CSC staff revolved around the timeline. As a result, student confidence in the conduct process suffered as widely varying case durations and unclear timelines created confusion and frustration. Likewise, uncertain schedules added to the CSC workload which ultimately impacted students adversely. Therefore, the Task Force recommends that a process with fixed timelines be established for conduct cases. The process should have clear steps, specify who makes decisions in each step, and set specific deadlines for those decisions. The Task Force has included a detailed proposed timeline structure in Appendix B.

The following recommendations are presented for consideration:

- Establish clear process with fixed timeline (implement proposed timeline structure attached)
- Provide a specific process for extending Code timeline
  - Permits timeline extensions at the start of the process before the notice of violation is received
  - Requires the Center for Student Conduct to explain the reason for extension and propose a specific new timeline
  - Decision on whether or not to grant the extension made by the Independent Hearing Officer
  - Offers a symmetric process for the student to request an extension promptly after receiving the notice of violation
- Establish time limits on conduct complaints
  - The student conduct process cannot start until the Center for Student Conduct is made aware of the alleged violation through receiving a complaint. However, excessive delay in starting the process results in hardship to students, and undermines trust in the system.
  - Therefore recommend that complaints must be submitted to the Center for Student Conduct within 60 working days of the date that the author of the complaint knew or should reasonably have known about the alleged violation. For the very small number of complaints where law or an external agency requires that information be withheld, this timeline will be modified to 30 working days from the time the information can or could have been released. Complaints received after these deadlines will not be pursued.
- Establish procedures for streamlined disposition of cases when students do not respond to charges
  - Currently, when students do not respond to charges cases must go through the full panel hearing process before sanctions can be imposed. The Task Force recommends a streamlined processes for cases in which students do not respond to charges.

[See Appendix B: Proposed Timeline Structure  
Proposed Timeline Diagram](#)

### **3. CREATE A CONSOLIDATED COMMUNICATION REGARDING CONDUCT CHARGES**

Currently, a student may receive several, similar communications over the duration of the conduct process, which can create confusion. The Task Force recommends that these communications be consolidated into a single communication entitled the Alleged Violation Letter (AVL) which will include:

- a detailed description of the incident and list of only the violations relevant to the incident;
- to help the student understand the severity of the alleged violation, a statement of the range of sanctions typically applied to similar cases;
- a statement that students may request access to their conduct file prior to meetings with the Center, along with procedures and deadlines for doing so;
- when possible, a specific statement of the sanction that will be applied if the student chooses to not take part in the conduct process.

See Appendix C: [Proposed Alleged Violation Letter](#)

### **4. PROMOTE FACULTY RESOLUTION OF ACADEMIC MISCONDUCT VIOLATIONS**

The Task Force agrees that the current process for the faculty resolution of academic violations should be standardized and improved to minimize inconsistencies in sanctions that arise when some cases are resolved by faculty and other cases are resolved through the Center for Student Conduct. The recommended standardized process can also relieve the Center for Student Conduct from managing a very large number of first time academic violation cases. As a fundamental starting point for this change in practice, UC Berkeley faculty will be strongly encouraged to meet and resolve the matter with a student suspected of a minor first time conduct violation before forwarding the case to the Center for Student Conduct. Specifically, issues of alleged misconduct should be addressed by the faculty member in charge of the course rather than by GSIs. Guidelines on handling issues of alleged academic misconduct will be readily available to faculty and will continue to be posted on the Center for Student Conduct website.

More specifically, the Task Force recommends the following actions:

- Request that EVCP Breslauer issue a bi-annual communication reminding and encouraging faculty on the use of academic violation reporting and resolution procedures
- The Task Force recommends that Deans should ensure that a designated person for each department/unit is trained to deal with academic misconduct and can respond to faculty questions. CSC would connect with the various departmental liaisons to make certain all departments are familiar with the appropriate policies and procedures for dealing with instances of academic misconduct. The Task Force recognizes that the identification of a departmental liaison may be challenging for some units.
- The two forms (Disposition and Referral) currently used for reporting instances of academic misconduct to CSC should be combined into a single form (see Appendix D).
- In matters where it is not possible for the faculty member to resolve the allegation directly with the student, then a Disposition/Discipline Referral Form would be sent to the CSC; CSC would conduct follow-up meetings with the student and, if necessary, conduct a hearing. A case would not be forwarded to CSC for resolution until it had been cleared by the department from which it originates (via the designated departmental support person).
- All faculty dispositions will continue to be reported to CSC for recordkeeping purposes.

See Appendix D: [Combined Faculty Disposition/Discipline Referral Form](#)

## 5. INCLUDE DEFINITIONS OF ACADEMIC MISCONDUCT IN THE CODE

The Task Force agrees that *Section V.102.01, Academic Dishonesty* in the Code (which we recommend changing to *Academic Misconduct versus Academic Dishonesty*) is vague and recommends that definitions of academic misconduct be included in an appendix of the Code to provide greater clarity for students, staff, and faculty. A statement would be included in *Section V.102.01, Academic Dishonesty* directing staff, faculty, and students to the Code's Appendix for a further explanation of academic misconduct.

Clarifying Academic Misconduct in the Code provides a more explicit basis of explanation of offenses, without providing excessive detail that may be discipline-related. The Task Force recommends that the Academic Senate be asked to post more explicit guidelines on academic misconduct on their website. This was endorsed by the Co-Chair of the Task Force, who will soon assume the chairmanship of the Senate. It is recognized that some practices and standards regarding academic misconduct may differ among departments for reasons particular to their fields, but that this can be handled within departments and it should not prevent general guidelines and explanations of various classes of academic misconduct from being provided to students. The Task Force agrees that campus efforts should be redoubled to explain the basic principles of academic misconduct to students during new student orientation (CalSo) and other transition events, particularly those related to international students, through the office of the Vice Chancellor for Student Affairs and other primary student facing divisions across campus. The Task Force also recommends that the university should research available online training modules required periodically for all students, similar to those currently used for ethics and sexual harassment.

