Student Discipline: A Guide for Hearing Officers

[This guide is not a statement of official policy of The University of Texas System. It provides general advice and information for personnel at institutions who are involved in the student disciplinary process. The official rules, regulations, and policies related to student discipline are published in the Rules and Regulations of the Board of Regents of The University of Texas System (See Regents’ Rules and Regulations, Series 50000, Rule 50101) and the institutional Handbook of Operating Procedures and Catalog. A UT System institution hearing officer may contact an attorney in the UT System Office of General Counsel General Law Section for legal advice (512) 499-4462.]

I. Introduction to the Disciplinary Hearing:

A. Student Conduct: As members of the academic community, students are expected to observe the standards of conduct prescribed by the Board of Regents and the U.T. institution that the student attends. Any student who engages in conduct that violates the Regents’ Rules and Regulations, The U.T. System or institutional rules is subject to one or more of the disciplinary penalties listed in the Regents’ Rules and Regulations or rules of the U.T. institution.

B. Authority for Student Discipline and Hearings:

1. The Board of Regents: The Board of Regents of The University of Texas System (“Board of Regents”) is charged with responsibility for the governance of The University of Texas System (“U.T. System”). The Texas Legislature has given the Board of Regents the authority to adopt and enforce such rules and regulations as it deems necessary for the operation, control, and management of the U.T. System and the institutions of the U.T. System (“institutions”).

2. Regents’ Delegation: Each institution is also required to adopt rules and regulations related to student conduct and disciplinary procedures consistent with the Regents’ Rules and Regulations.

3. Faculty and Administrators: UT officials involved in the disciplinary process have a shared responsibility to ensure compliance with these rules including compliance with the procedures that are articulated.
C. **Applicable Rules and Regulations for Hearings:**

1. **Regents’ Rules and Regulations**: The *Rules and Regulations* adopted by the Board of Regents include provisions relating to the standards of conduct expected of students at the institutions of the U. T. System. These *Rules and Regulations* have been drafted to establish disciplinary hearing procedures that conform to the procedural due process requirements of state and federal courts. (See Regents’ *Rules and Regulations*, Series 50000, Rule 50101).

2. **Institution Rules and Regulations**: Each UT System institution Handbook of Operating Procedures should contain a policy and procedures related to student discipline. You may request a copy from the Dean of Students.

3. **Due Process**: A disciplinary penalty may not be imposed upon a student for engaging in prohibited conduct unless the student has been provided a process that conforms to certain minimal procedural due process standards. The Regents’ *Rules and Regulations* have been drafted to include procedures that serve to provide the student process. These procedures also serve to protect University officials from a student’s legal challenges to the disciplinary process. *All institutions of the U.T. System are required to use these procedures in student disciplinary matters.*

II. **Beginning the Disciplinary Process:**

A. **Investigation**: An allegation that a student has violated standards of conduct prescribed by the Board of Regents or a U.T. institution is investigated by the Dean (or other administrative official responsible for the administration of student discipline).

B. **Charges**: If after investigating the allegations, including discussing the allegations with the accused student, the Dean determines that the allegations are supported by the evidence the Dean will notify the student of the charges and available options to resolve them.

C. **Interim Discipline**: The Dean is authorized to take immediate interim disciplinary action appropriate to the circumstances pending a hearing. Authorized actions by the Dean include suspension and a bar from the campus when a student’s continuing presence poses a potential danger to persons or property or a potential threat of disrupting any authorized activity of the U.T. institution.

D. **Withhold Transcripts, Grades, Degrees**: The Dean may withhold the issuance of an official transcript, grade, diploma, certificate, or degree to a student alleged to have violated a rule or regulation of the U.T. System or its institutions if the alleged charges would reasonably lead to the imposition of such penalty upon a finding that the student is responsible for the charges. The Dean may take such action pending a hearing,
resolution by administrative disposition and/or exhaustion of appellate rights if the Dean has provided the student an opportunity to provide a preliminary response to the allegations and in the opinion of the Dean, the best interests of the U.T. System or the institution would be served by this action.

E. **Options Available to Resolve Charges:**

1. **Administrative Disposition and Agreed to Sanctions:** If the accused student elects not to dispute the facts upon which the charges are based and agrees to the sanctions the Dean assesses, the student may execute a written waiver of the hearing procedures and this administrative disposition shall be final with no subsequent appeal.

2. **Administrative Disposition and Appeal of Sanctions:** If the student elects not to dispute the facts upon which the charges are based, but does not agree with the sanctions assessed by the Dean, the student may execute a written waiver of the hearing procedures yet retain the right to appeal the decision of the Dean only on the issue of penalty to the President of an institution.

3. **Disciplinary Hearing:** If the student denies the facts upon which the charges are based, the institution will proceed with a disciplinary hearing before a hearing officer.

III. **The Hearing Officer:**

A. **Appointment:** When the student chooses to have a disciplinary hearing, a person is appointed to serve as Hearing Officer at the disciplinary hearing.

B. **Role and Responsibilities:** A “Hearing Officer” is an individual selected in accordance with procedures adopted by the institution to hear disciplinary charges, make findings of fact and, upon a finding of responsibility, impose an appropriate sanction(s).

