

# Henderson State University

## CODE OF STUDENT RIGHTS, RESPONSIBILITIES, AND CONDUCT

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## PREFACE

### Core Values of Student Conduct at Henderson State University

- ***Academic Excellence:*** We promote academic excellence and celebrate scholarly achievement. We produce intellectually well-rounded graduates through rigorous and relevant programs.
- ***Collaboration and Community:*** We value collaboration recognizing that each person is an important part of a larger picture. Working together for a sustainable future, every individual contributes to the whole, whether in our university, our local community, or our world.
- ***Human Value and Difference:*** We celebrate every human being and, embracing our differences, strive together to prepare students to become responsible citizens in a diverse, global, and knowledge-based society. We value an inclusive community where all individuals can explore, discover, and develop their unique abilities and interests.
- ***Integrity:*** We cultivate a climate of academic, personal, and professional integrity by holding ourselves and each other to the highest ethical standards in all we say and do.
- ***Students and Student Success:*** We place students at the center of all we do; they are the reason we are here. Decisions made about programs, policies, and practices are based upon what is best for students and their success.

**Henderson State University students are responsible for knowing the information, policies and procedures outlined in this document. Henderson State University reserves the right to make changes to this code as necessary and once those changes are posted online, they are in effect.**

# Henderson State University: Code of Student Conduct

## SECTION 1: PHILOSOPHY STATEMENT

The Henderson community is committed to fostering a campus environment that is conducive to academic inquiry, a productive campus life and thoughtful study and discourse. The student conduct program within the Dean of Students office is committed to an educational and developmental process that balances the interests of individual students with the interests of the Henderson State University.

A community exists on the basis of shared values and principles. At Henderson State University, student members of the community are expected to uphold and abide by certain standards of conduct that form the basis of the *Code of Student Conduct*. These standards are embodied within a set of core values that include academic excellence, collaboration and community, human value and difference, integrity, students and student success.

Each member of the Henderson community bears responsibility for their conduct and to assume reasonable responsibility for the behavior of others. When members of the community fail to exemplify these five values by engaging in violation of the rules below, campus conduct proceedings are used to assert and uphold the *Code of Student Conduct*.

The student conduct process at Henderson is not intended to punish students; rather, it exists to protect the interests of the community and to challenge those whose behavior is not in accordance with our policies. Sanctions are intended to challenge students' moral and ethical decision-making and to help them bring their behavior into accord with our community expectations. When a student is unable to conform their behavior to community expectations, the student conduct process may determine that the student should no longer share in the privilege of participating in this community.

Students should be aware that the student conduct process is quite different from criminal and civil court proceedings. Procedures and rights in student conduct procedures are conducted with fairness to all, but do not include the same protections of due process afforded by the courts. Due process, as defined within these procedures, assures written notice and a hearing before an objective decision-maker. No student will be found in violation of Henderson's policies without information showing that it is more likely than not that a policy violation occurred and any sanctions will be proportionate to the severity of the violation and to the cumulative conduct history of the student.

## SECTION 2: JURISDICTION

Students at Henderson State University are provided a copy of the *Code of Student Conduct* annually in the form of a link on Henderson's website. In addition, first-time freshmen are provided a copy of the Code of Student Conduct in the student planners distributed through their Henderson Seminar class. Hard copies are available for all other students upon request from the Dean of Students office. Students are responsible for having read and abiding by the provisions of the *Code of Student Conduct*.

The *Code of Student Conduct* and the student conduct process apply to the conduct of individual students, both undergraduate and graduate, including all Henderson State University affiliated student organizations. For the purposes of student conduct, Henderson considers an individual to be a student when an offer of admission has been extended and thereafter as long as the student has a continuing educational interest in Henderson State University.

Henderson State University retains conduct jurisdiction over students who choose to take a leave of absence, withdraw or have graduated for any misconduct that occurred prior to the leave, withdrawal or graduation. If sanctioned, a hold may be placed on the student's ability to re-enroll **[and/or obtain official transcripts and/or graduate]** and all sanctions must be satisfied prior to re-enrollment eligibility. In the event of serious misconduct committed while still enrolled but reported after the accused student has graduated, Henderson may invoke these procedures and should the former student be found responsible, Henderson may revoke that student's degree.

The *Code of Student Conduct* applies to behaviors that take place on the campus, at Henderson-sponsored events and may also apply off-campus when the Dean of Students or designee determines that the off-campus conduct affects a substantial Henderson interest.<sup>1</sup> A substantial University/College interest is defined to include:

- Any situation where it appears that the student's conduct may present a danger or threat to the health or safety of him/herself or others; and/or
- Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational mission and/or interests of Henderson State University;

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<sup>1</sup> Adapted, with gratitude, from Penn State University.

The *Code of Student Conduct* may be applied to behavior conducted online, via email or other electronic medium. Students should also be aware that online postings such as blogs, web postings, chats and social networking sites are in the public sphere and are not private. These postings can subject a student to allegations of conduct violations if evidence of policy violations is posted online. Henderson State University does not regularly search for this information but may take action if and when such information is brought to the attention of Henderson officials. **[However, most online speech by students not involving Henderson networks or technology will be protected as free expression and not subject to this Code, with two notable exceptions:**

- **A true threat, defined as “a threat a reasonable person would interpret as a serious expression of intent to inflict bodily harm upon specific individuals”;**
- **Speech posted online about Henderson or its community members that causes a significant on-campus disruption.**

The *Code of Student Conduct* applies to guests of community members whose hosts may be held accountable for the misconduct of their guests. **[The Code may also be applied to resident non-students, campers and high school bridge/extension/partner/dual-credit and continuing education programs by contractual agreements].** Visitors to and guests of Henderson State University may seek resolution of violations of the *Code of Student Conduct* committed against them by members of the Henderson community.

There is no time limit on reporting violations of the *Code of Student Conduct*; however, the longer someone waits to report an offense, the harder it becomes for Henderson officials to obtain information and witness statements and to make determinations regarding alleged violations.

Though anonymous complaints are permitted, doing so may limit Henderson’s ability to investigate and respond to a complaint. Those who are aware of misconduct are encouraged to report it as quickly as possible to the Dean of Student’s office and/or to University Police.

**[A responding student facing an alleged violation of the *Code of Student Conduct* is not permitted to withdraw from Henderson State University until all allegations are resolved]**

### SECTION 3: VIOLATIONS OF THE LAW

Alleged violations of federal, state and local laws may be investigated and addressed under the *Code of Student Conduct*. When an offense occurs over which Henderson State University has jurisdiction, the conduct process will usually go forward notwithstanding any criminal complaint that may arise from the same incident.

Henderson State University reserves the right to exercise its authority of interim suspension upon notification that a student is facing criminal investigation and/or complaint (additional grounds for interim suspension are outlined on p. 22). Interim suspensions are imposed until a hearing can be held, typically within two weeks. **[Within that time, the suspended student may request an immediate hearing from the Dean of Students to show cause why the interim suspension should be lifted]**. This hearing may resolve the allegation, or may be held to determine if the interim suspension should be continued. The interim suspension may be continued if a danger to the community is posed and Henderson may be delayed or prevented from conducting its own investigation and resolving the allegation by the pendency of the criminal process. In such cases, Henderson will only delay its hearing until such time as it can conduct an internal investigation or obtain sufficient information independently or from law enforcement upon which to proceed. This delay will be no longer than two weeks from notice of the incident unless a longer delay is requested in writing by the complaining victim to allow the criminal investigation to proceed before Henderson's campus conduct process.