## 6. MODIFY THE CONDUCT PROCESS AS AN "EDUCATIONAL MODEL;" CHANGE THE NAME OF THE CENTER FOR STUDENT CONDUCT AND COMMUNITY STANDARDS

### **Educational Model:**

The Task Force had lengthy discussions regarding the "educational model" informing the student conduct process. Some members felt strongly that an educational model was inappropriate and certain sanctions (e.g., reflective essays) were not only unproductive but condescending and repressive of personal philosophical ideologies. Some members also felt the conduct office was acting excessively *in loco parentis* and therefore did not prepare students for judicial procedures beyond University borders. Concerns around the "counseling" role of conduct staff were raised; essentially members felt that these conversations could be viewed by students as intrusive and pragmatically, given current resource constraints, the conduct staff could not afford to spend a lot of time counseling students about violations rather than carrying out office procedures in an efficient and expeditious way.

Other members argued that the model was aligned with national best practice for university student judicial affairs and under certain circumstances, an essay could be effective in asking students to understand the impact of their actions. The ability to have many options for sanctions was viewed as being advantageous for the hearing panels. Furthermore, the role of a conduct office is not to prepare students for external judicial procedures but to help them understand that actions have consequences (positive and negative) and as an adult to take responsibility for one's decisions as member of the UC Berkeley community. Finally, these members felt the role of "counseling" was not about psychological counseling but about staff in dialogue with students to better understand *why* an action occurred, which often varies based on the individual. These types of conversations between staff and student allow a

deeper understanding of a situation so that appropriate resources can be directed to the student as needed (e.g., psychological counseling).

The Task Force recommends the following modifications to the General Overview to the Code to address the educational model debate:

*Because this is an educational process, students are expected to speak for themselves. ....*

*Sanctions in both the formal and informal processes are intended to enforce the Student Code of Conduct and to inform students about appropriate behavior within the community, help them learn from mistakes, and discourage future violations of the rules of conduct. Sanctions may include such elements as reflective writing assignments, community service, letters of apology, counseling or additional coursework, but are not limited to these actions, and may also include others as listed in Section 105 (Conduct Sanctions).*

Please note that some members do not support this revision and instead suggest the final paragraph be removed completely.

**Department Name:**

The majority of the Task Force agrees that the title “Center for Student Conduct and Community Standards” is too long and not widely used. Earlier this academic year, the Dean of Students abbreviated the name to “Center for Student Conduct” as practice, although not by policy.

Several members of the Task Force proposed a name change to “Office of Student Conduct.” Several members proposed that the current, abbreviated name is sufficient. The remaining members of the Task Force did not indicate a preference for one name over the other.

The Task Force recommends a change for the departmental title and leaves it to the discretion of the EVCP to determine the appropriate version.

**7. PROVIDE AN ALTERNATIVE CONFLICT RESOLUTION OPTION**

Currently the accused or respondent begins by responding to a complaint; sometimes this creates a defensive, punitive, and restrictive process and those involved are less likely to have gained a perspective/understanding of the other’s experience. The Task Force recommends that an Alternative Conflict Resolution option be developed with a condition that students cannot be forced to accept this option.

Some alternative resolution options could include conflict coaching, restorative justice, or mediation. Alternative resolution might be used, for example, in cases revolving around roommate issues, boyfriend/girlfriend issues, etc. and would not be available in cases of violence or sexual harassment/battery.

One member of the Task Force feels that proper formulation of an Alternative Conflict Resolution process, even if fully optional, would require review by a Task Force similar to this one.

## **8. EXPAND THE ROLE OF ADVISORS**

The 2003 Code of Student Conduct Review report recommended limiting the role of advisors for students. As such, the current Code allows advisors to accompany students in any phase of the process but permits advisors to speak during formal hearings only in unusual circumstances. However, the Task Force recommends the Code be revised to allow the Independent Hearing Officer to determine the role of advisors during conduct hearings on a case by case basis after consideration of appropriate factors including promotion of the fair, efficient, and timely completion of the hearing; the ability of the accused student to effectively present his or her case; the complexity and seriousness of the case, and the advisor's familiarity with and willingness to abide by applicable procedures. Under this recommendation, there will be no presumption either for or against direct participation by advisors in the hearing. Instead, a charged student or his or her advisor may request that the advisor be allowed to participate, and the IHO could grant or deny that request after consideration of relevant factors. One such factor would be the advisor's familiarity with and willingness to abide by applicable hearing procedures. The Task Force believes that advisors should be expected to initiate communication with the IHO to evaluate their understanding of applicable procedures. In addition, if advisors became disruptive during the hearing, the IHO would retain the ability to limit their role or rescind permission for them to participate.

The current Code grants students the right to have advisors accompany them to student conduct hearings but bars advisors from participating directly in the hearing process. The hearing panel or hearing officer may make exceptions only in "unusual circumstances (i.e. need for translator)." Restricting advisor or attorney participation in student conduct hearings is typical in higher education, and courts have held doing so does not violate constitutional due process requirements. Nevertheless, there have been complaints that prohibiting advisors from participating in hearings is unfair because it places students at a disadvantage defending against cases presented by trained and experienced conduct officers and because it limits the ability of advisors to protect students' procedural rights. In addition, restricting the advisor's ability to speak directly to the panel can be inefficient because students often end up repeatedly turning to advisors for instruction about what to say or what questions to ask witnesses.