1. **Pre-hearing Review:**

   a. Review the Regents’ *Rules and Regulations* and institutional policy.

   b. Review the Disciplinary Charges: Prior to the date set for the hearing (at least ten days prior except when interim disciplinary action has been taken), the Dean has provided the accused student a written notice that contains a statement of the disciplinary charges; a summary of the evidence supporting the charges; the name and office address of the Hearing Officer; and the date, time and place for the hearing. To the extent that the Dean has provided a copy of these charges and the documentation submitted by the parties related to the charges, the
Hearing Officer may review the materials to familiarize him/herself with the issues.

2. **Preside Over the Hearing**

3. **Write the Decision:** The Hearing Officer should make findings of fact, a conclusion regarding the student’s responsibility and assess sanctions, if any.

IV. **Pre-hearing Issues:**

A. **Challenge to Impartiality:** The concept of constitutional due process entitles an accused student to have disciplinary charges heard and decided by a fair and impartial Hearing Officer.

   1. **Written Challenge:** The Regents’ *Rules and Regulations* permit an accused student to challenge the impartiality of the Hearing Officer at least three (3) days prior to the hearing date. The challenge must be in writing; clearly state the facts supporting the challenge to fairness, impartiality and objectivity of the Hearing Officer; and be addressed and submitted to the Hearing Officer through the Office of the Dean.

   2. **No Automatic Disqualification:** The written challenge does not automatically disqualify the Hearing Officer.

   3. **Hearing Officer Decides:** The Hearing Officer is the **sole judge** of whether he or she is capable of considering the evidence and determining the facts with fairness and objectivity.

B. **Timing of Hearing:** It is essential to an effective disciplinary process that, to the extent possible, hearings take place when originally scheduled.

   1. **No Penalties Imposed Until After Hearing:** Unless an accused student waives the opportunity for a disciplinary hearing or interim discipline has been imposed, a disciplinary penalty may not be imposed until the student has been found responsible for the charges pursuant to the hearing procedures provided for in the Regents’ *Rules and Regulations*.

   2. **Interim Discipline Requires Immediate Hearing:** In cases where interim disciplinary action has been taken, the hearing generally must take place within ten (10) days after the date of the interim disciplinary action.

C. **Postponing Hearing Date:** Hearings may be postponed either by agreement of the parties or at the discretion of the Hearing Officer for “good cause.”
1. **Agreement of the Parties in Writing:** The Dean and the accused student may postpone the hearing date by agreement. The student should provide written confirmation of the agreed postponement and the new hearing date, and this will be provided to the Hearing Officer by the Dean for the record.

2. **Request Submitted to Hearing Officer:** In the absence of an agreement by the parties to postpone the hearing, the Hearing Officer has the authority to postpone a hearing to a date certain in the future for good cause. Requests for postponement must be stated in writing; be addressed and submitted to the Hearing Officer; and set forth the reason for the requested postponement.

3. **Facts that Demonstrate “good cause”:**
   
a. The Hearing Officer has the discretion, based on common sense and fairness to determine “good cause”.

b. Facts commonly alleged:
   
i. **Pending Criminal Matter:** The fact that a criminal matter is pending regarding the conduct that is the subject of the student discipline hearing does not itself constitute good cause. Courts have held that due process does not require that campus disciplinary hearings be postponed until after resolution of a criminal matter.

ii. **Time to obtain counsel**

4. **Record:** Any request and the response should be made part of the record of the student disciplinary proceedings.

D. **Exchange of Documents and Witness Lists:** Witnesses and documents, except those constituting rebuttal evidence, must be previously identified and exchanged no later than five (5) days prior to the hearing.

E. **Request to Compel Witness Attendance:** Neither the U.T. System nor the institutions have the authority to issue subpoenas to compel attendance of witnesses at the hearing. It is the responsibility of the parties to request their designated witnesses to appear at the hearing to provide testimony.

F. **Request to Dismiss Charges:** A student sometimes requests the Hearing Officer to dismiss the charges so that the student does not have to go through the hearing process. Arguments commonly asserted include:

1. **The Institution’s Lack of Jurisdiction:**

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a. No longer student: The Regents’ Rules and Regulations broadly define “student”; therefore, it is unlikely that this argument to dismiss the charge without hearing will have merit. “Student” includes those persons:
   i. currently enrolled,
   ii. accepted for admission or readmission,
   iii. enrolled in prior semester and eligible to reenroll in immediately following semester, or
   iv. engaged in prohibited conduct at a time when they met any of the previous criteria.

b. Off-campus conduct: The Regents’ Rules and Regulations extend to conduct taking place off-campus. The U.T. System and its institutions generally do not pursue all off-campus violations, but do pursue those that it determines to be detrimental to or that adversely affect the university environment. Courts have held that universities have a legitimate interest in maintaining student bodies that meet certain standards of character; thus, it is not a legitimate argument that the university is barred from pursuing off-campus charges.

2. Insufficient evidence: When considering this argument, the Hearing Officer should remember that the purpose of the hearing is to determine whether the evidence supports the charge(s).

3. Statute of limitations: When considering this argument, the Hearing Officer should remember that universities are not required to set a time limit after which they may not pursue charges.

