

CUNY RESIDENCE HALL DISCIPLINARY PROCEDURES

I. Introduction

These procedures are intended to apply to all CUNY- owned and/or - operated residence halls (referred to as “CUNY residence halls.”) CUNY- owned buildings refers both to buildings operated by CUNY as the owner and those owned by CUNY but operated by a private company on behalf of CUNY. CUNY- operated buildings are buildings for which CUNY is responsible for the management of the building, regardless of whether CUNY owns the building. The purpose of these procedures is to protect the health and safety of the entire residence hall community. These procedures provide for discipline of students who live in residence halls who violate the rules governing student conduct applicable to CUNY students. At the same time, these procedures are designed to ensure that the due process rights of student residents accused of engaging in inappropriate conduct are respected.

II. Applicable Rules of Conduct

All students who live in CUNY residence halls are expected to behave lawfully and responsibly. They are expected not to engage in conduct that threatens or causes harm to others or interferes with the working or learning environment of others. All resident students must comply with local, state and federal laws, including the Henderson Rules (N.Y. State Education Law, Article 129-A) and with CUNY and College policies. In addition, each CUNY residence hall should have written rules that are distributed to residents governing appropriate conduct in the residence hall. Students who violate their residence hall’s rules concerning behavior in the residence hall will be subject to discipline under these residence hall disciplinary procedures.

To the extent that the conduct at issue also violates local, state or federal law (including the Henderson Rules) or other CUNY or College policies, a student will be subject to discipline under Article XV of CUNY’s Bylaws (“Article XV”) as an alternative to disciplinary proceedings invoked under these residence hall procedures. In cases in which the conduct is serious and the sanction might involve suspension or expulsion from the University, rather than a sanction solely relating to future conduct and tenure at the residence hall, Article XV procedures should be invoked instead of residence hall disciplinary procedures. Further, in all cases involving a possible violation of CUNY’s Sexual Misconduct Policy (cases involving alleged sexual misconduct, including cases of sexual harassment, gender-based harassment, or sexual violence), the cases must be reported to the applicable CUNY College’s Title IX coordinator for applicable interim measures, investigation and potential discipline under Article XV.

Further, if a student’s conduct threatens harm to him or herself or others or substantially disrupts the learning or working environment of others, and is connected to a mental health or other medical issue, that conduct should be addressed under CUNY’s Medical Withdrawal and Re-entry Policy and Procedures (“Medical Withdrawal Policy”).

III. Emergency Situations

A. Emergency interim removal

If a resident's behavior presents an immediate, severe and direct threat to him or herself or others (by evidencing a likelihood of harm to him or herself or others), or is substantially disrupting the learning or working environment of others, the Residence Hall Director ("RHD") may remove the resident from the residence hall for a period not to exceed seven business days, pending the results of administrative proceedings or, where mental health issues are present, psychological evaluation. The RHD must consult with the College's Chief Student Affairs Officer or designee and Chief of the Department of Public Safety or designee before deciding on and effectuating such removal unless the situation presents an immediate danger. If the need for removal is immediate, the RHD must consult with the above-referenced College officials as soon as practicable following such removal.

The fact that a resident has threatened to commit or attempted to commit suicide, however, may not, in and of itself, be used as the basis for an emergency interim removal. In such a circumstance, the RHD should contact the College's Chief Student Affairs Officer or designee, who shall arrange for the resident to be referred to a mental health professional under the Medical Withdrawal Policy for an assessment of whether the resident presents a direct threat to him or herself or others.

Following an emergency interim removal of a student, the next step in the applicable and appropriate process (either under these procedures, the Medical Withdrawal Policy, or Article XV) should be taken as soon as practicable, and in no event later than the time deadlines outlined in the applicable policy.

B. Emergency interim relocation

A student may be relocated from one area of a residence hall to a different location in that building or, if applicable, to a different building in the complex. Room relocation may also be imposed as an interim measure under CUNY's Sexual Misconduct Policy.