Students accused of crimes may request to take a leave from Henderson State University until the criminal charges are resolved. In such situations, Henderson's procedure for voluntary leaves of absence is subject to the following conditions:

- The responding student must comply with all campus investigative efforts that will not prejudice their defense in the criminal trial; and
- The responding student must comply with all interim actions and/or restrictions imposed during the leave of absence; and
- The responding student must agree that, in order to be reinstated to active student status, they must first be subject to, and fully cooperate with, the campus conduct process and must comply with all sanctions that are imposed.

## SECTION 4: STANDARDS OF CONDUCT

### A. Core Values and Behavioral Expectations

Henderson State University considers the behavior described in the following subsections as inappropriate for Henderson's community and in opposition to the core values set forth in this document. These expectations and rules apply to all students, regardless of their classification. Henderson State University encourages community members to report to Henderson officials all incidents that involve the following actions. Any student found to have committed or to have attempted to commit the following misconduct is subject to the sanctions outlined in Section 7: Conduct Procedures.

While the following list of possible actions of misconduct may result in judicial sanctions up to and including suspension from Henderson State University, there are three actions that, if a student is found guilty of the charges, will result in suspension from Henderson State University for a minimum of two academic semesters. Academic semesters for judicial purposes are considered fall and spring semesters.

- **Sexual Assault;** any student found guilty of any form of sexual assault towards another student or person will be suspended from Henderson State University. Under rare circumstance, the guilty student could be conditionally readmitted to the University, but not before the victim has graduated from Henderson State University.
- **Weapons;** Possession, use, or distribution of guns, ammunition, or other devices that would be considered dangerous to the campus community.
- **Drugs;** Use, possession or distribution of illegal drugs (including Marijuana) and other controlled substances or drug paraphernalia except as expressly permitted by law and the Henderson State University Drug policy.

These sanctions will take affect regardless of whether the incidents took place on campus or off campus. For information concerning University Jurisdiction see page Section 2: Jurisdiction.

***Integrity: Henderson State University cultivates a climate of academic, personal, and professional integrity by holding ourselves and each other to the highest ethical standards in all we say and do. Behavior that violates this value includes, but is not limited to:***

1. **Falsification.** Knowingly furnishing or possessing false, falsified or forged materials, documents, accounts, records, identification or financial instruments;
2. **Unauthorized Access.** Unauthorized access to any Henderson building (i.e. keys, cards, etc.) or unauthorized possession, duplication or use of means of access to

any Henderson building or failing to timely report a lost Henderson identification card or key;

3. **Collusion.** Action or inaction with another or others to violate the *Code of Student Conduct*;
4. **Trust.** Violations of positions of trust within the community;
5. **Election Tampering.** Tampering with the election of any Henderson State University recognized student organization (minor election code violations are addressed by the SGA);
6. **Taking of Property.** Intentional and unauthorized taking of Henderson State University property or the personal property of another, including goods, services and other valuables;
7. **Stolen Property.** Knowingly taking or maintaining possession of stolen property;
8. **Alcohol.** Use, possession, or distribution of alcoholic beverages or paraphernalia except as expressly permitted by law and Henderson's Alcohol Policy (See *Community Standards* for further information);
9. **Drugs.** Use, possession or distribution of illegal drugs and other controlled substances or drug paraphernalia except as expressly permitted by law and the Henderson State University Drug Policy (See *Community Standards* for further information);
10. **Prescription Medications.** Abuse, misuse, sale, or distribution of prescription or over-the-counter medications;
11. **Failure to Comply.** Failure to comply with the reasonable directives of Henderson State University officials or law enforcement officers during the performance of their duties and/or failure to identify oneself to these persons when requested to do so;
12. **Arrest.** Failure of any student to accurately report an off-campus arrest by any law enforcement agency for any crime (including non-custodial or field arrests) to the Dean of Students office within seventy-two (72) hours of release.
13. **Financial Responsibilities.** Failure to promptly meet financial responsibilities to the University, including, but not limited to; knowingly passing a worthless check or money order in payment to the University or to an official of the University acting in an official capacity.



14. **Other Policies.** Violating other published University policies or rules, including all Residence Hall policies;
15. **Health and Safety.** Creation of health and/or safety hazards (dangerous pranks, hanging out of or climbing from/on/in windows, balconies, roofs, etc.)
16. **[Violations of Law. Evidence of violation of local, state or federal laws, when substantiated through the University's conduct process.]**

***Collaboration and Community: Henderson State University recognizes that each person is an important part of a larger picture. Working together for a sustainable future, every individual contributes to the whole, whether in our university, our local community, or our world.***

17. **Disruptive Behavior.** Substantial disruption of Henderson operations including obstruction of teaching, research, administration, other Henderson activities, and/or other authorized non-Henderson activities which occur on campus;
18. **Rioting.** Causing, inciting or participating in any disturbance that presents a clear and present danger to self or others, causes physical harm to others, or damage and/or destruction of property;
19. **Unauthorized Entry.** Misuse of access privileges to Henderson premises or unauthorized entry to or use of buildings, including trespassing, propping or unauthorized use of alarmed doors for entry into or exit from a Henderson building;
20. **Trademark.** Unauthorized use (including misuse) of organizational names and images;
21. **Damage and Destruction.** Intentional, reckless and/or unauthorized damage to or destruction of Henderson State University property or the personal property of another;
22. **IT and Acceptable Use.** Henderson State University uses the computer system for administrative functions and student training. Any student acquiring or attempting to acquire unauthorized access to the administrative data in any way whatsoever will be subject to disciplinary action. Such action could lead to dismissal from school.

Email Policy: Individuals who are granted computing accounts and who use computing resources such as e-mail at the University accept the responsibilities

that accompany such access. Each user is expected to use University accounts and resources for educational, research, or administrative purposes. Users shall not (a) initiate or propagate electronic chain letters; (b) engage in spamming or other indiscriminate mass mailings to newsgroups, mailing lists, or individuals, e.g. the use of "faculty", "everyone" and/or "staff" distributions list shall be solely for related University information or functions; (c) forge communications to make them appear to originate from another person, e.g., spoofing; or (d) engage in resource-intensive activities unrelated to University functions. Misuse of computing resources will be reviewed through established University procedures for student and employee misconduct. Restrictions imposed on usage of computer and network systems may be challenged through the same procedures.

Some (but not all) inappropriate uses of the University distribution lists are listed below:

1. Marketing items that are not related to a University function
2. Promoting events that are not related to a University function
3. Requesting donations that are not related to a University function.