G. No Pre-Hearing Ex Parte Discussion or Investigation: Hearing Officers may not entertain discussion or investigate ex parte.

1. The Record: The Hearing Officer’s decision must be solely based upon the record created at the hearing.

2. Attempts to Contact Hearing Officer: If contacted by any party, their advocate or witness, care must be exercised in responding to avoid discussing the facts of the case with any party, advocate, witness or potential witness, or other individual regarding the case prior to the hearing. The Office of General Counsel should be notified.
V. The Hearing:

A. Due Process: The concept of due process is that prior to a deprivation of protected interest process must be provided. But the process that is due is flexible depending on the severity of the deprivation. Currently, U.T. institution rules provide more process than courts have required for most student disciplinary cases. Accordingly, the Hearing Officer must ensure that disciplinary hearings comport with the Regents’ Rules and Regulations and institutional rules which have been written in accordance with federal and state due process requirements. The student’s due process includes:

1. the right to know the charges and the evidence;
2. the right to confront and examine witnesses;
3. the right to be represented by a person of her/his choice;
   a. Lawyers Permitted: Courts have held that a student is not entitled to a lawyer in a student disciplinary proceeding unless criminal charges are pending or there are other serious matters. However, U.T. System rules do allow students to be represented by a lawyer.
   b. Permitted Role of the Lawyer: The lawyer is only allowed to advise the student. The lawyer is not permitted to question witnesses or make arguments.
4. the right to be heard by an impartial body or officer; and
5. the right to have a copy of the proceeding for appeal process.

B. Recording of the Proceedings: Each hearing should be recorded. The Hearing Officer should ensure the recording mechanism is tested prior to the hearing.

C. Persons Present at Hearing: To avoid issues concerning invasion of accused student’s right of privacy or unauthorized disclosure of information from student records protected by the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), the hearing should be closed to everyone EXCEPT:

1. the Dean,
2. the accused student,
3. the advisor chosen by the student and/or the Dean,
4. the Hearing Officer,
5. the Hearing Officer’s legal counsel from the U.T. System Office of General Counsel (if requested),

6. the person making the official recording of the hearing,

7. other university officials with legitimate educational interests as determined by the dean, and

8. witnesses while giving testimony.

a. Witnesses should testify without regard to what other witnesses testifying at the hearing may say, therefore, the Hearing Officer should:

   i. require all potential witnesses, other than the accused student and the Dean, to leave the hearing room until such time as they are called to testify; and

   ii. instruct the witnesses not to discuss their testimony with any other witness.

D. **Student’s Absence:** With proof that notice of the hearing was sent in accordance with the rules, the hearing may proceed in the student’s absence.

E. **Introductory Statement:** It is recommended that the Hearing Officer begin the proceeding with a statement that outlines the hearing procedures and informs the parties that all procedural questions and all objections regarding exhibits or testimony are to be directed to and will be ruled upon by the Hearing Officer. The preparation of an introductory statement will help the Hearing Officer to become familiar with the procedure before the hearing begins. *(Attachment 1).* Such a statement:

1. establishes the Hearing Officer’s authority;

2. helps him or her take charge of the proceeding;

3. lets the parties know what will happen and in what order;

4. establishes order and decorum for the hearing; and

5. sets time limits for the hearing.

F. **Introduction and Admissibility of Evidence:** Witnesses must be identified and documents exchanged no later than five (5) days prior to the hearing unless the witness or document is offered as rebuttal evidence. The Hearing Officer must rule upon objections that are made to the admissibility of evidence offered by the parties.
1. **Formal Rules of Evidence do not apply:** The Hearing officer is sole judge regarding admissibility. Sometimes attorneys that participate in the process do not immediately recognize that the rules that apply in court proceedings do not apply in the student disciplinary process so the Hearing Officer should be prepared to make clear that the formal rules of evidence do not apply. *(Attachment 2)*. Nevertheless, the Hearing Officer should recognize the differences in quality of evidence.

   a. Relevancy:

      i. Evidence is relevant if it tends to prove or disprove the facts that are at issue. There should be some logical connection between the offered evidence and the facts that are in dispute.

      ii. Hearing Officers can either include or exclude irrelevant evidence. If included, irrelevance may be a factor in deciding the weight of the evidence to arrive at a fair and important decision.

   b. Hearsay:

      i. Testimony is hearsay if it is based upon what the witness has read or has been told by someone. The testimony of a witness, whether oral or in writing, should be based upon personal knowledge or observation of the witness.

      ii. Hearing Officers can either include or exclude hearsay evidence. If included hearsay may be a factor in deciding the weight of the evidence to arrive at a fair and impartial decision.

   c. Cumulative Evidence:

      i. Cumulative evidence is additional evidence of the same nature as that already admitted that is merely repetitious and has no probative value.

      ii. Evidence that is admissible but is merely cumulative of evidence already in the record may be excluded by the Hearing Officer upon objection or upon a determination by the Hearing Officer that further testimony on an issue becomes merely repetitive. This issue arises most often with testimony relating to the character of the accused student.

   d. Rebuttal Evidence:

      i. Rebuttal evidence is evidence introduced solely to show fault in an opponent’s evidence or argument at the hearing. Evidence
offered only as additional support to an argument made in a case in chief, if not offered to contradict, impeach or defuse the impact of the evidence offered by an adverse party, is not rebuttal evidence.

ii. Example: The police car video would generally not be rebuttal evidence in a DWI disciplinary case, because it relates to the main issue in the case. It should be part of the case-in-chief of the offering party and properly identified five (5) days prior to hearing.

iii. Example: During his testimony, a student states he has never attended a party where alcohol was served. The Dean of Students recalls that in another matter, a witness statement indicated that the student had been present at a party where alcohol was served. In this situation, the statement could be introduced as rebuttal evidence.

