

College Operating Procedures (COP)



Procedure Title: Student Code of Conduct Procedures
Procedure Number: 06-0802
Originating Department: Student Affairs

Specific Authority:

Board Policy 6Hx6:6.01
Florida Statute 1006.60
Florida Administrative Code n/a

Procedure Actions: Adopted: 07/01/09; 2/14/11; 4/4/2017; 2/4/2021

Purpose Statement: This procedure document is intended to define terms associated with student conduct, and provide detailed descriptions of the procedures associated with implementing the student code of conduct.

Guidelines:

The Student Code of Conduct outlines the administrative procedures followed by the College when addressing student behavior.

Procedures:

Interim Actions

The Vice Provost for Student Affairs, or designee, is authorized to determine if an alleged violation of the Student Code of Conduct warrants interim action. Interim actions may be implemented any time prior to the conclusion of the conduct process, including the appeal process.

The criteria used in making this determination is:

- A. Whether the student poses an ongoing threat of harm, disruption of, or interference with the normal operations of the College; and
- B. whether interim suspension is necessary to protect the health (physical and mental), safety or general welfare of the College Community or to preserve College property.

Interim action includes, but is not limited to, one or more of the following:

- A. Interim Suspension. If the Vice Provost, or designee, determines that other interim measures are necessary to protect the health, safety, or welfare of the student or the College Community, they may:
 - a. Restrict or ban attendance of any or all classes.
 - b. Restrict or ban access or contact with individuals in the College Community.
 - c. Restrict or ban access to College property, places, facilities, or equipment.
 - d. Restrict or ban participation in College activities or organizations, or activities.
 - e. Restrict or ban from College housing.
 - f. Suspend an FSW student organization.

- g. Otherwise restrict conduct or ban access to College resources.
- B. The Vice Provost, or designee, may immediately place a registration hold on any student who has interim action taken against them, which prevents the student from accessing, changing or altering his or her course registration and/or admission status.
 - C. The Vice Provost, or designee, may also request that a student's access to the portal, email, online course rooms, and other online information access be suspended.
 - D. Implementation of interim action, such as interim suspension, requires the student be notified in writing immediately upon the determination that an interim action(s) is warranted. The notice shall state the basis for the interim actions(s) and that the student will have the opportunity to inspect all information that initiated the interim action(s). The written notice will be sent to the student's College email account. The College may also communicate the determination verbally to the student but must also concurrently deliver the written notice as described above. The student has three (3) business days from the date of the notice to make a written request to appeal the interim action(s). The appeal of the interim action(s) will be heard by the Vice Provost for Student Affairs, or designee, within three (3) business days of receipt of the appeal. The hearing may be delayed due to a semester break or closing of the College. The notification of decision shall be in correspondence via email to the student within three business days of hearing the appeal. The student's appeal of the interim action(s) must be based on one of the following:
 - a. An egregious error pertaining to the student's or organization's involvement.
 - b. A contention that the violation, even if proven, does not pose a threat to the health, safety or general welfare of the College Community and thus does not warrant interim action.
 - E. As a result of an appeal, if it is determined by the Vice Provost for Student Affairs or designee, that the interim action be overturned, the student's status will be reinstated and the conduct process will continue in accordance with the Student Code of Conduct.
 - F. If the student does not appeal the interim action the conduct process will continue in accordance with the Student Code of Conduct.

Provisions for Students

Procedural fairness is basic to the proper enforcement of all College regulations. Accordingly, no disciplinary action shall be initiated or sanction imposed against a student until the student has been notified in writing of the complaints against him or her, the student has been informed of his or her rights under this Code, and the student has been given the opportunity to be heard. The College is not required to postpone student conduct proceedings pending the outcome of any outside criminal or civil case.

The following provisions shall be explained to each Student during the Initial Review meeting and prior to the start of any conduct hearing:

- A. Students will receive a fair and impartial hearing in accordance with the requirements of the Student Code of Conduct.