- 23. Gambling.** Gambling as prohibited by the laws of the State of Arkansas. (Gambling may include raffles, lotteries, sports pools and online betting activities.)
- 24. Weapons.** Possession, use, or distribution of explosives (including fireworks and ammunition), guns (including air, BB, paintball, and pellet guns), or other weapons or dangerous objects such as arrows, axes, machetes, nun chucks, throwing stars, or knives with a blade of longer than three inches, including the storage of any item that falls within the category of a weapon in a vehicle parked on Henderson State University property.
- 25. Tobacco.** Smoking or tobacco use in any area of campus **including e-vapor devices.**
- 26. Fire Safety.** Violation of local, state, federal or campus fire policies including, but not limited to:
- a) Intentionally or recklessly causing a fire which damages Henderson or personal property or which causes injury.
  - b) Failure to evacuate a Henderson-controlled building during a fire alarm;
  - c) Improper use of Henderson fire safety equipment; or
  - d) Tampering with or improperly engaging a fire alarm or fire detection/control equipment while on Henderson property. Such action may result in a local fine in addition to Henderson sanctions;

27. **Ineligible Pledging or Association.** Pledging or associating with a student organization without having met eligibility requirements established by the College/University.
28. **Animals.** Animals, with the exception of animals that provide assistance (e.g. seeing-eye dogs), and pets as outlined in the Residence Life Handbook, are not permitted on campus except as permitted by law.
29. **Wheeled Devices.** Skateboards, roller blades, roller skates, bicycles and similar wheeled devices are not permitted inside Henderson buildings, residence halls or athletic facilities. Additionally, skateboards and other wheeled items may not be ridden on railings, curbs, benches, or any such fixtures that may be damaged by these activities and individuals may be liable for damage to Henderson State University property caused by these activities.

**Self-Balancing devices or hover boards** are not allowed on campus or at any campus events

***Human Value and Difference: Henderson State University celebrates every human being and, embracing our differences, strive together to prepare students to become responsible citizens in a diverse, global, and knowledge based society. We value an inclusive community where all individuals can explore, discover, and develop their unique abilities and interests. Conduct that violates this value includes, but is not limited to:***

30. **Discrimination.** Any act or failure to act that is based upon an individual or group's actual or perceived status (**sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation, or other protected status**) that is sufficiently severe that it limits or denies the ability to participate in or benefit from Henderson's educational program or activities.
31. **Harassment.** Any unwelcome conduct based on actual or perceived status including: [**sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status**]. Any unwelcome conduct should be reported to campus officials, who will act to remedy and resolve reported incidents on behalf of the victim and community.
- a) **Hostile Environment.** Sanctions can and will be imposed for the creation of a hostile environment only when [unwelcome] harassment is sufficiently severe, pervasive (or persistent) and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate

in or benefit from Henderson's educational or employment program or activities<sup>2</sup>.

32. **Retaliatory Discrimination or Harassment.** Any intentional, adverse action taken by an responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant [**or supporter of a participant**] in a civil rights grievance proceeding or other protected activity [**under this Code**].

33. **Bystanding.**

- a) Complicity with or failure of any student to [**appropriately**] address known or obvious violations of the *Code of Student Conduct* or law;
- b) Complicity with or failure of any organized group to [**appropriately**] address known or obvious violations of the *Code of Student Conduct* or law by its members.

34. **Abuse of Conduct Process.** Abuse or interference with, or failure to comply in, Henderson processes including conduct and academic integrity hearings including, but not limited to:

- a) Falsification, distortion, or misrepresentation of information;
- b) Failure to provide, destroying or concealing information during an investigation of an alleged policy violation;
- c) Attempting to discourage an individual's proper participation in, or use of, the campus conduct system;
- d) Harassment (verbal or physical) and/or intimidation of a member of a campus conduct body prior to, during, and/or following a campus conduct proceeding;
- e) Failure to comply with the sanction(s) imposed by the campus conduct system;
- f) Influencing, or attempting to influence, another person to commit an abuse of the campus conduct system.

35. **Harm to Persons.** Intentionally or recklessly causing physical harm or endangering the health or safety of any person.

36. **Threatening Behaviors:**

- a) **Threat.** Written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property.
- b) **Intimidation.** Intimidation defined as implied threats or acts that cause a reasonable fear of harm in another.

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<sup>2</sup> This policy attempts to balance the need of the community to create a civil climate while also embracing the 1<sup>st</sup> Amendment protection that attaches to most harassing speech that is simply offensive.

37. **Bullying and Cyberbullying.** Bullying and cyberbullying are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.
38. **Hazing.** Defined as an act that endangers the mental or physical health or safety of a student, or that destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization. Participation or cooperation by the person(s) being hazed does not excuse the violation. Failing to intervene to prevent **(and/or)** failing to discourage **(and/or)** failing to report those acts may also violate this policy.
39. **Intimate Partner/Relationship Violence.** Violence or abuse by a person in an intimate relationship with another;
40. **Stalking.** Stalking is a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to feel fear;
41. **Sexual Misconduct.** Includes, but is not limited to, sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse, and/or sexual exploitation
42. **Public Exposure.** Includes deliberately and publicly exposing one's intimate body parts, public urination, defecation, and public sex acts.

## SECTION 5: OVERVIEW OF THE CONDUCT PROCESS

This overview gives a general idea of how Henderson State University's campus conduct proceedings work, but it should be noted that not all situations are of the same severity or complexity. Thus, these procedures are flexible, and are not exactly the same in every situation, though consistency in similar situations is a priority. The campus conduct process and all applicable timelines commence with notice to an administrator of a potential violation of Henderson State University rules.<sup>3</sup>

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<sup>3</sup> In Title IX related issues, the "administrator" is any "responsible employee" as defined under Title IX and/or campus policy.

NOTICE. Once notice is received from any source (victim, RA, 3<sup>rd</sup> party, University Police, online, etc.), Henderson State University may proceed with a preliminary investigation and/or may schedule an initial educational meeting/conference with the responding student to explain the conduct process to the responding student and gather information.

#### **A. STEP 1: Preliminary Inquiry and/or Educational Conference**

Henderson State University conducts a preliminary inquiry into the nature of the incident, complaint or notice, the evidence available, and the parties involved. The preliminary inquiry may lead to:

- 1) A determination that there is insufficient evidence to pursue the investigation, because the behavior alleged, even if proven, would not violate the Code of Student Conduct, (e.g.: for reasons such as mistaken identity or allegations of behavior that falls outside the code);
- 2) A more comprehensive investigation, when it is clear more information must be gathered.
- 3) A formal complaint of a violation and/or an educational conference with the responding student.

When an initial educational meeting/conference is held, the possible outcomes include:

- A decision not to pursue the allegation based on a lack of or insufficient evidence. The matter should be closed and records should so indicate;
- A decision on the allegation, also known as an “informal” or “administrative” resolution to an uncontested allegation (see immediately below);
- A decision to proceed with additional investigation and/or referral for a “formal” resolution.

If a decision on the allegation is made and the finding is that the responding student is not responsible for violating the Code, the process will end. **[The party bringing the complaint may request that the Dean of Students and the Title IX Coordinator reopen the investigation and/or grant a hearing. This decision shall be in the sole discretion of the Dean of Students and the Title IX Coordinator and will only be granted for extraordinary cause].** If the University finding is that the responding student is in violation, and the responding student accepts this finding within three days, the University considers this an “uncontested allegation.” The administrator conducting the initial educational conference will then determine the sanction(s) for the misconduct, which the responding student may accept or reject. If accepted, the process ends<sup>4</sup>.

If a student accepts the findings, but rejects the sanction, the University will conduct a sanction-only hearing, conducted by **[a panel, etc.]** which recommends a sanction to the

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<sup>4</sup> In cases of minor misconduct, both steps in this paragraph can be accomplished in one meeting.

Dean of Students. The sanction is then reviewed and finalized by the Dean of Students and is subject to appeal (see *Appeal Review Procedures* in Section 7P) by any party to the misconduct. Once the appeal is decided, the process ends.