G. Examinations of Witnesses: The Dean and the accused student are entitled to have witnesses testify regarding the issues.

1. Attendance of Witnesses: Neither the U.T. System nor the institutions have the authority to issue subpoenas to compel attendance of witnesses at the hearing. It is the responsibility of the parties to request their designated witnesses to appear at the hearing to provide testimony.

2. Cross-examination: Witnesses called to testify by one party may be cross-examined by the other party.

3. Hearing Officer May Question Witnesses: The Hearing Officer is entitled and encouraged to ask questions of a witness if there is a need for clarification or the Hearing Officer believes an important point was missed. There is no set rule about when questions by the Hearing Officer may be asked, but it usually occurs after both parties have finished with their examination of the witness.

H. Control of the Order and Decorum of the Proceedings: Although the parties, their advisors, and witnesses are usually cooperative and respectful, Hearing Officers may occasionally have to contend with an over-zealous or over-controlling individual. There may be occasions when the parties, their advisors, or the witnesses are disruptive or refuse to stay within the scope of the issues in the case. Disruptive, rude, hostile or abusive conduct by anyone during the hearing should not be condoned and the Hearing Officer should stop such behavior if it occurs. Options available to the Hearing Officer to assist with an orderly hearing are:

1. To establish authority early in the hearing process and continue to exercise it throughout the hearing.
2. To be prepared by becoming familiar with the Regents’ *Rules and Regulations* relating to student discipline and the charge letter (since those two documents essentially set the limits of both the form and substance of the proceeding) prior to the hearing.

3. To identify the unacceptable behavior on the record with the Hearing Officer informing the person who is engaging in it to stop.

4. To exclude evidence from the record when the Hearing Officer has determined that his/her efforts to correct the behavior have gone unheeded.

5. To stop the hearing.

I. **Closing Statements and Dean’s Recommendation of Penalty:** After the presentation of the evidence has been concluded by both parties, each party may make a closing statement to the Hearing Officer that summarizes the evidence admitted and states the conclusions the Hearing Officer is requested to reach.

1. **The Dean’s Statements:** As the party with the burden of proof, the Dean has the right to make the first closing statement and may also make a final statement after the closing statement of the accused student.

2. **Dean Recommends Penalty:** The Dean’s first closing statement may include a recommendation regarding the penalty to be imposed in the event the Hearing Officer finds the student responsible for the alleged misconduct. The Dean’s recommendation may be based upon the past practice for misconduct of a similar nature, the past disciplinary record of the student, or other factors deemed relevant by the Dean.

3. **The Student’s Response to Penalty Recommendation:** The accused student is entitled to a closing statement and to respond to the penalty recommendation of the Dean in the student’s closing statement.

4. **Time Limits:** The Hearing Officer may establish a time limit for closing statements and require the parties to observe the time limits.

VI. **Requirements for Sexual Assault Cases:**

A. **Alleged Victim’s Rights During the Hearing:** The alleged victim’s rights during the hearing are:

1. to be present during entire hearing, notwithstanding the fact that the complainant is called as a witness;
2. to have a support person/advisor present during the hearing, but the support person may not speak during the hearing except to the alleged victim;

3. to not have irrelevant evidence of past sexual history with third parties admitted as evidence; and

4. to have a closed hearing.

B. **Alleged Victim’s Rights to Outcome:** The alleged victim has the right after the hearing to know the outcome of the hearing as indicated in FERPA.

VII. **Post Hearing Issues:**

A. **No Post-Hearing Ex Parte Discussion or Investigation:** Hearing Officers may not entertain discussion or investigate *ex parte*.

1. The Hearing Officer’s decision must be solely based upon the record created at the hearing.

2. Care must be exercised in responding to any parties, their advocates, witnesses or potential witnesses, or other individuals regarding the case subsequent to the hearing.

3. If contacted by any of the aforementioned individuals, Judicial Affairs or the Office of General Counsel should be notified.

4. Illustration – The *Than* Case: The court found that the Hearing Officer’s *ex parte* investigation violated due process.

   a. Facts: *Than* was a third year medical student accused of cheating on the NBME exam. Proctors witnessed Than looking at Chiang’s paper. Statistics were inconclusive. After visiting the classroom after the hearing, the Hearing Officer found sufficient evidence to support the charge of cheating and recommended expulsion. The President upheld the disciplinary penalty. A lawsuit was filed.

   b. Holding: Than’s due process rights were violated when the Hearing Officer viewed evidence outside the presence of the accused student. Specifically, the Hearing Officer sat in the chair occupied by Than and could see the paper on the desk that had been occupied by Chiang. The Hearing Officer placed considerable weight on this evidence, but Than did not have the opportunity to cross-examine to determine the height of individual, whether the individual was covering the test paper or whether the individual was leaning over the paper.
B. **Deciding the Case:** The Hearing Officer is required to render a written decision that makes findings of facts and a determination regarding the responsibility of the accused student.