This relocation may be made permanent or temporary until a permanent space is located by the residence hall staff. The interim relocation shall become immediately effective without prior notice whenever there is evidence that the student's continued presence in the current residence poses a significant disruption to other persons or property or to the stability and continuance of normal housing functions.

Following an emergency interim relocation of a student, the next step in the applicable and appropriate process (either under these procedures, the Medical Withdrawal Policy, or Article XV, including in cases involving alleged sexual

misconduct) should be taken as soon as soon as practicable, and in no event later than the time deadlines outlined in the applicable policy.

IV. Disciplinary Procedures in the Residence Hall

A. Role of the Residence Hall Director

Each residence hall, whether managed directly by a CUNY college or by a private management company, will have a director (“RHD”), whose responsibilities will include oversight of the residence hall internal disciplinary process. The RHD may conduct investigations of complaints, mediation conferences, and disciplinary hearings under these procedures. If the RHD is involved in the investigation or attempted mediation of a case, he or she may not also adjudicate the case if it goes to a hearing. In that event, the RHD shall designate another residence hall professional staff member to conduct the hearing.

B. Complaint and Investigative Process

A complaint of a violation of a residence hall, College or CUNY policy may be submitted by anyone, including resident advisors (“RAs”), residence hall staff, or other staff or students including guests in the residence hall. The complaint must be in writing. Intentionally providing false information is a serious offense that will subject a person providing such intentionally false information to disciplinary action. Further, retaliation of any kind against witnesses or other participants in the investigative process is strictly prohibited and may result in separate disciplinary action.

If the complaint involves sexual misconduct because it alleges harassment, gender-based harassment, or sexual violence, the case must be reported to the applicable CUNY College’s Title IX coordinator for investigation and for potential discipline under Article XV. In all other cases, the complaint should be submitted to the RHD or designee for investigation, with a copy provided to the College’s Chief Student Affairs Officer. The RHD or designee will assess the incident and identify any alleged policy violations. If he or she determines that policies may have been violated, he or she will investigate by interviewing witnesses and gathering relevant documents. Investigations should be completed within thirty days, except that they must be completed within seven days if the student has been removed from the residence hall under the emergency interim removal procedure or if the student has been relocated within the residence hall or complex under the emergency interim relocation procedure.

After the investigation has been completed, the RHD or designee will determine if residence hall, CUNY and/or College policy was violated. If so, and if the matter is not referred to the College’s Chief Student Affairs Officer, the RHD or designee will refer the incident for informal mediation through the residence hall’s procedures. Alternatively, in the event of a determination (in consultation with the College’s Chief Student Affairs Officer) that the matter presents a serious violation of CUNY and/or College policies (including but not limited to the Henderson Rules) for which the appropriate sanction might involve suspension or expulsion from the University, the RHD or designee will refer the case to the College’s Chief Student Affairs Officer for all

further action under Article XV of CUNY's Bylaws or, if applicable and appropriate, the Medical Withdrawal Policy.

C. The Mediation Process

The first step in the mediation process ordinarily should be a meeting between the accused student ("respondent") and the RHD or designee. In cases involving minor infractions, a policy clarification notice letter may be sent in lieu of initiating the mediation process. Should the student wish to contest the policy clarification letter and engage in mediation instead, the student must send a written request for mediation to the RHD within five business days from receipt of the policy clarification letter.

The RHD or designee will conduct the mediation conference. At the conference, the findings of the investigation will be discussed with the student with an effort toward resolving the case. There are three potential outcomes to mediation. First, the case may be resolved by mutual agreement, which may include the imposition of sanctions for violations of policy (if a student admits responsibility for such violations). Second, if no agreement is reached, the matter may proceed to a formal disciplinary hearing under these procedures. Third, if the student effectively demonstrates that the investigation's findings are incorrect, the allegations may be dismissed as unfounded.

Failure to attend an assigned mediation conference may result in the student being charged with an additional violation of residence hall rules and the scheduling of a disciplinary hearing.