- B. Students will be notified in writing of the alleged violations against him or her and the alleged misconduct upon which the charge is based with reasonable access to the case file prior to and during the hearing.
- C. Students may inspect any available information presented in support of the charges during the Initial Review meeting and during the hearing. The student may take notes from the information to be used in the hearing.
- D. Students may decline to make statements in response to the allegations. Declining to make a statement shall not be construed as an admission of responsibility.
- E. Students may be assisted by an advisor of their choice, at their own expense. The advisor may be present, but may not speak for or present the case for the student, or otherwise participate directly in the proceeding. It is the student's responsibility to make appropriate arrangements for the advisor to attend the scheduled hearing time.
- F. At the determined time, the Charged student(s) may hear and question adverse witnesses who testify at the hearing. In the cases of sexual misconduct or abuse see information in the FSW Title IX Reporting and Resolution Process.

Provisions for Students Impacted by Acts of Violence

- A. Students may present relevant information and witnesses. The College cannot compel any person to attend a student disciplinary hearing on behalf of a Student. Students are responsible for arranging his or her own witnesses and presenting information during the proceeding. The Hearing Body shall have the authority to limit the number of witnesses in order to avoid unreasonable delays where the testimony of these witnesses is repetitious or irrelevant.
- B. Students will not be forced to present testimony which would be self-incriminating.
- C. Students will be considered not responsible for the alleged conduct until found responsible by a preponderance of the information. The finding of responsible or not responsible on the charges shall be based solely on the information presented at the hearing.
- D. The right to confidentiality, in accordance with the terms of the Family Educational Rights and Privacy Act (FERPA).
 - a. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student educational records and outlines the conditions in which prior consent is required to disclose information from educational records.
- E. The Responding Student will be notified in writing of the decision of the Hearing Body within ten (10) business days from the date of the hearing, unless extenuating circumstances that resulted in a delay of the decision are communicated to the student in writing.
- F. The Responding Student may appeal the determination of responsibility in accordance with the requirements of the Code.

Conduct Procedures

This section of the code describes the Student Conduct proceedings at Florida SouthWestern State College.

- A. **Reporting.** Any person or entity may file a report against a student for alleged violation of law or College regulations or policies. An investigation may take place of the circumstances of the report. The report regarding a student's conduct must be submitted as follows:
 - a. Reports can be submitted online, via email, in-person, via telephone, or by mail.
 - b. Reports should be made within 6 months of the incident, or knowledge about the incident.

- B. The Vice Provost, or designee, will determine if there are reasonable grounds to believe that the allegations could potentially constitute a violation of the Student Code of Conduct.
 - a. Nothing in this regulation shall prevent the mediation of a complaint when deemed appropriate by the College.
 - b. Nothing in this regulation shall prevent the resolution of a complaint administratively by written agreement with mutual consent of the parties involved. Such disposition shall be final and there shall be no subsequent proceedings.
 - c. If an alleged violation of the Student Code of Conduct is not handled through other appropriate channels, is not dismissed, or is not settled informally, then the Vice Provost, or designee, may present in correspondence formal charges to the student.
 - d. **Notice of Allegations.** The allegations of charges shall be in correspondence via email and include: the specific Student Code of Conduct violations, a brief description of alleged offenses, the student's rights, and a request to schedule the Initial Review.
 - e. If a hold on registration is not already in effect, as an interim action, upon issuing the Notice of Charges the Vice Provost, or designee, may place a hold on registration until final disposition of the complaint.
 - f. **Initial Review.** After the Notice of Charges has been issued, the Initial Review will be scheduled.
 - g. The Initial Review is part of the overall investigation of the report.
 - h. The Initial Review consists primarily of a discussion between the charged student and the Vice Provost, or designee, in an effort to resolve the matter.
 - i. The Initial Review is not audio taped or recorded.
 - j. If the Charged Student chooses to accept responsibility, or fails to attend the Initial Review, the Vice Provost, or designee, may assess such sanctions as deemed appropriate.
 - k. The outcome and any sanctions imposed in cases where the Responding Student accepts responsibility or fails to attend the Initial Review will be communicated in correspondence via email to the Responding Student within five (5) business days of the determination.