1. **Determination of Responsibility:**

   a. **Burden of Proof:** The Dean has the burden to prove the allegations of misconduct by greater weight of credible evidence.

      i. “Credible evidence” is evidence that is believable.

      ii. The burden is met if there is more believable evidence that supports the truth of the charges than there is evidence that supports their falsity. The mere number of witnesses who testify for a party or who testify as to a particular issue is not controlling in determining whether this burden has been met.

      iii. Note: Do not confuse the hearing standard of “greater weight of credible evidence” with the criminal standard of “beyond a reasonable doubt.” The student disciplinary hearing standard is less stringent than the criminal standard.

   b. **Assessing Witness Credibility:** The Hearing Officer is the sole judge of the credibility of a witness.

      i. A witness is “credible” when he or she is believable.

      ii. In determining the credibility of a witness, the Hearing Officer may consider:

          • the demeanor of the witness,

          • the opportunity of the witness to observe events or to acquire knowledge that is the subject of the testimony,

          • any interest that the witness may have in the determination of the charges, or

          • any other factor that is relevant to determining whether the witness is believable.

      iii. **Difficult Cases:** While some cases may be easy to evaluate, many cases are difficult and only have a “he said/she said” scenario. Hearing Officers in this situation, not having other evidence to corroborate, must look to the credible evidence (ex: surrounding events, motives, etc).
c. Direct and Indirect Proof: The facts at issue may be proven by direct or indirect evidence.

i. “Direct evidence” is testimony by a witness who saw the events occur or who heard words spoken that establish the fact in question.

ii. “Indirect evidence” includes testimony or documents that establish collateral facts or circumstances from which the fact at issue may be inferred from common knowledge or experience.

2. Assessment of Penalty: If it is concluded that the accused student is responsible, an appropriate penalty will be assessed by the Hearing Officer from those penalties authorized in the Regents’ Rules and Regulations and the rules of the institution. The Hearing Officer should clearly state the specifics of the penalty. For example, if the penalty is probation or suspension, the Hearing Officer should specify the beginning date, ending date, the conditions applicable during the period of probation or suspension, and the penalty that will be imposed if the conditions are violated.

3. Issuing Decision: A copy of the decision must be delivered to the accused student and the Dean.

4. Sample Cases:

a. Falsifying application: In the Matter of the Disciplinary Charges against Tom Thomas (Attachment 3)

b. Scholastic Dishonesty: In the Matter of the Disciplinary Charges against Amber Cooper (Attachment 4)

c. Intimidation, Harassment, and Coercion: In the Matter of Disciplinary Charges against William Mitchell (Attachment 5)

C. Preserving the Record: The Hearing Officer has the responsibility to preserve, safeguard and maintain the confidentiality of the hearing record. Upon issuing a decision, the record must be returned to the Dean of Students. The record consists of:

1. Notice of charges
2. Record of proceeding
3. Decision(s) of Hearing Officer
4. Exhibits admitted
D. **Post Decision Role of the Hearing Officer:** The role of the Hearing Officer is completed upon transmission of the decision to the parties unless, upon appeal, the case is returned for the hearing to be reopened for the presentation of additional evidence.

VIII. **Appeals:** Either party may appeal the decision of the Hearing Officer to the President of the institution within fourteen (14) days after the appealing party has been notified of the decision or, if mailed, within fourteen (14) days of the date of mailing of the decision. The appeal must:

A. be in writing;

B. state the specific reasons for the appeal and include argument;

C. be sent to the other party; and

D. be stamped as received by the President’s office no later than fourteen (14) days after notified of the sanctions.

IX. **Disclosure of Students’ Records:**

A. **FERPA Rights:** A Hearing Officer is not responsible in his/her role as a Hearing Officer for providing records to other parties and any request for records to the Hearing Officer must be directed to the Dean. However, since a student disciplinary hearing involves student education records, a general knowledge of the federal law regarding student records is required. The University of Texas System and each University of Texas educational institution have implemented a student records policy pursuant to this law. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, is a federal law that provides students with the following rights with respect to their student educational records:

1. To inspect and review the student’s education records;

2. To consent to disclosure of the student’s education records to third parties, except to the extent that FERPA authorizes disclosure without consent;

3. To request amendment of the student’s education records to ensure that they are not inaccurate or misleading;

4. To be notified of the student’s privacy rights under FERPA; and

5. To file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA.
B. **Definitions:**

1. “Student” means an individual who is or who has been in attendance at a University of Texas System institution. It does not include persons who have been admitted but did not attend the U.T. institution. For the purposes of this policy, “attendance” includes attendance in person or by correspondence (including electronic correspondence) and the period during which a person is working under a work-study program.