D. Disciplinary Hearing

1. Notice to Students

Notice of the charge(s) and the time and place of the hearing must be sent to the student's college e-mail address and, by regular mail or hand delivery, to the student's residence hall address or by regular mail to the student's other current resident address, if the student is no longer living in the residence hall (or, if unknown, the student's permanent home address). The notice must contain a summary of the student's procedural rights at the hearing, as listed below. The student should be given a minimum of seven calendar days notice of the date of the hearing.

2. General Rules

In general, the model for the disciplinary hearing is an administrative proceeding, not a criminal or civil trial. Accordingly, criminal or civil trial procedures and rules of evidence do not apply. As long as the student rights outlined in this policy are observed, the Hearing Officer will have considerable discretion with respect to procedural requirements so as to facilitate a fair and expeditious decision.

Hearings will be closed to the public, except that an open hearing may be held, at the discretion of the presiding adjudicator(s), if requested by the respondent. The case against the respondent will be presented by the RHD or designee. The RHD may serve as the Hearing Officer for the case if he or she were not involved in the investigation or attempted mediation process. In the event of prior involvement in the case by the RHD, a residence hall or student affairs professional staff member with no prior involvement will be the Hearing Officer.

The Hearing Officer will inform the respondent of the charges, the hearing procedures, and his or her rights. The student shall then be asked for a plea of “responsible” or “not responsible.” If the student pleads “responsible,” he or she will be given an opportunity to explain his or her actions and to discuss the appropriate sanction, if any. If the student pleads “not responsible,” the hearing will proceed to determination on the student’s culpability. The Hearing Officer will determine whether the student is responsible by reviewing the evidence presented and applying a preponderance of the evidence standard.

If the respondent does not attend the hearing, and does not present a reasonable excuse for non-attendance to the RHD or designee, the hearing may be held in the student’s absence. The Hearing Officer will consider the evidence and make a determination based on the evidence available. The absence of a student may give rise to an inference of responsibility, but may not be treated, by itself, as sufficient to demonstrate responsibility by a preponderance of the evidence.

3. Summary of Student Procedural Rights at the Hearing

- The right to a confidential, closed hearing.
- The right to present the student’s version of the incident.
- The right to present witnesses and documentary evidence on the student’s behalf.
- The right to cross-examine witnesses presenting evidence at the hearing.
- The right to receive copies of documents introduced into evidence at the hearing.
- The right to be represented by legal counsel or an advisor at the student’s expense; the advisor does not act as an advocate for the resident and is not authorized to address the Hearing Officer. The advisor must indicate relevant professional affiliation (if any), as well as name and relationship to the respondent. RAs are not permitted to serve as advisors to respondents. The process will not be delayed due to the unavailability of an advisor.
- The right to take written notes during the hearing, but not to use recording devices. The RHD’s office, however, will be responsible for recording the hearing, and must make a copy of that recording available to the student upon request.
- The right to a written decision based on a preponderance of the evidence.
- The right to appeal a determination after a hearing.

4. Witnesses

The respondent and the residence hall staff member presenting the case each may present witnesses. Witnesses may participate in the process by answering questions posed during the hearing or by providing a signed statement. Witnesses will be asked to affirm that their statements are truthful. Questions may be posed to witnesses by the Hearing Officer, the respondent, and the professional staff member presenting the case against the student.

5. Documentary Evidence

Respondents may introduce documentary evidence on their behalf at the hearing. CUNY adheres to federal law, the Federal Education Rights and Privacy Act (“FERPA”), which governs the permissible release of “education records.” Education records include records relating to students’ residency in residence halls. Except in emergency situations or for other good cause, requested copies will be provided to a respondent prior to a disciplinary hearing on that student’s case. However, redactions will be made to the copies if required by law.

6. Determination

a. Responsibility

Once all of the evidence is presented, the hearing will be adjourned for the Hearing Officer to make a determination. A student will be found responsible for a violation of residence hall rules if the case against the student was demonstrated by a preponderance of the evidence. In other words, the evidence must demonstrate that it was “more likely than not” that the respondent was responsible for a violation.

