

PROCEDURES FOR STUDENT DISCIPLINARY CASES INVOLVING PSYCHOLOGICAL ISSUES

A. INTRODUCTION AND DEFINITIONS

As stated in the University Judiciary Committee Constitution, the Committee lacks jurisdiction over “persons who are determined under procedures adopted by the President of the University to have psychological problems.” The following procedures are designed to provide an orderly process for making such determinations. These procedures do not apply to Honor Committee proceedings, nor are they intended to inhibit or impair existing authority of University officials to invoke interim suspensions in appropriate cases or exercise other administrative authority.

- (1) These procedures apply to cases referred by the UJC in the following circumstances:
 - a. A Student charged with a judicial offense represents in good faith to the UJC that he or she had a Contributory Psychological Disorder at the time of the alleged offense. In such a case, the Student must promptly file a written “Request for Evaluation Hearing” with the UJC Chair by completing and delivering the request form attached to these procedures as Appendix A. The procedures for such a request, which requires the review and approval of the Office of the Vice President, are outlined below.
 - b. A Student (or his or her representative) represents in good faith to the UJC that, because of a Lack of Capacity, he or she is incapable of comprehending and therefore defending against judicial charges. In such a case, the Student or a person authorized to act on the Student’s behalf must promptly file a written “Request for Evaluation Hearing” with the UJC Chair by completing and delivering the request form attached to these procedures as Appendix B. The procedures for such a request, which requires the review and approval of the Office of the Vice President, are outlined below.
 - c. The UJC has good cause to believe that, even though a Student facing judicial charges has not alleged a Contributory Psychological Disorder or Lack of Capacity, the Student may have a psychological condition that would deprive the UJC of jurisdiction. In such instances, the UJC will refer the case to the Dean, who shall determine whether to request an Evaluation Hearing under these procedures, or return the case to the UJC for adjudication.
- (2) These procedures apply to cases referred by the Dean in the following circumstances:
 - a. Whether or not judicial charges are filed or pending, the Dean may request an Evaluation Hearing when there is good cause to believe that, based upon a Student’s conduct or behavior, a Student’s presence at the University poses a

Significant Risk. Such a request is appropriate in cases of interim suspension or readmission, and the Dean may include in his/her request that the Student undergo a mental health assessment as one of the conditions for the Student's return to or continued enrollment at the University. The procedures for such a request, which requires the review and approval of the Office of the Vice President, are outlined below.

- b. Upon referral of a case from the UJC, the Dean may request an Evaluation Hearing when there is good cause to believe that, even though a Student facing judicial charges has not alleged a Contributory Psychological Disorder or Lack of Capacity, the Student may have a psychological condition that would deprive the UJC of jurisdiction.
- (3) As used in these procedures, the following terms shall have the meanings indicated:
- a. "Dean" - the University's Dean of Students or the Dean's designee, or such other office or person authorized by the Vice President for Student Affairs.
 - b. "Evaluation Hearing" - a hearing as described in these procedures convened to evaluate a Contributory Psychological Disorder or Lack of Capacity, or a hearing as described in these procedures when convened at the request of the Dean or when otherwise approved or requested by the Vice President.
 - c. "Judicial" – charges arising under the University's Standards of Conduct that fall within the jurisdiction of the UJC.
 - d. "Lack of Capacity"- lacking the mental capacity to comprehend and therefore defend against judicial charge(s) because of a psychological or psychiatric condition or mental disease.
 - e. "Contributory Psychological Disorder" – a psychological or psychiatric condition or mental disease, which significantly contributed to or substantially influenced the behavior underlying the judicial offense charged. A Contributory Psychological Disorder may be taken into account as a mitigating factor with respect to Sanctions or Restrictions.
 - f. "Panel" - the hearing panel of one or more persons selected by the Vice-President as described below.
 - g. "Representative" - the person, if any, selected by the Student or the Dean to appear on the Student's or Dean's behalf at an Evaluation Hearing. A Representative shall be a student or employee of the University but may not be an attorney. A licensed health care professional may also serve as the Student's or Dean's Representative. The Representative selected shall be responsible for reading and observing these procedures, and is required to

immediately notify the Vice President in writing of his or her selection and agreement to represent the Student or Dean.