If the administrator conducting the educational conference determines that it is more likely than not that the responding student is in violation, and the responding student rejects that finding in whole or in part, then it is considered a contested allegation and the process moves to Step 2.

### **B. STEP 2: Formal Hearing**

In a contested allegation, additional investigation may then be commenced and/or a hearing may be held when there is reasonable cause to believe that a rule or rules have been violated. A formal notice of the complaint will be issued, and a hearing will be held before **[a panel, an administrator, etc.]** A finding will be determined and is final except in cases that involve Title IX or other discrimination allegations. In those cases, the hearing results serve as a recommendation to the Dean of Students and, where appropriate, the Title IX Coordinator, who review and finalize the finding.<sup>5</sup> If the finding is that the responding student is not responsible, the process ends. Applicable appeals options are described under Section 7P of this document.

### **C. STEP 3: Review and Finalize Sanction(s).**

If the student is found in violation(s), sanctions will be recommended by the **[panel, administrator, etc.]** to the Dean of Students **[and Title IX Coordinator when applicable]**, who will review and finalize the sanctions, subject to the University's appeals process by any party to the complaint.

## **SECTION 6: STUDENT CONDUCT AUTHORITY**

### **A. Authority**

The Dean of Students is vested with the authority over student conduct by the President of the University. The Dean of Students may appoint a Director of Student Conduct to oversee and manage the student conduct process. The University appoints a standing committee consisting of faculty, staff, and students to serve as the Judicial Conduct

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<sup>5</sup> The findings of the hearing should only be overturned or modified when necessary to conform to Title IX and/or to repair error that would result in appeal.

Board as deemed necessary to efficiently and effectively supervise the student conduct process.

The Dean of Students (or designee) will assume responsibility for the investigation of an allegation of misconduct to determine if the complaint has merit.

## **B. Gatekeeping**

No complaint will be forwarded for a hearing unless there is reasonable cause to believe a policy has been violated. Reasonable cause is defined as some credible information to support each element of the offense, even if that information is merely a credible witness or a victim's statement. A complaint wholly unsupported by any credible information will not be forwarded for a hearing.

## **C. Conflict Resolution Options**

The Dean of Students has discretion to refer a complaint for mediation or other forms of appropriate conflict resolution. All parties must agree to conflict resolution and to be bound by the decision with no review/appeal. Any unsuccessful conflict resolution can be forwarded for formal processing and hearing; however, at no time will complaints of physical sexual misconduct or violence be mediated as the sole institutional response. The Dean of Students may also suggest that complaints that do not involve a violation of the *Code of Student Conduct* be referred for mediation or other appropriate conflict resolution.

## **D. Composition of the Hearing Panel**

The University General Counsel will be responsible for assembling the Hearing Panel according to the following guidelines:

- 1) The membership of the panel is selected from a pool of at least 6 students, 6 faculty, and 6 staff/administrative members appointed and trained for at least twelve (12) hours annually<sup>6</sup> by the Dean of Students or University General Counsel.
- 2) For each complaint, a panel will be chosen from the available pool, and is usually comprised of one student, one faculty member, and one staff member or administrator. Availability may determine a different composition for the Panel, and in complaints involving discrimination, sexual misconduct, or other sensitive

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<sup>6</sup> Minimal competence requires 8 hours of training, and panel members ought to be more than minimally competent.



issues, the Dean of Students will usually use three administrative/staff members for the panel. The Dean of Students appoints the non-voting chair of the Hearing Panel, who assures that University procedures are followed throughout the hearing.

#### **E. Administrative Hearing [or Conference] Officers**

Administrative Hearing Officers (AHO or ACO) are chosen from a pool of annually trained administrators or staff members selected by the Dean of Students.

#### **F. Panel Pool and the Appeals Panel**

Three-member Appeals Panels are drawn from the panel pool, with the only requirement being that they did not serve on the Panel for the initial hearing. Appeals Panels review appeal requests submitted by the Dean of Students. If an all administrative/staff panel is used to hear a sensitive issue, the Appeals Panel will also be comprised of only administrative/staff members.

To serve in the panel pool, students must:

- 1) Be in academic good standing and have completed 15 hours of academic credit with a cumulative GPA of at least 2.5.
- 2) Be in good standing with the conduct process throughout the semester in which they serve. Good standing is defined as having no record of misconduct during the semester(s) in which a student wishes to serve on the panel. A serious history of misconduct could disqualify a student for service.
- 3) Submit a letter of recommendation from a faculty member or administrator from within the University community.

The Dean of Students will have final authority to approve all those serving on the panel. The non-voting advisor to the panel is the Dean of Students (or designee) with responsibility for training the panel, conducting preliminary investigations, and ensuring a fair process for the party bringing the complaint and responding student. In the event of a resignation from the panel, the Dean of Students (or designee) will solicit a replacement from the group from which the representative came. Decisions made, and sanctions imposed, by the panel or an AHO will be final and implemented, pending the normal appeal process. At the discretion of the Dean of Students (or designee), implementation of sanctions may be stayed pending review.

#### **G. Interpretation and Revision**

The Dean of Students will develop procedural rules for the administration of hearings that are consistent with provisions of the *Code of Student Conduct*. Material deviation from these rules will, generally, only be made as necessary and will include reasonable advance notice to the parties involved, either by posting online and/or in the form of written communication. The Dean of Students may vary procedures with notice upon determining that changes to law or regulation require policy or procedural alterations not reflected in this *Code*. The Dean of Students may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. Any question of interpretation of the *Code of Student Conduct* will be referred to the Dean of Students, whose interpretation is final. The *Code of Student Conduct* will be updated annually under the direction of the Dean of Students with a comprehensive revision process being conducted every three (3) years.

## **SECTION 7: FORMAL CONDUCT PROCEDURES**

### **A. Henderson State University as Convener**

The University is the convener of every action under this code. Within that action, there are several roles. The responding student is the person who is alleged to have violated the Code. The party bringing the complaint, who may be a student, employee, visitor, or guest, may choose to be present and participate in the process as fully as the responding student. There are witnesses, who may offer information regarding the allegation. There is an investigator(s) whose role is to present the allegations and share the evidence that the University has obtained regarding the allegations.

### **B. Group Violations**

A student group or organization and its officers and membership may be held collectively and individually responsible when there are violations of this code by the organization or its member(s):

- Take place at organization-sponsored or co-sponsored events, whether sponsorship is formal or tacit;
- Have received the consent or encouragement of the organization or of the organization's leaders or officers; or
- Were known or should have been known to the membership or its officers.

Hearings for student groups or organizations follow the same general student conduct procedures. In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and individually and will be proportionate to the involvement of each individual and the organization.

### **C. Amnesty:**

### **1) For Victims**

The University provides amnesty to victims who may be hesitant to report to University officials because they fear that they themselves may be accused of minor policy violations, such as underage drinking, at the time of the incident. Educational options will be explored, but no conduct proceedings or conduct record will result<sup>7</sup>.

### **2) For Those Who Offer Assistance**

To encourage students to offer help and assistance to others, the University pursues a policy of amnesty for minor violations when students offer help to others in need. At the discretion of the Dean of Students, amnesty may also be extended on a case-by-case basis to the person receiving assistance. Educational options will be explored, but no conduct proceedings or conduct record will result.