On the other hand, some members of the Task Force have been concerned that granting students a right to have the advisor participate or establishing a presumption in favor of advisor participation could create its own problems. In their view, allowing advisors to speak on behalf of students undermines the educational value of the process to the student and interferes with the ability of the panel to hear directly from the student. In addition, there is concern that establishing a right to advisor participation would lead to more attorney involvement in conduct hearings which many view as disruptive and damaging to the process, and often detrimental to the charged student. While some members of the Task Force believe that the current presumption should remain in the Code and others believe that the Code should grant students a right to have their advisors participate, a majority of Task Force members feel that implementation of the recommendation to appoint an Independent Hearing Officer would create an opportunity for a middle ground solution.

## **9. CLARIFY AND EXPAND CONDUCT SANCTIONS LANGUAGE; FORMALLY ESTABLISH THE NON-REPORTABLE WARNING AS A SANCTION**

Section VI of the current Code provides information about the conduct sanctions that are typically imposed to Code violations. However, students remain unclear what the various sanctions mean and the

impact of these sanctions during their time at the University. The Task Force recommends that the description of these conduct sanctions be expanded to include more details on when each sanction might be used and what potential impacts it could have on the student. The proposed detailed descriptions of conduct sanctions are to be included in revisions to the Code of Student Conduct.

In addition, the lowest-level sanction a student can receive for any finding of a Code violation is a *warning*, which creates a 7-year conduct record. The Task Force recommends the creation of *non-reportable warning* as a sanction (as a subset of the *warning* sanction) that CSC will typically issue when the student's action formally constitutes a violation but the circumstances and degree of severity of the action do not warrant the creation of a conduct record. Once issued, records of non-reportable warnings are maintained only for on-campus reference in the case of subsequent violations.

#### **10. CLARIFY DEFINITIONS OF ALCOHOL, WEAPONS, AND OTHER VIOLATIONS IN THE CODE**

In the current Code of Student Conduct, reference is made to certain policies or procedures that exist and for which students may be found responsible without telling them what the violations mean or where to find a more detailed description of them. The Task Force believes that the Code should be more explicit in making more readily clear and available the conduct related violations that students may be found responsible for during their tenure at UC Berkeley. In certain cases and where applicable, it is unclear whether differences exist between the laws of the State of California and/or the City of Berkeley and Code violations. This can create confusion among students nor educate them about standards of behavior. Recognizing that UCOP language in the Code of Student Conduct must be included and cannot be changed, violations written in the Code can be expanded upon and explained according to individual campus needs.

The Task Force recommends clarifying the definitions of:

- University Official
- Disorderly Conduct
- Disturbing the Peace
- Failure to Comply
- Controlled Substances & Alcohol
- Weapons
- Other policies or regulations
- Housing Regulations

We recommend that the Office of Legal Affairs and UCPD ensure these definitions are aligned with city and state laws.

#### **11. ISSUE A UNIVERSITY STATEMENT REGARDING THE APPLICATION OF THE CODE TO FREE SPEECH AND/OR ACTS OF CIVIL DISOBEDIENCE**

As noted in the letter dated October 18, 2010 by EVCP Breslauer, the Task Force was formed, in large part, to address the questions and concerns raised regarding the facilitation of the student conduct process related to the disruptive protests that occurred during the 2009-2010 academic year. The numerous conversations that ensued on the topic of civil disobedience and its relationship to the Code are undoubtedly reflected in the group's differing recommendations below. The majority of the Task Force agrees that some form of additional clarification for the UC Berkeley campus about civil disobedience would be helpful given the confusion for some students that acts of civil disobedience are

or should be immune from the Code of Student Conduct. Once again, the majority of the Task Force, while supporting the individual right to engage in acts of civil disobedience and the rich history of this tradition at UC Berkeley, believes that individuals should be held accountable for behavior that explicitly violates federal, state and/or University rules or regulations. Please note that the 2003 Code of Student Conduct Review report noted that further work on the issue of civil disobedience would be conducted. The Phase II review was never concluded.

**Free Speech:**

The Task Force recommends the *Statement on Free Speech* be made accessible to the campus community via UCB Website (site location to be determined).

*Proposed Statement on Free Speech (abbreviated):*

The University of California Policy on Speech and Advocacy guarantees students the constitutionally protected rights of free expression, speech, assembly, and worship. This Statement explains how the Policy on Speech and Advocacy applies to disciplinary cases that arise under the Code of Student Conduct.

- Constitutionally protected expressive activity will not be subject to discipline under the Code. Nevertheless, members of the campus community must recognize that certain types of conduct and speech are not constitutionally protected and that when individuals engage in them—even in the context of expressive actions—they may be subject to discipline under the Code. For example, some forms of speech are not constitutionally protected and may be grounds for discipline; the University may impose reasonable limits on the time, place and manner of speech activities and *conduct* that violates University rules, such as destruction of property, endangering the safety of others, assault, or interfering with campus operations, even if it occurs in connection with speech activities or is motivated by expressive concerns, is not protected and may subject students to discipline.
- While violations of the Code of Conduct may be subject to discipline even when they occur in connection with expressive activities, the viewpoints or political positions expressed shall have no influence on either the decision to impose discipline or the severity of penalties imposed.

[See Appendix E: Full Statement on Free Speech](#)

**Civil Disobedience:**

A few members of the Task Force recommend inclusion of a Statement and Definition of Civil Disobedience and the Statement on Free Speech in the Code of Student Conduct.

*Proposed Definition/Statement on Civil Disobedience:*

Civil disobedience occurs when a person deliberately breaks a law that he or she believes is unjust, or when a person breaks a law to protest a policy or action that has been taken by a governmental or other agency. The goal of this deliberate act is to advocate a change in the law or policy. It is implicit in this act that the person expects to receive and accept the consequences of the violation of law. As such, the defense is inadmissible that because the law was broken on conscientious grounds, the person cannot be held responsible for the consequences.

Students and others who exercise their right of protest by including civil disobedience will be expected to accept the penalties of those actions honorably; indeed, they are part of the intention of civil disobedience. However, in no case of civil disobedience will the penalties be influenced in any way by the individual’s conscientious position; they will be based strictly on the consequences of breaking the

law in and of itself. Individuals will not be asked nor encouraged to rescind or renounce their philosophical positions in any discussion of negotiation or settlement of their cases.