- h. “Restrictions” - the suspension from the University or from certain University activities, or other protective actions, conditions or restrictions, collectively, which may be imposed by a Panel upon a Student based upon the evidence following an Evaluation Hearing.
- i. “Sanction(s)” - those sanctions established by the Board of Visitors of the University of Virginia for violations of the Standards of Conduct.
- j. “Significant Risk”- the likelihood that a Student poses a threat to himself or herself, to the health or safety of other members of the University, to University property, or to the educational process.
- k. “Standards of Conduct”- the University’s Standards of Conduct adopted by the Board of Visitors.
- l. “Student”- any person enrolled or admitted to the University as a student, or a former student who seeks to re-enroll with unresolved or pending judicial charges, or any person applying for readmission when an Evaluation Hearing is authorized by these procedures or otherwise approved or requested by the Vice President.
- m. “UJC” - the University Judiciary Committee.
- n. “Vice President” - the University's Vice President for Student Affairs or the Vice President’s designee.

B. INITIAL PROCEDURES

- (1) Student Requesting an Evaluation Hearing Based Upon a Contributory Psychological Disorder
 - a. Timing of Request: A Student’s Request for an Evaluation Hearing based upon a Contributory Psychological Disorder must be filed no later than fourteen (14) calendar days following the date the Student is first notified by the UJC of judicial charges, unless the Chair of the UJC determines that good cause demonstrated by the student justifies a reasonable extension of time. The Request for Evaluation Hearing must be submitted to the UJC Chair by completing the form attached to these procedures as Appendix A. The UJC Chair shall promptly deliver a copy of the Request to the Office of the Vice President, together with copies of the UJC’s records relating to the underlying judicial charge(s).

- b. The Request must be supported in writing by a mental health professional, describing the nature and extent of the student's Contributory Psychological Disorder. The mental health professional's written assessment may be provided by a counselor or other professional from Counseling and Psychological Services at the University's Elson Student Health Center or otherwise by a licensed mental health care professional. As a condition of proceeding under these procedures and to permit a fair and complete evaluation of the Student's alleged condition, the Student will be required to agree and sign all reasonably requested authorizations allowing the mental health professional to communicate with the University.
- c. The Request will be evaluated by the Special Advisor to the Vice President or by such other person approved by the Vice President to determine whether the Student has preliminarily demonstrated good cause for convening an Evaluation Hearing. That determination may be appealed to the Vice President in writing setting forth the specific grounds for appeal. Any such appeal must be delivered to the Vice President promptly and no later than five (5) calendar days from receipt of the Special Advisor's determination, unless extended by the Vice President for good cause shown. The Vice President's decision shall be final. The Student may be required to discuss the Request with the Office of the Vice President, and to provide supplemental information as might be reasonably requested by that Office to fully understand the scope or nature of the alleged Contributory Psychological Disorder. The case may be returned to the UJC if the Student unreasonably fails to supply requested information needed to assess the Student's request for an Evaluation Hearing or if the Student has not demonstrated that an Evaluation Hearing is factually justified.
- d. If the Office of the Vice President approves a Request for Evaluation Hearing, the Vice President shall so notify the Student and the UJC Chair in writing. Such notice shall state that it is given under these procedures, shall refer to the underlying judicial charges, and shall enclose a copy of these procedures.
- e. A Student who refuses or fails to cooperate in the scheduling of an Evaluation Hearing or who otherwise unduly delays the Hearing and any related proceedings without good cause may forfeit opportunity for review under these procedures, and the Vice President may remand the case to the UJC. Such cooperation also includes promptly responding to phone calls, emails, or letters addressed to the Student or to his or her Representative, working affirmatively and diligently with persons the Student wishes to have present at the Hearing to facilitate their availability for the Panels' consideration, and working cooperatively in scheduling the Hearing date.