### **3) For Those Who Report Serious Violations**

Students who are engaged in minor violations but who choose to bring related serious violations by others to the attention of the University are offered amnesty for their minor violations. Educational options will be explored, but no conduct proceedings or record will result.

Abuse of amnesty requests can result in a decision by the Dean of Students not to extend amnesty to the same person repeatedly.

### **4) Safe Harbor**

Henderson State University has a Safe Harbor rule for students. The University believes that students who have a drug and/or addiction problem deserve help. If any University student brings their own use, addiction, or dependency to the attention of University officials outside the threat of drug tests or conduct sanctions and seeks assistance, a conduct complaint will not be pursued. A written action plan may be used to track cooperation with the Safe Harbor program by the student. Failure to follow the action plan will nullify the Safe Harbor protection and campus conduct processes will be initiated.

## **D. Notice of Alleged Violation**

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<sup>7</sup> Records regarding the provision of amnesty, however, should be maintained.

Any member of the Henderson community, visitor or guest may allege a policy violation(s) by any student for misconduct under this *Code* by following the processes outlined in this document.

Notice may also be given to the Dean of Students (or designee) and/or to the Title IX Coordinator, when appropriate. Additionally, administrators may act on notice of a potential violation whether a formal allegation is made or not. All allegations can be submitted by a victim or a third party, and should be submitted as soon as possible after the offending event occurs. The University has the right to pursue an allegation or notice of misconduct on its own behalf and to serve as convener of the subsequent campus conduct process.

The Dean of Students (or designee) will assume responsibility for the investigation of the alleged violation as described in the sub-section below.

### **E. Investigation**

Investigation is referenced in both steps 1 and 2 above, with detailed investigation procedures described in this sub-section. The Dean of Students will appoint an investigator(s) for allegations under this *Code*.<sup>8</sup> The investigator(s) will take the following steps, if not already completed by the Dean of Students or judicial designee:

- 1) Initiate any necessary remedial actions on behalf of the victim (if any);
- 2) Determine the identity and contact information of the party bringing the complaint, whether that person is the initiator of the complaint, the alleged victim, or a University proxy or representative;
- 3) Conduct an immediate preliminary investigation to identify an initial list of all policies that may have been violated, to review the history of the parties, the context of the incident(s), any potential patterns and the nature of the complaint;
  - a) If the victim is reluctant to pursue the complaint, determine whether the complaint should still be pursued and whether sufficient independent evidence could support the complaint without the participation of the victim;
  - b) Notify the victim of whether the University intends to pursue the complaint regardless of their involvement, and inform the victim of their rights in the process and option to become involved if they so choose;
  - c) Preliminary investigation usually takes between 1-7 business days to complete;
- 4) If indicated by the preliminary investigation and authorized by the Dean of Students, conduct a comprehensive investigation to determine if there is

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<sup>8</sup> For any complaint that falls under Title IX (e.g. sexual misconduct) or involves any other form of discrimination, the Dean of Students will work under the direction of the Title IX Coordinator.

reasonable cause to believe that the responding student violated University policy, and to determine what specific policy violations should serve as the basis for the complaint;

- a) If there is insufficient evidence through the investigation to support reasonable cause, the allegations will be closed with no further action;
  - b) A comprehensive investigation usually takes between one day and two weeks;
- 5) Meet with the party bringing the complaint to finalize the Party bringing the complaint's Statement, which will be drawn up by the investigator or designee as a result of this meeting;
  - 6) Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding student, who may be given notice of the interview prior to or at the time of the interview;
    - a) Prepare the notice of alleged policy violation(s) on the basis of the reasonable cause determination, which may be delivered prior to, during or after the responding student is interviewed, at the discretion of the investigator(s);
  - 7) Interview all relevant witnesses, summarize the information they are able to share and have each witness sign the summary to verify its accuracy;
  - 8) Obtain all documentary evidence and information that is available;
  - 9) Obtain all physical evidence that is available;
  - 10) Complete the investigation promptly by analyzing all available evidence without unreasonable deviation from the intended timeline;
  - 11) Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
  - 12) Present the investigation report and findings to the responding student, who may:
    - a) accept the findings,
    - b) accept the findings in part and reject them in part,
    - c) or may reject all findings;
  - 13) Share the findings and update the party bringing the complaint on the status of the investigation and the outcome.

## **F. Findings**

The following options (1-3) describe how to proceed depending on whether the responding student is found responsible and whether the Responding Student accepts or rejects the findings and/or the sanctions either in whole or in part.

### **1) The Responding Student is Found "Not Responsible"**

Where the responding student is found not responsible for the alleged violation(s), the investigation will be closed. The party bringing the complaint, if any, may request that the Title IX Coordinator or Dean of Students, as applicable, review the investigation file to possibly re-open the investigation or convene a hearing. The decision to re-open an investigation or convene a hearing rests solely in the discretion of the Title IX Coordinator or the Dean of Students in these cases, and is granted only on the basis of extraordinary cause.

## **2) The Responding Student Accepts a Finding of “Responsible”...**

### **a) The Responding Student Accepts a Finding of “Responsible” and Accepts the Recommended Sanctions.**

Should the responding student accept the finding that they violated University policy, the Investigator will recommend appropriate sanctions for the violation, having consulted with Dean of Students and/or Title IX Coordinator, as appropriate. In cases involving discrimination, recommended sanctions will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the University community. If the responding student accepts these recommended sanctions, the sanctions are implemented by the Dean of Students and the process ends. **[There will be a three-day period for review between the date of acceptance and when the resolution becomes final. Should the responding student decide to reject the sanctions within that time period, Option 2B will apply].** This outcome is not subject to appeal.

### **b) The Responding Student Accepts a Finding of “Responsible” and Rejects the Sanctions Recommended.**

If the responding student accepts the “responsible” findings, but rejects the recommended sanctions, there will be an administrative conference on the sanction, only. Administrative conference procedures are detailed below.

## **3) Responding Student Rejects the Findings Completely or In-part**

### **a) Responding Student Rejects the Findings Completely**

Where the responding student rejects the finding that they violated University policy, a formal hearing will be convened within seven business days, barring exigent circumstances.

At the hearing, the investigator(s) will present their report to the panel, the panel will hear from the parties, and any necessary witnesses. The investigation report will be considered by the panel, which renders an independent and objective finding. Full panel procedures are detailed below.

If the panel finds the responding student not responsible for all violations, the Dean of Students will timely inform the parties of this determination and the rationale for the decision in writing. This determination is subject to appeal by any party to the complaint. Appeal review procedures are outlined below.

If the panel finds a violation, it will recommend a sanction/responsive action to the Dean of Students, who will confer with the Title IX Coordinator as necessary and, render a decision within five (5) days of the hearing and timely notify the parties orally, as well as in writing. An appeal of sanction(s) may be filed by any party to the complaint as detailed below.

**b) Responding Student Accepts the Findings in Part and Rejects in Part**

Where the responding student rejects in part the finding that they violated University policy, there will be a panel hearing solely on the disputed allegations within seven days, barring exigent circumstances. For all findings holding a responding student responsible for a violation, the University will follow the sanctioning process detailed in sub-sections K(8) and K(9), below. If the Panel finds the responding student “Not Responsible” on any of the contested allegations, the process will move to the Sanctioning Phase on only the uncontested allegations, as detailed in sub-sections K(8) and K(9), below.