Formal Hearing

A Formal Hearing is defined as any Hearing before the Student Conduct Board or a College Hearing Officer.

- A. The student may choose to have his or her Hearing before the Student Conduct Board or a College Hearing Officer. This choice shall be made in writing within three (3) business days in response to the Initial Review outcome letter.

- B. If the student does not choose an option, the Hearing shall be heard by a Hearing Officer.

Notice of Hearing

The notification of Hearing shall be sent officially via email at least five (5) business days from the date of which the student denies responsibility and will include:

- A. A brief description of the incident and the alleged violations of the student code of conduct.
- B. The date, time and location of the Student Conduct Board or Hearing Officer Hearing.
- C. Notification of his or her rights and the Hearing procedures.
- D. A reasonable date, time and location for an Information Session, during which the student and his or her advisor may review a potential witness list and all materials to be used by the College in his/her case may be scheduled prior to the Hearing.

A challenge to the impartiality of a hearing officer or Student Conduct Board member, should be brought forward to the Vice Provost for Student Affairs or designee, to determine if the hearing officer should be replaced due to a conflict.

Postponement of Hearing

The student may request postponement of a hearing at least one business day prior to the hearing date and this request must be in writing to the Student Conduct Office. The Vice Provost or designee may grant a postponement when the circumstances presented demonstrate that a postponement is necessary to ensure fairness to the process or on any other reasonable grounds. The Vice Provost, or designee, may also postpone the Hearing on the College's behalf for administrative reasons. Should a postponement be approved, the College will notify the student and hearing board/officer at least one business day prior to the scheduled Student Conduct Board Hearing.

- A. **Structure of the Student Conduct Board.** The Student Conduct Board shall consist of the following persons who have completed training conducted by the College. At least 50% of students along with fulltime faculty or administrators at FSW will serve on the Student Conduct Board. The chairperson of a Student Conduct Board Hearing shall be one of the members who has been trained to serve in the role of chairperson. The Hearing is not a legal proceeding. Formal courtroom rules of process, procedure, and/or evidence do not apply.
- B. **Objectives of the Hearing.** Requisite levels of fairness and the satisfaction of certain minimum requirements will be provided to all participants during these proceedings. The Hearing shall have the following objectives:
 - a. Review the incident which resulted in charges of violations of the Student Code of Conduct.
 - b. Give the accused student an opportunity to respond to the charges.
 - c. Review the facts of the case.
 - d. Recommend finding of Responsible or Not Responsible of Student Code of Conduct violations to the Vice Provost or designee.

- e. If finding of Responsible, document what are believed to be the facts of the case and include these in the recommendations of sanctions to the Vice Provost or designee.

C. Witnesses

All parties to the Hearing may arrange for witnesses to voluntarily present relevant information during the Hearing. The questioning of witnesses shall be facilitated by the Hearing Officer or Student Conduct Board Chair, as applicable. Each witness will be reminded that he or she is required to tell the truth. If it is determined later that a student provided untrue testimony at a Hearing, that student is subject to being charged with violation of the Student Code of Conduct.

D. Review of Information

- a. The Responding Student and his or her advisor, if any, have the right to inspect all of the information that will be presented against the student prior to the Hearing.
- b. The Responding student may present information on his or her own behalf. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the Hearing Officer or the Student Conduct Board at their discretion.

E. Burdens of Proof

The Student Conduct Board or Hearing Officer shall determine whether it is more likely than not that the accused student violated the Student Code of Conduct by a preponderance (more likely than not) of the information. This means that the information presented supports the finding that it is more likely than not that the violation occurred. The burden of proof is not on the Charged Student.

- F. The Responding Student or the Impacted Student may choose one advisor to be present during the process at the Responding Student's or the Impacted Student's expense and initiative. It is the Responding Student's or Impacted Student's responsibility to make appropriate arrangements for the advisor to attend the Hearing, which shall not be delayed due to scheduling conflicts of the chosen advisor. The advisor may be present to advise the Responding Student or the Impacted Student but may not speak for or present the case for the Responding Student or the Impacted Student, present statements or arguments, question witnesses or otherwise participate in the process.