- (2) Student Requesting An Evaluation Hearing Based Upon Lack of Capacity
- a. A Student who represents that he or she lacks the capacity to understand and defend against judicial charges is, by this representation, acknowledging that he or she has a serious state of mental incapacitation and ordinarily would be expected to have withdrawn from the University for medical reasons. A student who claims Lack of Capacity but has not withdrawn from the University will be rebuttably presumed capable of comprehending judicial charges.
 - b. A Student who represents that he or she is suffering from a Lack of Capacity must file a written Request for Evaluation Hearing by completing the form attached to these procedures as Appendix B and delivering it to the UJC Chair at least five (5) calendar days prior to the scheduled trial of the judicial charges unless, for good cause shown, the UJC Chair grants additional time or approves a late filing, provided, any Request must be filed no later than commencement of the UJC trial. The UJC Chair shall promptly deliver a copy of the Request to the Office of the Vice President, together with copies of the UJC's records relating to the underlying judicial charge(s).
 - c. The Request must be supported in writing by a mental health professional, describing the nature and extent of the Student's Lack of Capacity. The mental health professional's written assessment may be provided by a counselor or other professional from Counseling and Psychological Services at the University's Elson Student Health Center or otherwise by a licensed mental health care professional. As a condition of proceeding under these procedures and to permit a fair and complete evaluation of the Student's alleged Lack of Capacity, the Student will be required to agree and sign all reasonably requested authorizations allowing the mental health professional to communicate with the University.
 - d. The Request will be evaluated by the Special Advisor to the Vice President or by such other person approved by the Vice President to determine whether the Student has preliminarily demonstrated good cause for convening an Evaluation Hearing. That determination may be appealed to the Vice President in writing setting forth the specific grounds for appeal. Any such appeal must be delivered to the Vice President promptly and no later than five (5) calendar days from receipt of the Special Advisor's determination, unless extended by the Vice President for good cause shown. The Vice President's decisions shall be final. The Student may be required to discuss the Request with the Office of the Vice President, and to provide supplemental information as might be reasonably requested by that Office to fully understand the scope or nature of the alleged Lack of Capacity. The case may be returned to the UJC if the Student unreasonably fails to supply requested information needed to fairly assess the Student's request for an Evaluation

Hearing or if the Student has not sufficiently demonstrated that an Evaluation Hearing is factually justified.

- e. If the Office of the Vice President approves a Request for Evaluation Hearing, the Vice President shall so notify the Student and the UJC Chair in writing. Such notice shall state that it is given under these procedures, shall refer to the underlying judicial charges, and shall enclose a copy of these procedures.
 - f. A Student who refuses or fails to cooperate in the scheduling of an Evaluation Hearing or who otherwise unduly delays the Hearing and any related proceedings without good cause may forfeit opportunity for review under these procedures, and the Vice President may remand the case to the UJC. Such cooperation also includes promptly responding to phone calls, emails, or letters addressed to the Student or to his or her Representative, working affirmatively and diligently with persons the Student wishes to have present at the Hearing to facilitate their availability for the Panel's consideration, and working cooperatively in scheduling the Hearing date. The circumstances of the Student's represented incapacitation will be considered prior to the enforcement of this provision.
- (3) Dean Requesting an Evaluation Hearing
- a. The Dean may request an Evaluation Hearing when there is good cause to believe that, based upon a Student's conduct or behavior, a Student's return or continued presence at the University poses a Significant Risk. Upon referral of a case from the UJC, the Dean may also request an Evaluation Hearing when there is good cause to believe that, even though a Student facing judicial charges has not alleged a Contributory Psychological Disorder or Lack of Capacity, the Student may have a psychological condition that would deprive the UJC of jurisdiction.
 - b. The Request shall set forth the circumstances justifying the Evaluation Hearing.
 - c. The Dean may request that the Student undergo a mental health assessment or refer the Student to Counseling and Psychological Services in the University's Elson Student Health Center for evaluation. The Student may be requested to sign any reasonably requested authorizations to allow the mental health provider to communicate with the Dean regarding the evaluation.
 - d. The Dean's request for an Evaluation Hearing shall be filed with the Office of the Vice President and copied to the Student. If the Dean requests that the Student also undergo a mental health assessment or evaluation by Counseling and Psychological Services, that request shall also be filed with the Office of the Vice President and copied to the Student.