**G. Policy Prohibiting Sex- and Gender-Based Discrimination, Harassment, Misconduct and Retaliation**

At Henderson State University, we celebrate every human being; we value an inclusive community; and we cultivate a climate of academic, personal, and professional integrity by holding ourselves and each other to the highest ethical standards in all we say and do. In support of those core values, Henderson State University is committed to providing an environment that is free from harassment and discrimination based upon race, color, ethnicity, religion, sexual orientation, gender identity, national origin, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, physical disability or mental disability. Such an environment is necessary for a healthy learning, working, and living atmosphere. Accordingly, all acts of discrimination,

harassment, retaliation, and sexual misconduct as defined by this policy are prohibited. Henderson State University believes in a zero tolerance policy for sex- and gender-based misconduct. When an allegation of misconduct is brought to the Title IX Coordinator's attention, and a responding party is found to have violated this policy, effective sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

The full Policy Prohibiting Sex- and Gender-Based Discrimination, Harassment, Misconduct and Retaliation can be found at:

[http://www.hsu.edu/CurrentStudents/2015\\_policy\\_TitleIX.pdf](http://www.hsu.edu/CurrentStudents/2015_policy_TitleIX.pdf)

## **H. Notice of Hearing**

Once a determination is made that reasonable cause exists for the Dean of Students (or designee) to refer a complaint for a hearing, notice will be given to the responding student. Notice will be in writing and may be delivered by one or more of the following methods: in person by the Dean of Students (or designee); mailed to the local or permanent address of the student as indicated in official University records; or emailed to the student's University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. The letter of notice will:

- 1) Include the alleged violation and notification of where to locate the *Code of Student Conduct* and University procedures for resolution of the complaint; and
- 2) Direct the responding student to contact the Dean of Students (or designee) within a specified period of time to respond to the complaint. This time period will generally be no less than two days<sup>9</sup> from the date of delivery of the summons letter.

A meeting with the Dean of Students (or designee) may be arranged to explain the nature of the complaint and the conduct process. At this meeting, the responding student may indicate, either verbally or in writing, to the Dean of Students (or designee), whether they admit to or deny the allegations of the complaint.

## **I. Interim Action**

Under the *Code of Student Conduct*, the Dean of Students or designee may impose restrictions and/or separate a student from the community pending the scheduling of a

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<sup>9</sup> "Day", used throughout this document, refers to normal business days when the College/University is in operation.



campus hearing on alleged violation(s) of the *Code of Student Conduct* when a student represents a threat of serious harm to others, is facing allegations of serious criminal activity, to preserve the integrity of an investigation, to preserve University property and/or to prevent disruption of, or interference with, the normal operations of the University. Interim actions can include separation from the institution or restrictions on participation in the community for no more than ten (10) business days pending the scheduling of a campus hearing on alleged violation(s) of the *Code of Student Conduct*. **[A student who receives an interim suspension may request a meeting with the Dean of Students or designee to demonstrate why an interim suspension is not merited. Regardless of the outcome of this meeting, the University may still proceed with the scheduling of a campus hearing].**

During an interim suspension, a student may be denied access to University housing and/or the University campus/facilities/events. As determined appropriate by the Dean of Students, this restriction may include classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the Dean of Students and with the approval of, and in collaboration with, the appropriate Dean(s), alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding student.

## **J. Hearing Options & Preparation**

The following sub-sections describe the University's conduct hearing processes. Except in a complaint involving failure to comply with the summons of the Dean of Students (or designee), no student may be found to have violated the *Code of Student Conduct* solely as a result of the student's failure to appear for a hearing. In all such instances, conduct hearings will proceed as scheduled and the information in support of the complaint will be presented to, and considered by, the Dean of Students, AHO or panel presiding over the hearing.

Where the responding student admits to violating the *Code of Student Conduct*, the Dean of Students (or designee) may invoke administrative hearing procedures to determine and administer appropriate sanctions without a formal hearing. This process is also known as an *administrative conference*. In an administrative conference, complaints will be heard and determinations will be made by the Dean of Students or designee.

Where the responding student denies violating the *Code of Student Conduct*, a formal hearing will be conducted. This process is known as a panel hearing. At the discretion of the Director of Student Conduct (or designee), a request by one or more of the parties to the complaint for an administrative conference may be considered. Students who deny a violation for which a panel hearing will be held will be given a minimum of seven **[3,5,7]** days to prepare unless all parties wish to proceed more quickly. Preparation for a formal hearing is summarized in the following guidelines:

- 1) Notice of the time, date and location of the hearing will be in writing and may be delivered by one or more of the following methods: in person by the Dean of Students (or designee); mailed to the local or permanent address of the student as indicated in official University records; or emailed to the student's University-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered.
- 2) If there is an alleged victim of the conduct in question, the alleged victim may serve as the party bringing the complaint or may elect to have the University administration serve as the party bringing the complaint forward. Where there is no alleged victim, the University administration will serve as the party bringing the complaint forward.
- 3) If a responding student fails to respond to notice from the Dean of Student (or designee), the Dean of Students (or designee) may initiate a complaint against the student for failure to comply with the directives of a University official and give notice of this offense. Unless the student responds to this notice within two days by answering the original notice, an administrative conference may be scheduled and held on the student's behalf. As a result, the student may be administratively withdrawn from attending classes or a disciplinary hold may be placed on their University account, deeming them ineligible to register for courses or University housing until such time as the student responds to the initial complaint.
- 4) At least three (3) days before any scheduled formal hearing, the following will occur:
  - a) The responding student will deliver to the Dean of Students (or designee) a written response to the complaint;
  - b) The responding student will deliver to the Dean of Students(or designee) a written list of all witnesses for the University/College to call at the hearing;
  - c) The responding student will deliver to the Dean of Students (or designee) all physical evidence the student intends to use or needs to have present at the hearing and will indicate who has possession or custody of such evidence, if known, so that the Dean of Students can arrange for its presence;
  - d) The party bringing the complaint will deliver to the Dean of Students (or designee) a written list of all witnesses for the University to call at the hearing;

- e) The party bringing the complaint will deliver to the Director of Student Conduct (or designee) all items of physical evidence needed at the hearing and will indicate who has possession or custody of such evidence, if known, so that the Director of Student Conduct can arrange for its presence;
  - f) The party bringing the complaint and the responding student will notify the Director of Student Conduct (or designee) of the names of any advisors/advocates who may be accompanying the parties at the hearing.
- 5) The Dean of Students (or designee) will ensure that the hearing information and any other available written documentation is shared with the parties at least two (2) days before any scheduled hearing. In addition, the parties will be given a list of the names of all the panelists in advance. Should any party object to any panelist, that party must raise all objections, in writing, to the Dean of Students immediately. Hearing officers will only be unseated if the Dean of Students concludes that their bias precludes an impartial hearing of the complaint. Additionally, any panelist who feels they cannot make an objective determination must recuse themselves from the proceedings.

#### **K. Panel Hearing Procedures**

The Dean of Students will appoint one panelist as the Chair for the hearing. The parties have the right to be present at the hearing; however, they do not have the right to be present during deliberations. If a student cannot attend the hearing, it is that student's responsibility to notify the Dean of Students no less than three (3) days prior to the scheduled hearing to arrange for another date, time and location. Except in cases of grave or unforeseen circumstances, if the responding student fails to give the requisite minimum three (3) day notice, or if the responding student fails to appear, the hearing will proceed as scheduled. If the party bringing the complaint fails to appear, the complaint may be dropped unless Henderson chooses to pursue the allegation on its own behalf, as determined by the Dean of Students.