**A few members of the Task Force recommend no inclusion of statement on Civil Disobedience or Free Speech.**

## **12. ADOPT A “PREPONDERANCE OF EVIDENCE” STANDARD THROUGHOUT THE CODE**

The existing definition of the standard of proof written in the Code as “greater than 50%” is problematic and confusing. The consequence of the 50% rule is that conduct officers may end up forwarding cases to a hearing instead of dropping them because they are unclear as to whether or not the case is above or below this 50% threshold. The Task Force recommends that all references to standard of proof should be described as the “preponderance of evidence,” defined as “more likely to be true than not” without necessarily being “beyond reasonable doubt.” Cases that do not meet this burden should be dropped and not pursued to hearings.

## **13. REVISE CAMPUS RECORDS RETENTION POLICY FOR STUDENT CONDUCT RECORDS; WRITE A POLICY FOR EXPUNGEMENT PROCESS**

Currently, the Code states that all student discipline files will be maintained for a period of at least seven years. The Task Force recommends revising this policy so that discipline files will be retained for four years except for those cases that fall under other legal requirements that require longer retention. Students are worried about conduct records impacting their future endeavors such as graduate school or employment options. The Task Force also recommends writing a policy regarding the process for students to have their records expunged, as currently there is not a written policy that is transparent and clear to all students.

[See Appendix F: Proposals for Records Retention and Expungement Policies](#)

## **14. SEPARATE THE INTERIM SUSPENSION PROCESS FROM THE STUDENT DISCIPLINARY PROCESS**

The existing Code provides for an Interim Suspension process for the “(e)xclusion from classes or from other specified activities or areas of the campus...before final determination of an alleged violation...when there is reasonable cause to believe that the student’s participation in University activities or presence...threatens the health or safety of any campus member.” The Interim Suspension process should be independent of the conduct process since the interim suspension cases are set into motion by a collective body of campus wide professionals trained to manage these rare but complex and often dangerous situations. The Code’s decision-making structures are not well suited to rapid action which is a requirement for the resolution of interim suspension cases. There are other campus mechanisms for handling similar situations. As such, the Task Force recommends that the interim suspension process be separated from the student disciplinary process and accountability placed elsewhere (e.g., Behavioral Risk Assessment Team; UCPD).

## **15. REMOVE “GEOGRAPHIC BOX” DEFINITION FROM THE CODE AND MODIFY “OTHER OFF-CAMPUS CONDUCT” LANGUAGE**

Language in the Code regarding the “geographic box” (Section IV.B.1) felt arbitrary and its application was, at times, difficult for CSC staff to determine. Ideally, behavioral standards of Berkeley students should not be encompassed by geography, but by ethics.

More practically, students should only be pursued for action that directly impacts the University community, whether on or off campus. An off-campus case would only be pursued by the Center for Student Conduct if it posed a potential or real threat to the safety or health of another University individual (student, staff, faculty or any other member of the campus community), particularly in cases that involve stalking, sexual harassment, and related offenses, or a threat to a University event or property etc. Therefore, the Task Force recommends that the “Geographic Box” paragraph be removed and that the “Other Off-Campus Conduct” language in Section IV.B.2 be modified because it depends largely on the “geographic box” and maintains that CSC staff may choose to prosecute students for off-campus behavior based on their judgment rather than by clear jurisdictional standards.

*Student conduct that occurs off University property is subject to the Code where it a) adversely affects the health, safety, or security of any other member of the University community, or the mission of the University, or b) involves academic work or any records, or documents of the University.*

The Task Force also recommends the next section be modified as follows:

*Conduct on Other UC Campuses and Off-Campus Sponsored Sites:*

*A UC student at one campus of the University who is accused of violating University policies or campus regulations on another campus of the University, or at an official function of that campus, or at any site at which a University function is sponsored, shall be subject to the disciplinary procedures of either the former or the latter campus as agreed by designees of both campuses. The imposition of any recommendations for disciplinary sanctions arising from these procedures must be reviewed and approved by both campuses before the sanctions are imposed.*

## **16. INCORPORATE UCOP POLICY CHANGES AFFECTING THE CODE**

The University is required to include language from UCOP in the Code. Three recent policy changes are: *Section 102.24 of the Policy on Student Conduct and Discipline, 102.00 Grounds for Discipline (terrorizing conduct); Section 104.90 of the Policy on Student Conduct and Discipline, 104.00 Administration of Student Discipline (enhanced sanction); and A Model Policy for Discipline of Criminal Convictions (Campus Optional).*

Bearing in mind that the Code would only have jurisdiction as outlined in the modification of Section IV.B (see the proposed Geographic Box modifications above), the Task Force recommends the University enforce the optional policy only under these circumstances.

## **17. REVIEW STAFFING CAPACITY OF CENTER FOR STUDENT CONDUCT AND PROVIDE APPLICABLE LEGAL TRAINING FOR CSC STAFF**

The Task Force believes that many of the recommendations put forth in this report will ultimately strengthen the student conduct process and reduce inefficiencies that have taxed the CSC staff with regard to unmanageable caseloads. Concurrently, the CSC staff began a Business Process Review in the summer of 2010 which identified changes for office systems related to technology and work flow, among others. Realizing that the Task Force recommendations may not go into effect until Fall 2011, the Task Force recommends that a more thorough review of current staffing resources (personnel and infrastructure) for optimal caseload management be conducted at a later date. In this review, consideration of CAS Standards (Council on Advancement of Standards) for national best practice;

information garnered from Business Process Review and related recommendations from Task Force (if Independent Hearing Officer is implemented) should be taken into account. The Task Force recommends a full review in late Spring 2012 to determine if CSC staffing capacity is adequate or not in light of variables noted above.