2. “Educational records” include records directly related to a student that are maintained by the University. Education records do not include:

   a. records of instructional, administrative, and educational personnel that are in the sole possession of the maker (i.e. file notes of conversations), are used only as a personal memory aid, and are not accessible or revealed to any individual except a temporary substitute;

   b. records of the University campus police;

   c. student medical and counseling records created, maintained, and used only in connection with provision of medical treatment or counseling to the student, that are not disclosed to anyone other than the individuals providing the treatment. (While a student may not inspect his or her medical records, these records may be reviewed by a physician of the student’s choice);

   d. employment records unrelated to the student’s status as a student; or

   e. alumni records.

3. “Directory Information” means information in a student’s education record that would not generally be considered harmful or an invasion of privacy if disclosed.

   a. The University of Texas System institutions’ policies will generally designate the following minimum information as directory information:

      i. Student’s name;

      ii. Local and permanent address;

      iii. E-mail address;

      iv. Telephone number;

      v. Date and place of birth;
vi. Field of study;

vii. Dates of attendance;

viii. Enrollment status;

ix. Student classification;

x. Degrees, certificates and awards (including scholarships) received;

xi. Photographs;

xii. Participation in officially recognized activities and sports;

xiii. Weight and height of members of athletic teams; and

xiv. The most recent previous educational agency or institution attended.

4. “Official with legitimate educational interest” is a person employed by the University in an administrative, supervisory, academic, or support staff position (including law enforcement unit and health staff); a person or company with whom the University has a contract or affiliation (such as an attorney, auditor, collection agent or clinical facility); a member of Board of Trustees; or a person assisting another university official in performing his or her task, who needs to review an education record in order to fulfill his or her professional responsibility.

C. Disclosure of Student Education Records:

1. Disclosure Without Consent of Student:

a. Directory Information. Directory information (as defined above) may appear in public documents and may otherwise be disclosed without student consent unless a student submits a written request to the registrar during the first twelve (12) days of class of a fall or spring semester, the first four (4) class days of a summer semester, or the first three days of any quarter to withhold such information from disclosure. Requests to withhold directory information will generally be honored by the University for only the current enrollment period (this depends on the specific institutional policy); therefore, it may be necessary to file a request to withhold Directory Information each semester or term in the Office of the Registrar.
b. **Disclosure to University Officials.** University officials with legitimate educational interests in the student’s education records are allowed access to student education records. Inter-institutional disclosures may be made between institutions that administer or participate in joint programs or activities, in accordance with legitimate educational interest criteria.

c. **Health and Safety.** The University may disclose student information to persons in an emergency in order to protect the health and safety of the student or others in the University community. There are documentary requirements associated with the institution’s health and safety determination.

2. **Disclosure with Consent of Student:** With the student’s prior consent, the University will release personally identifiable student information in education records or allow access to those records. Such consent must be written, signed and dated, and must specify the records to be disclosed, the party to whom the records are to be disclosed, and the purpose of the disclosure.

3. **Disclosure to Student:**

   a. The student has the right, on request to the appropriate University official, to review all materials that are in the student’s education records, except:

      i. financial information submitted by the student’s parents;

      ii. confidential letters and recommendations associated with admissions, employment or job placement, or honors, to which the student has waived rights of inspection and review (the University is not required to permit students to inspect and review confidential letters and recommendations placed in their files prior to January 1, 1975, provided those letters were collected under established policies of confidentiality and were used only for the purposes for which they were collected); or

      iii. education records containing information about more than one student, in which case the University will permit access only to that part of the record that pertains to the inquiring student.

   b. Students may have copies of their educational records and this policy. Official copies of academic records or transcripts will not be released for students who have a delinquent financial obligation or financial “hold” at the University.
4. **Disclosure of Disciplinary Hearing Results:**

   a. **Disclosure to Victims:** The University may disclose to an alleged victim of any crime of violence (as that term is defined in Chapter 1, Section 16 of Title 18, United States Code), or a non-forcible sex offense, the final results of any disciplinary proceeding conducted by the University against the alleged perpetrator of such crime or offense with respect to such crime or offense, regardless of whether the alleged perpetrator was found responsible for violating the University’s rules or policies with respect to such crime or offense.

   b. **Disclosure to Third Parties:** The University may disclose the final results of any disciplinary proceeding against a student who is an alleged perpetrator of any crime of violence or non-forcible sex offense (as those terms are defined in 34 C.F.R. 99.39), for violating the University’s rules or policies with respect to such crime or offense. Such disclosure shall include only the name of the student, the violation committed, and any sanction imposed by the University on that student. Such disclosure may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

   c. **Alcohol and Drug Violations.** The University may disclose to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the University, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student’s education records, if the student is under the age of 21 at the time of disclosure to the parent, and the University determines that the student is responsible for a disciplinary violation with respect to such use or possession.

X. **Office of General Counsel:**

   A. **Role:** The Office of General Counsel is available to provide advice to University administrators acting within the role and scope of their assigned duties. Upon request of the Hearing Officer, an OGC attorney will be assigned to assist the Hearing Officer regarding these processes.