The Dean of Students (or designee), the Chair and the Panel will conduct panel hearings according to the following guidelines:

- 1) Hearings will be closed to the public.
- 2) Admission to the hearing of persons other than the parties involved will be at the discretion of the panel chair and the Dean of Students.

- 3) In hearings involving more than one responding student, the standard procedure will be to hear the complaints jointly; however, the Dean of Students may permit the hearing pertinent to each responding student to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding student.
- 4) The parties have the right to an advisor/advocate of their own choosing, including attorneys. Typically advisors are members of the campus community, but the parties may select whomever they wish to serve as their advisor.<sup>10</sup> The advisor may not make a presentation or represent the party bringing the complaint or responding student during the hearing. They may confer quietly with their advisee, exchange notes, clarify procedural questions with the chair and suggest questions to their advisee.<sup>11</sup>
- 5) The party bringing the complaint, the responding student, the panel, and the Dean of Students (or designee) will have the privilege of questioning all present witnesses and questioning all present parties (directly or through the Chair, at the discretion of the Chair). Unduly repetitive witnesses can be limited at the discretion of the **[panel Chair and/or the Dean of Students, or designee]**.
- 6) Pertinent records, exhibits, and written statements may be accepted as information for consideration by the panel and the Dean of Students. Formal rules of evidence are not observed. The **[panel Chair and/or the Dean of Students, or designee]** may limit the number of character witnesses presented or may accept written affidavits of character instead.
- 7) All procedural questions are subject to the final decision of the Dean of Students **[or panel Chair]**.
- 8) After a panel hearing, the panel will deliberate and determine, by majority vote, whether it is more likely than not that the responding student has violated the *Code of Student Conduct*. The Dean of Students (or designee) will be present and available as a resource during all deliberations. Once a finding is determined, if the finding is that of a policy violation, the panel will determine an appropriate sanction(s). The Dean of Students (or designee) is responsible for informing the panel of applicable precedent and any previous conduct violations or other relevant pattern information about the responding student. The panel Chairperson will prepare a written deliberation report and deliver it to the Dean of Students, detailing the recommended finding, how each member voted, the information cited by the panel in support of its recommendation, and any

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<sup>10</sup> Note that some jurisdictions (e.g.: North Carolina) require institutions to permit attorney participation in a hearing.

<sup>11</sup> *See Id.*

information the panel excluded from its consideration and why. This report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Dean of Students within two (2) days of the end of deliberations.

- 9) The Dean of Students will consider the recommendations of the panel, may make appropriate modifications to the panel's report and will then render a decision and inform the responding student and party bringing the complaint (if applicable by law or Henderson policy) of the final determination within two (2) days of the hearing. Notification will be made in writing and may be delivered by one or more of the following methods: in person by the Dean of Students (or designee); mailed to the local or permanent address of the student as indicated in official Henderson records; or emailed to the student's University issued email account. Once mailed, emailed and/or received in-person, such notice will be presumptively delivered. In cases of sexual misconduct and other crimes of violence, notice of the outcome will be delivered to all parties simultaneously, meaning without substantial delay between the notifications to each.
- 10) There will be a single verbatim record, such as an audio recording, for all panel hearings. Deliberations will not be recorded. The record will be the property of Henderson and maintained according to Henderson's record retention policy.

#### **L. Conduct Sanctions**

One or more of following sanctions may be imposed upon any student for any single violation of the *Code of Student Conduct*:

- 1) *Warning*: An official written notice that the student has violated Henderson policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at Henderson State University.
- 2) *Restitution*: Compensation for damage caused to the Henderson or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
- 3) *Fines*: Reasonable fines may be imposed. Fines are specified to include:
- 4) *Community/University Service Requirements*: For a student or organization to complete a specific supervised Henderson service.

- 5) *Loss of Privileges*: The student will be denied specified privileges for a designated period of time.
- 6) *Confiscation of Prohibited Property*: Items whose presence is in violation of Henderson policy will be confiscated and will become the property of Henderson. Prohibited items may be returned to the owner at the discretion of the Dean of Students and/or Campus Police.
- 7) *Behavioral Requirement*: This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- 8) *Educational Program*: Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- 9) *Restriction of Visitation Privileges*: May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- 10) *University/Residence Life Probation*: Official notice that, should further violations of Residence Life or Henderson policies occur during a specified probationary period, the student may immediately be removed from Henderson housing. Regular probationary meetings may also be imposed.
- 11) *Henderson State University Housing Reassignment*: Reassignment to another University housing facility. Residential Life personnel will decide on the reassignment details.
- 12) *Henderson State University Housing Suspension*: Removal from Henderson housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to Henderson housing may be specified. Under this sanction, a student is required to vacate Henderson housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Housing and Residence Life. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for Henderson housing, the student must gain permission from the Director of Housing and Residence Life (or designee). This sanction may include restrictions on visitation to specified buildings or all Henderson housing during the suspension.
- 13) *Henderson Housing Expulsion*: The student's privilege to live in, or visit, any Henderson housing structure is revoked indefinitely. This sanction may be

enforced with a trespass action if deemed necessary.

- 14) *Henderson Probation*: The student is put on official notice that, should further violations of Henderson policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
- 15) *Eligibility Restriction*: The student is deemed “not in good standing” with the Henderson for a specified period of time. Specific limitations or exceptions may be granted by the Dean of Students and terms of this conduct sanction may include, but are not limited to, the following:
  - a) Ineligibility to hold any office in any student organization recognized by Henderson or hold an elected or appointed office at Henderson State University; or
  - b) Ineligibility to represent Henderson to anyone outside the Henderson community in any way including: participating in the study abroad program, attending conferences, or representing Henderson at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
- 16) *Henderson Suspension*: Separation from Henderson for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Dean of Students. During the suspension period, the student is banned from university property, functions, events and activities without prior written approval from the Dean of Students. This sanction may be enforced with a trespass action as necessary. **[This sanction will be noted as a Conduct Suspension on the student’s official academic transcript]**
- 17) *Henderson Expulsion*: Permanent separation from Henderson State University. The student is banned from university property and the student’s presence at any Henderson-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary. **[This sanction will be noted as a Conduct Expulsion on the student’s official academic transcript].**
- 18) *Other Sanctions*: Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Dean of Students or designee.

The following sanctions may be imposed upon groups or organizations found to have violated the *Code of Student Conduct*:

- 1) One or more of the sanctions listed above, specifically *a)* through *i)* and *o)* through *q)*; and/or
- 2) Deactivation, de-recognition, loss of all privileges (including status as a Henderson registered group/organization), for a specified period of time.

#### **M. Parental Notification**

Henderson State University reserves the right to notify the parents/guardians of dependent students regarding any conduct situation, particularly alcohol and other drug violations. Henderson may also notify parents/guardians of non-dependent students who are under the age of 21 of alcohol and/or other drug violations. Parental notification may also be utilized discretionarily by administrators when permitted by FERPA or consent of the student.