- e. The Office of the Vice President will review the Dean's request, and if justified, approve it, and appoint a Panel to conduct an Evaluation Hearing. The Vice President may invoke or continue an interim suspension of any Student who unreasonably refuses to submit to a mental health assessment or evaluation or who fails to cooperate with the Evaluation Hearing.

C. HEARINGS AND FINDINGS

(1) Hearing Panels, Notification, Documentation

- a. A Panel shall preside over each Hearing under these procedures. The Vice President shall select the Panel members and shall notify the Student and the Dean of the names of the Panel members and of the Panel Chair. The Vice President shall seek to staff the Panel with one or more persons with appropriate expertise, such as psychologists, psychiatrists, or both. Selection of Panel members may be made without any restriction on the number of prior Panels on which a person has served.
- b. The Student and the Dean shall be notified as soon as possible regarding the date, time, and place of the Hearing. The Vice President shall provide the Student a copy of the case file to be presented to the Panel by the Dean at the time the hearing date is set, normally no less than five (5) calendar days prior to the hearing.
- c. In addition to the assessment of the mental health provider supporting the Request for an Evaluation Hearing, the Student may submit the opinion or recommendations of another licensed mental health professional for review by the Panel. If the Student wishes to do so, the Student shall provide to the Dean a copy of the report or reports to be submitted no less than two (2) calendar days prior to the hearing.
- d. The Hearing Panel will not be bound by the opinions and recommendations submitted in the case for or on behalf of the Dean or the Student.

(2) General Hearing Procedures

- a. The Dean, the Student, and any Representative for the Student or the Dean may attend the Hearing, excluding the Panel's private deliberations. The Student may have an attorney present for advice and support; however, the attorney may not participate in the hearing proceedings. The Chair shall determine whether any other person may attend the Hearing. Witnesses other than the parties may remain in the hearing room only while giving their testimony, unless the Chair determines otherwise. The Student and the Dean are responsible for arranging the attendance of their witnesses at the hearing. Attendance is not the responsibility of the Panel.

- b. The Panel Chair may allow for flexibility in the sequencing and introduction of evidence. The Panel is not bound by the rules of procedure or evidence applicable to judicial proceedings at law, and shall give such weight to relevant information presented as it deems appropriate. As presiding officer, the Chair shall decide all procedural and evidentiary questions raised during the Hearing.
- c. All decisions by the Panel shall be made by majority vote.
- d. The Panel shall make its best efforts to arrange for the Hearing to be accurately recorded and shall arrange for any transcription of the recording which it deems appropriate, or which the Student or the Dean requests. If the transcript is requested by the Student, the Student shall pay reasonable transcription charges. Such recording and transcription may be made by any person or persons, including University employees, which the Panel may designate.
- e. Before testifying, each witness shall swear or affirm to the Panel that his or her testimony shall be the truth, the whole truth, and nothing but the truth. Students testifying before the Panel are bound by the University's Honor Code.
- f. In any Evaluation Hearing requested by the Student, the Student bears the burden of demonstrating his or her represented Contributory Psychological Disorder or Lack of Capacity.
- g. In any Evaluation Hearing requested by the Dean, the Dean bears the burden of demonstrating that the Student's return or continued enrollment at the University poses a Significant Risk.
- h. The party bearing the burden of proof must persuade the Panel on the issue in question by a preponderance of the evidence. A preponderance of the evidence means the greater weight of the evidence; that is, to establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true considering all of the evidence.
- i. The parties may make opening statements at the beginning of the Hearing, and closing statements at the end of the Hearing. The party bearing the burden of proof may make the first opening statement and a rebuttal opening statement. That party shall first present any witnesses, documents, and other evidence to support his or her position. The responding party shall then have the opportunity to present relevant evidence. The Chair may allow additional evidence as he or she deems appropriate, in his or her sole reasonable discretion. The parties shall have the right to question witnesses upon the completion of each witness's initial testimony. Panel members may question witnesses at any time. Documents and other exhibits offered shall be marked

and, when received in evidence by the Panel, made a part of the Hearing record.