A written decision will be issued and appropriate sanctions, if any, imposed, within ten calendar days from the date of the hearing. The decision will be sent by the RHD by regular mail to the respondent’s residence hall mailbox or delivered by hand to the respondent’s room and to the student’s college e-mail address. In the event that the respondent is no longer residing in the residence hall, the RHD will send the decision to the student’s new address, or, if unknown, to the student’s permanent home address.

b. Educational Requirements and Sanctions

Students who are found responsible for a violation(s) may be subject to one or more educational requirements and/or sanctions. Respondents may also agree to educational requirements and/or sanctions in order to resolve a case during the mediation process. The following is a list of possible requirements and sanctions.

Educational requirement: Mandate that the student complete an educational program relevant to the violation, with the possibility of imposition of sanctions if the student fails to complete the program.

Warning: Written notice that the student has violated a rule and that continuation or repetition of the wrongful conduct may result in more severe disciplinary action.

Housing Probation: Imposition of a sanction that is deferred for a period of time and then expires, unless the student continues or repeats the wrongful conduct.

Loss of Privileges: Exclusion from participation in privileges for a specified period of time, including possible exclusion from certain areas of the residence hall.

Relocation: Interim or permanent relocation to another room/location within the hall.

Restitution: Reimbursement for damage to or misappropriation of property. It may also include restoring the property to its original condition, engaging in activities related to personal and/or academic growth and reflection, and/or providing service to the residence hall community.

Denial of Renewal: Denial of renewal option for future residence at the hall.

Residence Hall Suspension: Exclusion from the residence hall for a specified period of time, after which the student is eligible to return. It may also include specified conditions for re-admission. The student will have no access to the building during the period of suspension.

Residence Hall Dismissal: Permanent separation of the student from the residence hall and termination of a student's housing or license agreement, as applicable. Following dismissal, the student will have no access to the building.

E. Appeal

Students found responsible for violations after a disciplinary proceeding may submit a written appeal (via their email account or by regular mail) to an Appeal Officer within ten calendar days of the date of the decision. The Appeal Officer shall be the RHD, as long as he or she was not involved in an earlier stage of the proceedings at the Hearing or Mediation, and did not conduct the investigation. If the RHD had involvement with the case at an earlier stage, he or she should designate a staff member to decide the appeal. If there are no residence hall staff members who have not been involved in an earlier stage of the proceeding or investigation, the appeal will be decided by the College's Chief Student Affairs Officer or designee. If the sanction imposed is suspension or dismissal from the residence hall, the appeal shall be made directly to the College's Chief Student Affairs Officer or designee and not to the RHD or other residence hall staff member, even if they were not involved in the case at an earlier stage.

Unless the student has been subject to emergency interim removal or the written determination after the proceeding states that the student presents a direct threat to him or herself or others (by evidencing a likelihood of harm to him or herself or others), or is substantially disrupting the learning or working environment of others, the student may not be removed from the residence hall while his or her appeal is pending.

The appeal should include a written statement outlining the specific issues for which review is sought, and the grounds upon which exception is taken to the determination. Grounds for appeal are limited to the following:

- There is evidence that was not available at the hearing which, had it been available, would in all reasonable likelihood have produced a different finding on the student's responsibility for the alleged violation(s).
- The factual findings are "clearly erroneous" based on the evidence presented.
- There was a substantial procedural irregularity.
- The sanctions imposed are grossly disproportionate to the violation.

The Appeal Officer may either schedule a meeting with the student or decide the appeal solely on the content of the letter. The Appeal Officer may alter the findings if they are clearly erroneous, may reduce the sanctions imposed if they are disproportionate to the violation, and/or, in some cases, may remand for additional fact-finding to be made at a hearing. A determination on the Appeal should be issued within ten calendar days from the date of receipt of the appeal, and it should be mailed by regular mail or hand-delivered to the resident's residence hall address (or the resident's current address, if no longer living in the residence hall, or, if unknown, to the resident's permanent home address) and the resident's college e-mail address. The Appeal Officer's determination shall be final and not subject to further appeal.