The Task Force also recommends that where applicable, the training of CSC staff should be reoriented to include more knowledge of how the Code relates to legal procedures outside of campus to ensure consistent compliance. The Office of Legal Affairs is recommended to provide direction on training resources. In addition, as a part of the Center for Student Conduct's Business Review Process, a manual with specific training requirements is currently being developed and each year this manual will be updated to ensure compliance with new laws and UC policies. For example, new staff members will attend the Gerhing Academy for Student Conduct Administration within the first year of hire as well as participate in system-wide meetings of UC conduct officers.

#### **18. REVIEW SEXUAL MISCONDUCT PROCESS AT UC BERKELEY**

The Task Force briefly considered the matter of sexual misconduct and harassment in our discussion related to Code timelines. Student concerns about the University's handling of sexual misconduct cases were also raised this year, in both the Daily Cal and other campus forums. However, more pressing work prevented the group from having a thorough discussion of these matters. The recent commencement of a Department of Education Title IX investigation at Yale University (pertaining specifically to procedures for dealing with sexual misconduct and harassment) has begun a national dialogue on best practices for addressing sexual misconduct on university campuses. In addition, the Office of Civil Rights of The U.S. Department of Education issued guidance regarding procedures for investigating sexual harassment complaints pursuant to requirements of federal law. It is the opinion of the Task Force that the University should take this opportunity to examine the campus' own procedures and policies to see where improvements can be made.

The Task Force recommends the Vice Chancellor or Associate Chancellor with direct responsibility of the Title IX office convene a similarly constituted body to examine and evaluate these critical issues.

### Independent Hearing Officer Recommendation

The Task Force identified a number of challenges in the operation of the current hearing process. The Independent Hearing Officer proposal is intended to address these problems by:

- allowing for claims of procedural error to be addressed during the conduct process rather than only at the end;
- allowing dismissal of cases prior to hearings in which there are serious violations of procedure or a lack of evidence;
- professionalizing the conduct process by putting it in the hands of an independent official who is familiar with legal procedures and the requirements of the Code of Conduct;
- streamlining the conduct process by centralizing control over procedures and hearing logistics;
- creating more consistent interpretation and application of Code procedures;
- eliminating the appearance of unfairness that comes from the current need for CSC to train and advise faculty chairs regarding Code procedures and to manage all aspects of the conduct and hearing process by placing those functions in the hands of an independent party;
- improving procedural decision-making and better guaranteeing student procedural rights;
- enabling the exercise of discretion by the Hearing Officer so that procedures can be tailored to the needs of individual cases and hearings can be conducted efficiently;
- reducing administrative burdens on CSC by:
  - reducing or eliminating the need for training of hearing panel members;
  - eliminating the need for two CSC staff (presenter and process advisor) to be present at hearings;
  - moving responsibility for hearing logistics and scheduling to the IHO;
  - possibly reducing antagonism toward CSC staff by more sharply defining their roles, mitigating the appearance of conflicts of interest, and removing responsibility for procedural determinations that have been a source of conflict.

It is expected that the IHO's student conduct responsibilities will require a full-time position. If not, the IHO might serve other related functions on campus, such as reviewing student grievances unrelated to the student conduct process.

#### Financial Considerations

The Hearing Officer recommendation is endorsed by a substantial majority of the membership of the Task Force, however the following reservations have been expressed by some members:

- Concerns have been raised about whether the IHO can remain neutral and independent of CSC. The Task Force is in general agreement that the success of the IHO model will depend on the continuing independence and fairness of the IHO.
- Some members of the Task Force have also expressed concern that the proposal places too much authority over the conduct process in a single individual.
- Concern has been raised regarding the cost of the proposal, which will require adding a staff position. Position should be cost-neutral to the budget.

#### Neutrality of the Position

The Task Force recognizes that the success of this recommendation depends on the skill of the IHO and the IHO's ability to maintain real and perceived neutrality, consistency and fairness as well as to command the respect of participants in the process. Therefore, the Task Force recommends that

## Appendix A

implementation of the IHO in the Code be accompanied by a number of procedural safeguards aimed at maintaining independence:

- The position should be filled by someone with a background in hearing procedure and an understanding of due process requirements. Because of the non-legalistic nature of the student conduct process, experience in alternative forms of dispute resolution, such as mediation, would also be valuable.
- As establishing neutrality is critical, student representatives (e.g., members of student government and/or the student advocate's office) should be given a significant role in the selection process. For example, a search committee could be formed that would include student, staff, and faculty representatives. The committee would have to agree on candidates to be forwarded to the hiring authority.
- Consideration should be given to hiring the IHO for a 3-5 year term subject to renewal upon agreement of corresponding student representatives.
- Consideration should be given to the appropriate reporting relationship of the IHO. The IHO should not report to CSC or vice-versa, and the two should not directly report to the same individual. Some members of the Task Force felt that the IHO should be located entirely outside the Division of Student Affairs, while others felt that a reporting line within Student Affairs was logical and could be adequately separated from CSC.
- Because the IHO would play such a critical role in the hearing process, consideration should be given to appointing a backup in case of sickness or emergency.

### **Proposed Timeline Structure**

Notes:

- “Days” refers to full business days; 1 full business day after 10AM Tuesday is the close of business on Wednesday.
- This presupposes our recommendation that there be a single notification letter (Alleged Violation Letter) carrying the relevant facts, charges, a range of expected sanctions and (except in particularly serious cases) a proposed sanction.
- This presupposes our recommendation that there be a separate Independent Hearing Officer (IHO).
- This presupposes our recommendation on how timelines may be extended in certain circumstances.
- This presupposes our recommendation for how the procedure will proceed if a student does not reply or chooses not to take part.