   B. **Resources:**

       [http://www.utsystem.edu/OGC/general/homepage.htm](http://www.utsystem.edu/OGC/general/homepage.htm); (512) 499-4462 – Office of General Counsel General Law Section
Attachments:  

Suggested Hearing Officer Outline

1. Introduction

“I am ___________________, ________________________ at The University of Texas at ___________________ and I will be the Hearing Officer for this disciplinary hearing.”

(Optional) “I will be advised by _____________________ of the Office of General Counsel of The University of Texas System, who will be present during this hearing.”

2. Identification of Parties/Advisors

“Would the parties identify themselves for the record?”

“Please provide me with your addresses for future correspondence.”

(Optional) “Will each party identify their advisor for the record?”

3. Format of Hearing

“We will use the procedures specified in the Regents’ Rules and Regulations Series 50000, Rule 50101.”

“The following is a brief overview of this hearing’s format.”

“Dean ________________ and __________________ have the right to present testimony by witnesses; to cross examine witnesses presenting testimony on behalf of the other party; to introduce exhibits; and to present a brief closing argument.”

“The University bears the burden of proving the allegations of misconduct by the greater weight of the credible evidence. As a result, the Dean will present his/her case first after which ________________ will present his/her case.”

“The form of cross-examination will be as follows: after each witness has been questioned by the presenting party, the other party will have the right to question the witness, which may be followed by a redirect examination and a recross examination. I may limit the redirect or recross if it becomes redundant or irrelevant. Further, I may ask questions of each witness. The witness may then be excused but is subject to recall.”

(Optional) “The parties may confer with their advisor during the hearing if necessary. The advisor may not question witnesses, introduce evidence, make objections, present argument, or be a witness.”
“I will rule on the admissibility of all testimony and other evidence and on all objections regarding admissibility of testimony and other evidence in the hearing. Generally, I will admit into evidence all information and material I determine to be relevant to the issues to be decided in this hearing. I will not allow irrelevant evidence or evidence that is repetitive. Because the hearing is informal, the rules of evidence as used in courts do not apply.”

“This hearing will be documented by a tape recording which will be the official recording of the hearing.”

“Following the presentation of all evidence, the Dean and ______________ will be allowed to make closing statements. The Dean shall have the right to make the initial statement, which may include a recommendation for a penalty and to make a rebuttal statement following the statement by ____________.”

“After the hearing is adjourned, I will provide both parties with a written decision that will contain findings of fact and a conclusion as to the responsibility of _______________. If ________________ is found responsible, I will assess a penalty or penalties authorized in the Regents’ Rules and Regulations and the University’s Handbook.”

4. Invoking “The Rule”

“At this time, I ask that any person who is to testify as a witness in the proceeding, other than the Dean and ______________, to leave the room until such time as he or she is called to testify. Witnesses are instructed not to discuss their testimony with other witnesses.”

5. Opening Statements

(To Dean) “Is the University ready?”

(To student) “Are you ready?”

(To Dean) “Please read the charge into the record and have it marked as an exhibit.”

(To Dean) “Will you have any opening remarks?”

(To student) “Will you have any opening remarks?”

6. Direct and Cross Examination of University Witnesses

(To Dean) “Will you call your first witness?”

(The Dean calls witness. Witness is questioned by Dean).

(Witness passed for cross-examination by student.)

7. University Rests its Case
8. Direct and Cross Examination of the Student’s Witnesses

(To student) “Will you call your first witness?”

(Student calls witness. Witness is questioned by student.)

(Witness passed for cross-examination by Dean.)

9. Closing Statements

(To Dean) “You may make your closing statement and a recommended penalty in the event I find ______ responsible for the charge(s).”

(To student) “You may make your closing statement and response to the recommended penalty.”

(To Dean) “You may make your rebuttal statement.”

10. Concluding the Hearing

“This hearing is concluded.”
OPENING REMARKS

THE HEARING OFFICER: Okay. We’re going to go ahead and go on the record. This is an informal hearing of Jim Mitchell. I just want to set up some ground rules to start with and talk about the procedure of how this is going to work. And then I believe before the Dean reads the complaint, Ms. Hunt had a couple of items that she wanted to get on the record to begin with. So we’ll do that. As I said, this is an informal hearing. It’s not a legal proceeding and it’s not an administrative hearing, but it’s an academic one. It is my goal that everybody gets to tell their side of this story. So, that’s what I hope is going to happen today. This is a closed hearing, meaning that the only people that are going to be here are the advisers, the Dean, the student, the court reporter, and me, and any witness who happens to be testifying at the time, unless the Dean and the student want that to be opened up for some reason. If advisers are present – and I do see there are advisers here today – the adviser may confer with and advise the person that you’re advising, but you won’t be permitted to question witnesses, introduce evidence, make objections, or present arguments. And I have to say, as a lawyer, that seems very odd to me when I start doing these hearings. However, those are the rules of the University. Can everybody start out by stating who you are for our court reporter to get it on the record and who – if you’re advising someone, who you are advising. Why don’t we start with you, Ms. Hunt.
**MS. HUNT:** Sara Hunt, advisor to Jim Mitchell.