- a. Members of the Student Conduct Board, or witnesses, may not serve as a student's advisor at the Hearing.
- b. If the Charged Student or Impacted Student chooses an attorney as their advisor at the Hearing, they must inform the Vice Provost or designee, at least three (3) business days before the Hearing. In such cases the College may be advised by a College attorney as well.

G. Hearings

- a. All Hearings before the Student Conduct Board or Hearing Officer will be audio recorded by the College. This recording will serve as the only official record of these proceedings and shall be the property of the College. No other recordings are permitted. Deliberations shall not be recorded.
- b. The following is a guide to the format of events for Hearings, but it may change slightly at the discretion of the Vice Provost or designee. The Student Conduct

Board or Hearing Officer may question any party or witness directly at the appropriate time of the hearing:

- a) Review of Hearing procedures.
- b) Reading of Charges.
- c) Opening statement and presentation of information by the Responding Student.
- d) Questions for the Impacted Student by the Conduct Board or Hearing Officer; and/or reading of Impacted Student impact statement; and/or verbal statement by Impacted Student.
- e) Questioning of voluntary College witnesses, followed by the questioning of Responding Student's voluntary witnesses.
- f) Questions directed to the Responding Student by the Student Conduct Board or Hearing Officer.
- g) Closing statement by the Responding Student.
- h) Deliberation by the Board or Hearing Officer (not recorded). Deliberations are closed and may only be attended by the members of the Student Conduct Board.
- i) The Student Conduct Board or Hearing Officer may recommend a decision(s) and a sanction(s) to the Vice Provost or designee.

- H. The Student Conduct Board or Hearing Officer will find the Responding Student "Responsible" or "Not Responsible" for each of the alleged violations listed on the Notice of charges, based solely on the information presented at the Hearing. The Student Conduct Board or Hearing Officer will inform the Vice Provost or designee, of its findings and any recommendation for sanctions based on its findings. If the Student Conduct Board cannot reach a finding of "Responsible" or "Not Responsible" the finding will go in favor of the student and a "Not Responsible" finding will stand.
- a. If the Responding Student fails to appear at the scheduled Hearing (after proper notice), the hearing will be held without the student present. The student retains the right to appeal.
 - b. The Vice Provost or designee, will review the findings and recommendations of the Student Conduct Board or Hearing Officer, as applicable. The Vice Provost or designee, will then make the decision as to the violation(s) in question and sanctions imposed. This decision may consist of adopting, modifying, or rejecting the recommended decision and sanctions of the Student Conduct Board or Hearing Officer, or remanding the matter for rehearing. The Vice Provost or designee, will send a correspondence (referred to as a "Notice of Decision and Sanction") informing the student of the Vice Provost or designee's, final decision and sanctions and explaining any differences between the recommendation of the Student Conduct Hearing Board or Hearing Officer and the Vice Provost or designee's final decision. Such correspondence will be sent to the student within five (5) business days after the conclusion of the Hearing.

Appeals

- A. The Vice Provost, or designee, is the final appeal at Florida SouthWestern State College. The Vice Provost, or designee, is responsible for reviewing substantive or procedural appeals from the decisions of a Student Conduct Board or Hearing Officer. The appeal of the outcome of a conduct case must be based on one or more of the following causes:

- a. Due process errors including the College's failure to provide the student with notice or an opportunity to be heard.
 - b. The sanction is extraordinarily severe in relation to the offense committed.
 - c. New material or information that can be provided that was not available at the time of the original proceeding.
- B. All appeals must be postmarked or received in correspondence within five (5) business days of the date of the "Notice of Decision and Sanction" to the Vice Provost, or designee, for consideration. All appeals must specify the basis for the appeal. No person may hear or decide an appeal if he/she conducted or participated in the Hearing.
- C. The student's status will remain unchanged pending the appeal determination by the Vice Provost, or designee, (that is, a student shall remain eligible to attend classes and College activities pending the College's final decision in the student conduct proceeding), except where the Vice Provost, or designee, determines that the safety, health or general welfare of the student or the College Community is involved, in which case a student's privileges at the College, including the ability to attend classes or engage in College activities, may be suspended on an interim basis as described under the Interim Actions Provision.
- D. After considering the appeal the Vice Provost, or designee, may reopen the Hearing, order a new Hearing with a new Conduct Board or Hearing Officer, uphold or reverse the prior decision of the hearing officer or board, or revise the sanction. The Vice Provost, or designee, shall provide the student written notice of his or her decision within ten (10) business days of receipt of the appeal request.
- E. The appeal determination of the Vice Provost, or designee, is final and binding on all parties. There are no further appeals within the College.

Parental Notification Policy

Florida SouthWestern State College is committed to the success of its students both inside and outside of the classroom. Therefore, it is our goal to maximize students' learning and development, and promote their health, safety and welfare. In this regard, Florida SouthWestern State College has implemented a Parental Notification Policy. The Parental Notification Policy permits the College the right to inform parents or guardians when their dependent student (pursuant to the Internal Revenue Code), under the age of 21, has been found in violation of the College Alcoholic Beverages and Drug-Free Environment policy.

- A. In non-emergency situations, parents of dependent students, under the age of 21, may be notified in writing. However, in emergency situations, parents may be notified by an immediate phone call from the Vice Provost or designee.
- B. These guidelines do not preclude Parental Notification for other policy violations that may endanger the health, safety and wellbeing of a student or other individuals in the College Community. In addition, Parental Notification may occur in health and safety emergencies regardless of the student's age or dependent status.
- C. Students, whose parents are to be notified under these guidelines, will be informed, when possible, before such notification occurs and given an opportunity to initiate contact with their parents.

Provisions for Students Impacted by Acts of Violence

To ensure fairness to students impacted by actions of violence throughout the Student Code of Conduct, the College will provide the following provisions:

- A. An Impacted Student may have one person of his or her choice accompany them throughout the Student Conduct Review process. This person will act as a support person or advisor but will not represent the Impacted Student.
- B. An Impacted Student will receive notice of the hearing no less than five (5) business days prior to the date of the hearing.
- C. An Impacted Student and Charge Student may submit a list of questions related to the alleged incident, prior to the hearing. However, the Hearing Officer or Hearing Body shall not be required to ask these questions of the Charged Student depending on the nature of the questions, for example, past conduct and sexual history will not be considered when the Hearing Officer or Body is deciding of the Responding Student as to a Responsible or Not Responsible finding.
- D. An Impacted Student may make a student impact statement and offer to the Hearing Officer or Hearing Body a suggestion of what the Impacted Student believes to be an appropriate sanction for the Responding Student. This information may be used only in the sanctioning phase of deliberations if the Responding Student is found responsible for violating the Student Code of Conduct.
- E. The Responding Student will not be permitted to directly question the Impacted Student. In such cases, the Responding Student and the Impacted Student shall submit questions to the Hearing Body or officer. However, the Hearing Body or officer shall ask questions which they deem appropriate to the case. At the request of the Impacted Student in cases involving physical violence, or other charges deemed appropriate in the professional judgment of the Hearing Body or officer, the Impacted Student may request to testify in a separate room from the Responding Student so long as the process does not unduly compromise the Responding Student's right to question the witness.
- F. Where the Student Conduct Review process addresses an allegation of violence, both the Impacted Student and the Responding Student or Organization must be informed of the final outcome of the Student Conduct Review process without a commitment to protect the confidentiality of the information. The final outcome means only the final determination with respect to the alleged misconduct or abuse and any sanction(s) that is imposed against the Responding Student. If the Impacted Student is deceased, the next of kin shall be considered as the alleged Impacted Student for purposes of this paragraph.
- G. Family Educational Rights and Privacy Act (FERPA) and the Student Code of Conduct.