The timeline starts when the Center for Student Conduct (CSC) receives a complaint. Complaints must be submitted to CSC within 60 working days of the date that the author of the complaint knew or should reasonably have known about the alleged violation. For the very small number of complaints where law or an external agency requires that information be withheld, this timeline will be modified to 30 working days from the time the information can or could have been released. Complaints received after these deadlines will not be pursued. Certain complaints will be investigated as required by law (e.g., Sexual Assault complaints).

By the end of 7 days after receiving the complaint, the Center for Student Conduct must:

- Decide whether it needs extra time for this case, and if so, appeal to the Independent Hearing Officer for a change in timelines. If that appeal is granted, the timelines change to the new schedule that IHO has determined.
- Determine whether there is a preponderance of evidence that allows the case to move forward.
- Write and convey the Alleged Violation Letter (AVL).

By the end of 7 days after delivery of the AVL, the student must choose which of several options he or she will follow:

- An alternative resolution process, if offered as an option in the AVL
- Accept the proposed sanction, if offered as an option in the AVL
- Request a meeting with CSC to discuss informal resolution
- Request a hearing either with a full panel, or before the IHO
- Decide whether he/she needs extra time for this case, and if so, appeal to the Independent Hearing Officer for a change in timelines. If that appeal is granted, the timelines change to the new schedule that IHO has determined.

If the student has not replied or not selected one of the offered options by the end of the period, one of two things will happen within 10 days:

- If the proposed sanction is less severe than suspension or expulsion, it will be imposed by CSC.
- If the proposed sanction is suspension or expulsion, or if the AVL did not include a proposed sanction, CSC will present the case to the IHO. By failing to reply, the student has waived any right to appear at this presentation. The IHO will impose the recommended sanction if in the IHO’s opinion the case justifies that sanction. If it does not, a less severe sanction will be imposed.

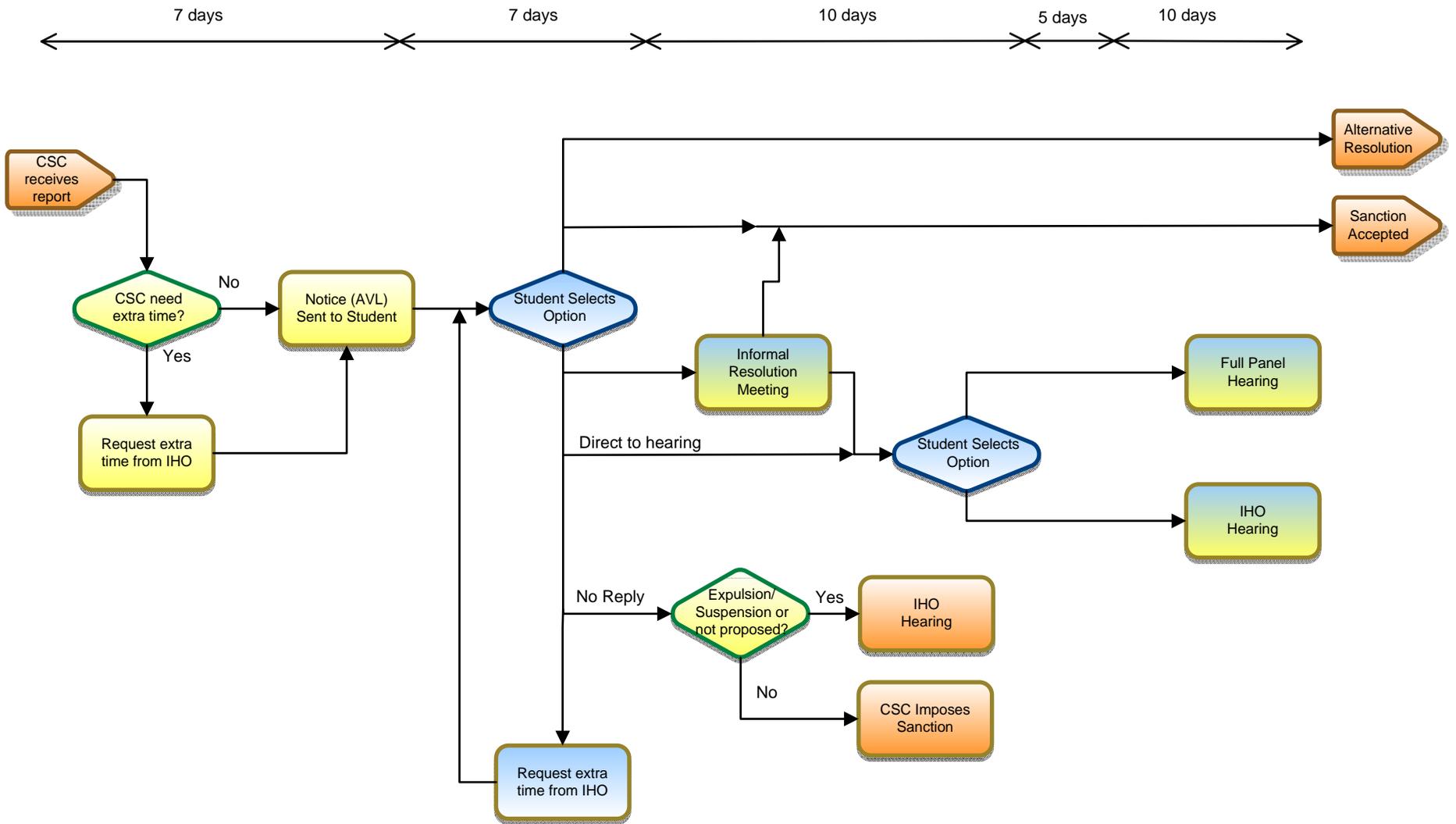
## Appendix B

If the student elects informal resolution, that meeting will take place within 10 days.

- If the student and CSC can agree on an informal resolution, the process ends with the execution of their agreement.
- If no agreement is reached, a hearing will be scheduled by the IHO for at least 5 days and no later than 15 days after the end of the meeting period. (The student and CSC always get at least 5 days notice of the hearing)

If the student elects a hearing, that hearing will be scheduled by the IHO for at least 15 days and no later than 25 days after the reply deadline for the student.