- j. The Chair may continue the Hearing from time to time, provided that the Hearing shall be completed within ten (10) days of its commencement, unless the parties agree otherwise or the Chair decides otherwise, in writing, for good cause. Once the Hearing has been completed, it may be reopened by the Panel at any time before the Panel renders its written decision.

(3) Findings of the Panel – Student Requested Evaluation Hearings Based Upon Contributory Psychological Disorders

- a. If the Panel determines that the Student has established a Contributory Psychological Disorder, the Panel may impose Sanctions, if any, and Restrictions upon the Student as justified by the evidence. In its imposition of Restrictions, the panel shall consider the degree and nature of any Significant Risk. The Panel will be expected to evaluate and decide whether a temporary suspension is appropriate to allow the Student to recover or safeguard the University community or the Student. A Restriction involving suspension shall be enforced through a registration block applied by the Office of the Dean of Students. A notice of all Restrictions will also be filed with the Office of the Dean of Students and the Vice President. The UJC Chair shall be informed of the outcome of the proceedings by the Office of the Vice President. This communication to the UJC shall be confidentially transmitted and retained.
- b. If the Panel determines that the Student has not met the burden of proving a Contributory Psychological Disorder, the Panel shall return the case to the UJC for a hearing consistent with the UJC's procedures.

(4) Findings of the Panel – Student Requested Evaluation Hearings Based Upon Lack of Capacity

- a. If the Panel determines that the Student has established a Lack of Capacity, the Panel shall then determine whether the Student may remain enrolled at the University until the Student has regained sufficient capacity to stand trial before the UJC. This determination will be based upon whether the Student poses a Significant Risk. If the Student is allowed to remain enrolled, the Panel may impose Restrictions upon the Student as justified by the evidence, and/or require the Student to reappear before the Panel from time to time to reevaluate the Student's capacity.
- b. If the Panel determines that the Student has not met the burden of proving a Lack of Capacity, the Panel shall return the case to the UJC for a hearing consistent with the UJC's procedures.

(5) Findings of the Panel – Dean Requested Evaluation Hearings

- a. At the conclusion of the Hearing the Panel may find: (1) That the Dean has met the burden of demonstrating by the evidence presented that the Student poses a Significant Risk; or, (2) that the Dean has not met that burden.
- b. If the Panel determines that the Dean has met the burden, the Panel may impose Sanctions, if any, and Restrictions upon the Student supported by the evidence. The Panel will be expected to evaluate and decide in every case whether a temporary suspension is appropriate to safeguard the University community or the Student. A Restriction involving suspension shall be enforced through a registration block applied by the Office of the Dean of Students. A notice of all Restrictions will also be confidentially filed with the Dean of Students, the Vice President, and the UJC Chair, if appropriate.
- c. If the Panel determines that the Dean has not met the burden on the issue of Significant Risk (i.e., the Panel determines that the Student does not pose a Significant Risk), no Restrictions will be imposed. However, the Panel may make recommendations to the Student regarding treatment and such recommendations may also be filed with the Dean of Students. The Dean may follow up with the Student to ascertain whether the Student has acted on those recommendations and to provide support to the Student. Further, any underlying charges that have been filed with the UJC may thereupon proceed before the UJC.

(6) Panel Decision, Hearing Records

- a. The Panel shall endeavor to provide the Student, the Dean, and the Vice President with a copy of its written decision within ten (10) calendar days from the conclusion of the Hearing. The decision shall include specific findings and conclusions and will enumerate any Restrictions imposed by the Panel. Members of the Panel may submit separate written decisions concurring with, or dissenting from, in whole or part, the majority's decision.
- b. If the Panel determines that the University's or the Student's welfare requires it, the Panel may include in its decision a determination that the Restrictions imposed upon the Student shall be effective immediately and shall continue in effect until such time as the Vice President may determine otherwise. If the Restrictions include sanctions other than suspension, or if the Panel determines that a suspension need not commence immediately, the Restrictions shall take effect ten (10) calendar days after the Student's receipt of the Panel's written decision, or, in the event of a timely appeal, at such time as the Vice President determines.
- c. The Panel shall retain in confidence all records relating to these proceedings, as shall the Office of the Vice President, the Dean and the UJC Chair, and

shall make no public disclosure except where disclosure is required or permitted by law.