#### **N. Notification of Outcomes**

The outcome of a campus hearing is part of the education record of the responding student and is protected from release under the Federal Education Rights and Privacy Act (FERPA), except under certain conditions. As allowed by FERPA, when a student is accused of a policy violation that would constitute a “crime of violence” or forcible or nonforcible sex offense, Henderson will inform the alleged victim/party bringing the complaint in writing of the final results of a hearing regardless of whether Henderson concludes that a violation was committed. Such release of information may only include the alleged student’s/responding student’s name, the violation committed, and the sanctions assigned (if applicable). In cases of sexual misconduct and other offenses covered by Title IX, only, the rationale for the outcome will also be shared with all parties to the complaint in addition to the finding and sanction(s).

In cases where Henderson determines through the student conduct process that a student violated a policy that would constitute a “crime of violence” or nonforcible sex offense, Henderson may also release the above information publicly and/or to any third party. FERPA defines “crimes of violence” to include:

- 1) Arson
- 2) Assault offenses (includes stalking)
- 3) Burglary
- 4) Criminal Homicide—manslaughter by negligence
- 5) Criminal Homicide—murder and nonnegligent manslaughter



- 6) Destruction/damage/vandalism of property
- 7) Kidnapping/abduction
- 8) Robbery
- 9) Forcible sex offences
- 10) Non-forcible sex offences

#### **O. Failure to Complete Conduct Sanctions**

All students, as members of the Henderson community, are expected to comply with conduct sanctions within the timeframe specified by the Dean of Students or Administrative Hearing **[Conference]** Officer. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions and/or suspension from Henderson State University **[and may be noted on, or with, the student's official transcript at the end of the semester]**. In such situations, resident students will be required to vacate Henderson housing within 24 hours of notification by the Dean of Students though this deadline may be extended upon application to, and at the discretion of, the Director of Housing and Residence Life and/or the Dean of Students. A suspension will only be lifted when compliance with conduct sanctions is satisfactorily achieved. This determination will be made by the Dean of Students.

#### **P. Appeal Review Procedures**

Any party may request an appeal of the decision of the Panel/Administrative Conference by filing a written request to the Dean of Students, subject to the procedures outlined below. All sanctions imposed by the original hearing body remain in effect, and all parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.

#### **GROUNDINGS FOR APPEAL REQUESTS**

Appeals requests are limited to the following grounds:

- 1) A procedural **[or substantive error]** occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
- 2) To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
- 3) The sanctions imposed are substantially outside the parameters or guidelines set by Henderson State University for this type of offense or the cumulative conduct record of the responding student.

Appeals must be filed in writing with the Dean of Students within three **(3)** business days of the notice of the outcome to the hearing, barring exigent circumstances. Any exceptions are made at the discretion of the Dean of Students and, when appropriate, the Title IX Coordinator.

The Dean of Students will share the appeal by one party with the other party (parties) when appropriate under procedure or law (e.g., if the responding student appeals, the appeal is shared with the complainant, who may also wish to file a response, request an appeal on the same grounds or different grounds). The Dean of Students will refer the request(s) to the Henderson's designated Appeal Review Officer, appointed by [the President]. The Dean of Students will also draft a response memorandum to the appeal request(s), based on the Appeal Review Officer's determination that the request(s) will be granted or denied, and why. All request-related documents are shared with all parties prior to submission to the Appeal Review Officer, who serves a three-year term.

The Appeal Review Officer will conduct an initial review to determine if the appeal request meets the limited grounds and is timely. They may consult with the Dean of Students and/or Title IX Coordinator on any procedural or substantive questions that arise.

If the appeal is not timely or substantively eligible, the original finding and sanction will stand and the decision is final. If the appeal has standing, the Appeal Review Officer determines whether to refer the appeal to the Appeals Panel or to remand it to the original decision-maker(s), typically within 3-5 business days. Efforts should be made to use remand whenever possible, with clear instructions for reconsideration only in light of the granted appeal grounds. Where the original decision-maker may be unduly biased by a procedural or substantive error, a new panel will be constituted to reconsider the matter, which can in turn be appealed, once. Full rehearings by the Appeals Panel are not permitted **[are very rarely used]**. Where new evidence is presented or the sanction is challenged, the Appeals Review Officer will determine if the matter should be returned to the original decision-maker for reconsideration or if it should be reviewed by the Appeals Panel with instruction on the parameters regarding institutional consistency and any applicable legal guidelines. In review, the original finding and sanction are presumed to have been decided reasonably and appropriately, thus the burden is on the appealing party(ies) to show clear error. The Appeals Panel must limit its review to the challenges presented.

On reconsideration, the Appeals Panel or original decision-maker may affirm or change the findings and/or sanctions of the original hearing body according to the permissible grounds. Procedural **[or substantive]** errors should be corrected, new evidence should be considered, and sanctions should be proportionate to the severity of the violation and the student's cumulative conduct record.

All decisions of the Appeals Panel are to be made within five (5) days of submission to the Panel and are final, as are any decisions made by the original hearing body, Dean of Students or Title IX Coordinator as the result of reconsideration consistent with instructions from the Appeal Review Officer.

## **THE APPEALS PANEL**

Three-member Appeals Panels are drawn from the hearing panel pool, with the following requirements to serve

- 1) they did not serve on the Panel for the initial hearing
- 2) they were not involved in the investigation in any way
- 3) they have been properly trained in appeals procedures

If the institution allows for students to serve in the panel pool, they must:

- 1) Be in academic good standing and have completed 15 hours of academic credit with a cumulative GPA of at least 2.5.
- 2) Be in good standing with respect to the conduct process throughout the term in which they serve. Good standing is defined as having no record of misconduct during the semester(s) in which a student wishes to serve on the panel, as well as not currently being on any probation. A serious history of misconduct could disqualify a student for service.

The Appeal Review Officer will have final authority to approve all those serving on the panel. The parties may challenge a panelist(s) on the basis of potential bias, and any panelist who cannot render an impartial decision must recuse themselves. The Appeals Review Officer will make the determination as to the validity of any challenge or need for recusal. In the event of a recusal from the panel, the Appeals Review Officer will solicit a replacement from the pool of panelists.

The Dean of Students or designee serves as the non-voting advisor to the panel, with responsibility for training the panel, conducting preliminary investigations, and ensuring a fair process for the complainant and responding student.

The presumptive stance of Henderson is that all decisions made and sanctions imposed by the original decision-maker are to be implemented during the appellate process. At the discretion of the Dean of Students, and in consultation with the Title IX Coordinator when necessary, implementation of sanctions may be stayed pending review only in extremely exigent circumstances. This does not include proximity to graduation, end of term, or exams. Instead, it refers to an overwhelming likelihood, as determined by the Appeals Review Officer and Dean of Students, in consultation, that the appeal would result in a reversal of the finding and/or substantial modification of the sanctions.

## **OTHER GUIDELINES FOR APPEALS**

- All parties will be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original decision-maker for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal; Witnesses may be called if necessary.
- Appeals are not an opportunity for appeals panelists to substitute their judgment for that of the original decision-maker merely because they disagree with the finding and/or sanctions. Appeals decisions are to be deferential to the original decision-maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.
- Under certain circumstances as determined by the Dean of Students and/or Appeals Review Officer, the Vice-President for Student and External Affairs may serve as a final step in the appeals process.

#### **Q. Disciplinary Records**

All conduct records are maintained by Henderson State University for seven (7) years from the time of their creation except those that result in separation (suspension or expulsion, including from housing) and those that fall under Title IX, which are maintained indefinitely.

#### **R. Approval and Implementation**

This *Code of Student Conduct* was approved by the Henderson State University Executive Council, and implemented on July 1, 2015.