Students can file an appeal of a hearing decision up to 10 full days after the decision is delivered.



Appendix C –Alleged Violation Letter

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UNIVERSITY OF CALIFORNIA, BERKELEY

CENTER FOR STUDENT CONDUCT AND COMMUNITY STANDARDS  
2536 CHANNING WAY, BUILDING E  
BERKELEY, CALIFORNIA 94720-2432

Phone: (510) 643-9069  
Fax: (510) 643-3133

<DATE>

<NAME>  
<ADDRESS 1>  
<ADDRESS 2>

**SUBJECT: Code of Student Conduct - Alleged Violation Letter**  
CASE NUMBER: xxxxx-xxxx

Dear <NAME>:

The Center for Student Conduct and Community Standards (“Center”) has received information that on or about <DATE> you <*detailed description of incident*>.

The Center is reviewing this incident as your actions may be in violation of the following section(s) of the Berkeley Campus Code of Student Conduct (“Code”):

<*Code section reference here, narrowly tailored*>

You should understand that this letter is a notice that a complaint has been received by the Center. Although no decisions have been made regarding whether you violated the Code or on potential disciplinary action, you may find it helpful to know what form of conduct action is typically used to resolve violations similar to the one referred to in this notice.

A description of the mentioned conduct action(s) follows:

*10x.xx <Sanction 1>*  
*Sanction description*

*10x.xx <Sanction 2>*  
*Sanction description*

Please note that this information is provided strictly as an example of possible conduct action. Each individual case is unique and its resolution depends on your discussion of the incident and other available information.

If you would like to participate in the resolution of this incident please contact the Center by <*7 business days after this document’s issuance*> to discuss the case and/or schedule a time for us to meet. The purpose of this meeting is to explain the conduct process to you, discuss the incident, and review options for resolving this matter. If you do not contact the Center in writing within seven

Appendix C –Alleged Violation Letter

days, the process will continue in your absence according to the Code. *<When possible, a specific statement of the sanction that will be applied if the student chooses to not take part in the conduct process.>* *<Language referencing what to do if the student wants to request an extension here.>*

The University operates from the foundation that students are to be aware of the behavioral expectations, outlined in the Code, and as such responsible for their decisions and actions as a member of this community. Additionally, it is expected that students choosing to participate in the conduct process be honest and truthful. Information about the conduct process is available online at <http://studentconduct.berkeley.edu>.

The Code also outlines rights that students have throughout the conduct process. One of those rights is to an advisor of the student's choosing and expense. While students are encouraged to fully participate in resolution of their case, with the student's written permission, they may be assisted by an advisor throughout the conduct process. Copies of the Code are available in this office or can be accessed online at <http://studentconduct.berkeley.edu>. Additionally, students may request a copy of their conduct file prior to meeting with the Center and throughout the conduct process.

**Student Conduct and Community Standards is located in a historical building that is only accessible by a flight of stairs. If you would like to meet with Student Conduct and need accommodation, please request that the meeting be scheduled in a wheelchair or other accessible room when you contact our office. To schedule an appointment and/or request accommodation, please contact Student Conduct at 510-643-9069.**

Sincerely,  
<Conduct Staffmember>  
cc: File

**THE UNIVERSITY OF CALIFORNIA, BERKELEY**

**Center for Student Conduct and Community Standards**

**FACULTY DISPOSITION/ DISCIPLINE REFFERAL  
FOR ACADEMIC MISCONDUCT**

If the student charged with alleged academic misconduct violation(s)

- (1) does not dispute the facts upon which the charges are based, **and**
- (2) accepts the academic sanction proposed,

then the student should sign this form, and it should be forwarded to the Center for Student Conduct and Community Standards (“Student Conduct”) for record-keeping purposes (though it will NOT create an official University student conduct record). However, if

- (3) the student denies the allegation or does not accept the proposed academic sanction, or
- (4) the instructor feels uncomfortable approaching the student, or
- (5) the student wishes to have the matter reviewed by Student Conduct,

then the student should NOT sign this form, and it should be forwarded to Student Conduct for further review.

Full procedures and suggestions for speaking with students about these issues are outlined on the Web at [studentconduct.berkeley.edu](http://studentconduct.berkeley.edu). Staff members in Student Conduct are available at 510-643-9069 or at [studentconduct@berkeley.edu](mailto:studentconduct@berkeley.edu) for consultation if you have questions.

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Typing this form is not necessary, but please print legibly.

**1. The following student is charged with violating University policies on academic misconduct:**

Name \_\_\_\_\_ SID# \_\_\_\_\_

Dept. & Course No. \_\_\_\_\_ Date of Violation \_\_\_\_\_

**2. Type of violation** (see *Appendix V. Academic Misconduct* of the Code of Student Conduct for more detailed definitions):

- |   |  |
|---|--|
| _____ Cheating  | _____ Plagiarism   |
| _____ Furnishing false information/Fabrication/<br>Alteration                                 | _____ Creating an improper academic advantage or<br>disadvantage |
| _____ Disturbances in classroom or lab  | _____ Theft or damage of intellectual property                   |
| _____ Selling or distributing course lecture notes, etc. without permission of the instructor |  |
| _____ Other (specify): _____  |  |

**3. Summary of incident (please include dates of incident and meetings; if the student chooses not to sign the disposition, please explain the circumstances under which that decision was made, including a summary of interactions between the student and professor/GSI: (attach additional sheet if necessary)**

Appendix D

**4. Academic sanction proposed by instructor:** You may propose academic sanctions when the student admits to committing an act of academic misconduct. Typical academic sanctions are listed below. Please specify your proposed academic sanction.