D. APPEALS

(1) Appeals

- a. The Student or the Dean may appeal the Panel's decision by so notifying the Vice President in writing within ten (10) calendar days after receipt of the Panel's written decision. Such notification shall include a statement of the specific portion(s) of the Panel's decision with which the Student or Dean disagrees, any arguments in support of the Student's or Dean's position, and the Student's or Dean's proposed alternative to the conclusions of the portion(s) of the decision in question. Failure to meet these notice requirements may result in the denial of an appeal.
- b. The Vice President may afford the Student and the Dean an opportunity to present written arguments, as opposed to evidence, in support of their positions on the appeal. The Vice President may impose any reasonable time and length limitations on such presentations. The Vice President may question the Panel members about their decision. The Vice President may also obtain and review any or all of the transcripts and exhibits of the Hearing before the Panel.
- c. The Vice President shall evaluate whether the Panel's findings and conclusions are reasonably supported by evidence in the record and, if so, shall affirm those findings and conclusions. If the Vice President is persuaded of the existence of fraud or serious mistake before the Panel, or of extraordinary circumstances justifying the introduction of new or additional evidence, the Vice President may direct the Panel to reopen its Hearing and receive additional evidence, or the Vice President may appoint a new Panel to consider the case de novo. The Vice President's determination of these issues is final and may not be appealed.
- d. The Vice President shall give the Student and the Dean a written decision on the appeal in as timely a fashion as the Vice President's schedule can accommodate. This decision is final and may not be appealed.

(2) Termination of Restrictions

- a. A Student who is subject to Restrictions lasting longer than one semester may apply in writing to the Dean for termination or modification of the Restrictions. If the Student is not satisfied with the decision of the Dean on such application, the Student may seek review of such decision, in writing, by the Vice President. The Vice President may, at that time, establish such procedure as he or she may deem appropriate to determine whether the

Student's application should be granted, or may review and affirm, reverse, or alter the underlying decision by the Dean.

- b. The Vice President shall give the Student and the Dean a written decision on the application in as timely a fashion as the Vice President's schedule can accommodate. This decision is final and may not be appealed.

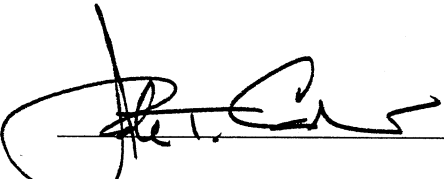
E. NOTICES

All notices to be given under these procedures shall be deemed to have been given upon actual receipt by or personal delivery to the person intended, or three (3) calendar days after mailing by U.S. mail to the person's address of record with the University or, in the case of the Dean or Vice-President, delivery to their regular University offices. Delivery, mailing or notice to the Student's Representative shall also be deemed as delivery, mailing or notice to the Student.

F. AMENDMENTS

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

Adopted:



John T. Casteen III, President

8/19/05
Date

APPENDIX A

REPRESENTATION OF A CONTRIBUTORY PSYCHOLOGICAL DISORDER
REQUEST FOR EVALUATION HEARING

Student's Name: _____

UJC Case Number: _____

Date Student received notice of judicial charges: _____

Date this Request received by UJC Chair: _____

I have read the Procedure for Student Disciplinary Cases Involving Psychological Issues and have had the opportunity to seek assistance of others in understanding the Procedures. If an Evaluation Hearing is granted under these Procedures, I understand I may, if I wish, designate a Representative to assist me who is a student or employee of the University but not an attorney.

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

I have or will promptly provide the Office of the Vice President for Student Affairs with a confidential professional assessment of my condition from Counseling and Psychological Services at the University's Elson Student Health Center or from a licensed mental health care professional. I will authorize the professional who has provided this assessment to communicate directly and confidentially with the Office of the Vice President so that my condition can be fully and fairly assessed by the University. I agree to sign any requested authorizations for such communication to occur.

Student's Signature Date

Witnessed by Date