- \_\_\_\_\_ resubmit assignment, paper, or computer program (specify requirements and due date)
- \_\_\_\_\_ retake exam
- \_\_\_\_\_ receive reduced credit or zero on assignment, paper, or computer program (specify grade)
- \_\_\_\_\_ receive reduced credit or zero on exam (specify grade)
- \_\_\_\_\_ receive reduced final grade or failing grade for the course (specify grade)
- \_\_\_\_\_ other (specify): \_\_\_\_\_

Instructor Signature \_\_\_\_\_

Instructor Name (Please Print) \_\_\_\_\_ Date \_\_\_\_\_

Campus Address \_\_\_\_\_ Mail Code \_\_\_\_\_

Phone \_\_\_\_\_ E-mail Address \_\_\_\_\_

**5. To the student:** Should you have any questions about academic sanctions or the conduct procedures, please contact your academic advising office, the Student Advocate Office at 510-642-6912, or Student Conduct at 510-643-9069 before you sign this form. **If you disagree with the charge(s) or the academic sanction(s) proposed, do not sign this form.** Request that the case be referred to Student Conduct for investigation. Please note that if you sign the form the sanction agreed to is final and will not be altered or further pursued by Student Conduct (**unless** you have a prior conduct record, as explained below).

*I understand the violation with which I am charged, accept responsibility for it, and accept the academic sanction recommended. I understand that if I have been found responsible for a prior violation Student Conduct may pursue more severe sanctions, including suspension or dismissal. I understand that I am expected to become familiar with academic expectations. I understand that this form will be kept in a confidential file in Student Conduct for at least seven years and alone will NOT create an official University student conduct record.*

Student Signature \_\_\_\_\_ Date \_\_\_\_\_

Student Name (Please Print) \_\_\_\_\_ SID# \_\_\_\_\_

**SEND THIS FORM TO:** Center for Student Conduct and Community Standards  
2536 Channing Way, Bldg E, 2<sup>nd</sup> Floor, MC #2432  
CAMPUS MAIL  
Phone: (510) 643-9069

**Original to Student Conduct**

**Copy to Student**

**Copy to Instructor**

### **Proposed Statement on Free Speech**

The University of California Policy on Speech and Advocacy guarantees students the constitutionally protected rights of free expression, speech, assembly, and worship. [\[http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/uc30.html\]](http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/uc30.html) This Statement explains how the Policy on Speech and Advocacy applies to disciplinary cases that arise under the Code of Student Conduct.

1. Constitutionally protected expressive activity will not be subject to discipline under the Code. Nevertheless, members of the campus community must recognize that certain types of conduct and speech are not constitutionally protected and that when individuals engage in them—even in the context of expressive actions—they may be subject to discipline under the Code. For example:
  - a. Some forms of speech are not constitutionally protected and may be grounds for discipline. Examples include threats of violence, incitement to imminent lawless action, raising false alarms regarding imminent personal danger, and certain severe and pervasive harassment. The actual definitions of these conduct violations are set out in the Code.
  - b. The University may impose reasonable limits on the time, place and manner of speech activities. Campus Time, Place and Manner regulations are posted at [\[http://police.berkeley.edu/about\\_UCPD/time-place-manner.html\]](http://police.berkeley.edu/about_UCPD/time-place-manner.html). Speech activities that violate Time, Place and Manner rules may subject individuals to discipline.
  - c. *Conduct* that violates University rules, such as destruction of property, endangering the safety of others, assault, or interfering with campus operations, even if it occurs in connection with speech activities or is motivated by expressive concerns, is not protected and may subject students to discipline.
2. While violations of the Code of Conduct may be subject to discipline even when they occur in connection with expressive activities, the viewpoints or political positions expressed shall have no influence on either the decision to impose discipline or the severity of penalties imposed.

## **Proposed Records Retention and Expungement Policies**

### **Records Retention**

The only written policy currently in effect by the campus on retention of student discipline files is the following wording in the Code:

*“The file of a student found in violation of campus regulations (including the transcripts or recordings of the hearing) will be maintained by Student Conduct and Community Standards for a period of at least seven years from the date of the letter providing notice of final conduct action, unless otherwise determined by the Dean of Students or his/her designee.”*

We propose the following records retention schedule as text to be placed in the Code:

*Student discipline records are confidential and are separate from the student’s academic record. The Center for Student Conduct will retain student discipline records according to the following schedule:*

- *In cases where the final disposition is dismissal, denial or revocation of a degree, and/or withdrawal of a diploma, the records will be retained indefinitely.*
- *Records which are subject to maintenance under the Campus Security Act (also known as the Jeanne Clery Act) will be retained for seven years from the date of the notice of final disposition.*
- *Student discipline records in all other cases are retained for four years from the date of the notice of final disposition or until graduation (whichever comes first).*
- *When there have been repeated violations of the Student Conduct Code, all student discipline records pertaining to an individual student will be retained for four years or graduation (seven years for cases which fall under the Clery Act) from the date of the final disposition in the most recent case.*
- *Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.*

### **Requests to Expunge Disciplinary Records**

Case referrals may result in the development of a disciplinary file in the name of the respondent, which shall be expunged if the respondent is found not responsible of the charges. The files of respondents found responsible of any of the charges against them will be retained as a disciplinary record.

The following is a proposal for wording for a policy on expunging student disciplinary records:

*Disciplinary records may be expunged by the Dean of Students of his/her designee for good cause, upon written request of respondents. Factors to be considered in review of such petitions shall include:*

- (a) the person’s disciplinary record as a whole*
- (b) the conduct of the respondent subsequent to the violation*
- (c) the nature of the violation(s) and the severity of any damage, injury, or harm resulting from it.*

*Disciplinary records retained for less than 90 days or designated as “permanent” shall not be expunged without unusual and compelling justification.*

*Expunged files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record. Disciplinary records may be reported to third parties, in accordance with University regulations and applicable state and federal law.*