**JIM MITCHELL:** Jim Mitchell.

**MS. DEBIN:** Patricia Debin, adviser for the Dean of Students Office.

**MR. MORGAN:** I’m Brian Morgan, Dean of Students Office.

**THE HEARING OFFICER:** If I didn’t say it before, I’m George Wright and I’m the hearing officer that’s been appointed in this case. As I said before, after I get finished going through these procedural items, I believe Ms. Hunt is going to say something, and then there’s going to be a brief opening by the dean. That’s typically the reading of the complaint. And then if Mr. Mitchell wants to give an opening statement, he will have an opportunity to do that after the dean reads his complaint. The next thing we’ll do after the opening is I am to inform Mr. Mitchell of his rights pursuant to the institutional rules. Then, the Dean will present witnesses and evidence. Mr. Mitchell can cross-examine those witnesses. Then, Mr. Mitchell can present witnesses and evidence, and Mr. Morgan can cross-examine those witnesses. Then, there will be rebuttal if any is needed. Then, after we’re through with all of this, I make a written decision regarding whether there has been a violation and if a violation is found, whether there should be a penalty and if there is a penalty, what that penalty should be. That decision will be in writing. And I do my very best to get that out within fourteen days so this case doesn’t just languish. I want to know right off the bat how long everybody thinks it’s going to take them. Mr. Morgan, how long do you think your presentation is going to be?

**MR. MORGAN:** No more than two hours.

**THE HEARING OFFICER:** And what about Mr. Mitchell? You can talk to him and he can talk.
MR. MITCHELL: Probably about 16 hours.

THE HEARING OFFICER: Okay. What I’m going to do, I think, is – I think after the Dean puts on his case, then I will – and I’m going to limit you to two hours. That’s how long you’re going to have to put on your case. And then after that, we’ll figure out whether sixteen hours is going to be needed for Mr. Mitchell’s side of the case.

MS. HUNT: That’s two hours including cross-examination?

THE HEARING OFFICER: Your cross-examination will go to your time. In other words, whenever Mr. Morgan is questioning somebody, that’s his time. And whenever Mr. Mitchell is questioning the witness, that’s his time.

MR. MITCHELL: Then we need to revise that to about twenty-four then.

THE HEARING OFFICER: Mr. Mitchell, there’s something that you wanted to start off by saying that Ms. Hunt had indicated.

MS. HUNT: Actually, I need to put on the record that I object to the process here in general. It doesn’t allow me to represent my client properly.

THE HEARING OFFICER: Okay. Your objection is noted.

MS. HUNT: Not letting us speak for him and make the arguments that need to be made, because he is simply a student. And as we have read Goss v. Lopez and Goldberg v. Kelly, given those parameters in those two cases, we think it’s violative of that particular law.

THE HEARING OFFICER: Okay. And I want to be real clear. I don’t want to hear from you or Ms. Debin. I want to hear from Mr. Morgan and Mr. Mitchell. I also want to say that I
think – I understand those concerns, and I have actually done some research in that myself for a prior hearing. And I’m not going to make any personal opinions about the process, but I will say that it meets the constitutional standards. Okay. With that said, I’m going to go ahead and let Mr. Morgan begin.

MR. MITCHELL: Can you clarify the rules of evidence in this hearing?

THE HEARING OFFICER: Yes, I will. The rules – there are no rules of evidence. There’s nothing written down and documented. What I will look at is what I find to be relevant evidence. And I’ll rule on that on a case-by-case basis. Certainly if someone is trying to offer something for me to review and anybody has an objection to that. I will give an opportunity once – I’ll ask are there any objections to that. And if there are none, then I will take a look at it. And if there are, then I would like for those to be stated. And there aren’t any – it’s not like the Texas Rules of Evidence. Mr. Morgan, I would like for you to go ahead and give your opening.

MR. MORGAN: Thank you.

MR. MITCHELL: Actually, we got one more question on the rules of evidence. Is there a – how is a document authenticated?

THE HEARING OFFICER: That’s up to you and that’s up to Mr. Morgan, how you’re going to authenticate that.

MR. MITCHELL: And is there a best evidence rule?

THE HEARING OFFICER: There is no best evidence rule. Once again, it’s purely discretionary.
MR. MORGAN: I’m assuming this is counting as his time.

MR. MITCHELL: Is there a corollary to the rule 106?

THE HEARING OFFICER: Are you talking about the Rules of Evidence 106?

MR. MITCHELL: Yes.

THE HEARING OFFICER: I don’t know – I don’t know off the top of my head what 106 is.

MR. MITCHELL: If they put in part of the document, we get to put in the rest of the document?

THE HEARING OFFICER: I have no objection to that. I have no problem with that.

THE HEARING OFFICER: Okay.

MR. MORGAN: Okay. Thank you.

THE HEARING OFFICER: Mr. Morgan, go ahead.

MR. MORGAN: I’ll read the complaint.
A hearing was held on November 13, 2008 concerning the allegation that Tom Thomas (Thomas) requested admission to The University of Texas at Austin for the fall semester of 2006 and that at that time falsified the admission application by failing to list attendance at the University of Houston and the University of Georgia. It was also alleged that Thomas failed to provide the Registrar with official transcripts from these institutions until he had completed 16 semester hours. Thomas personally appeared at the hearing and was assisted by an advisor. H. Harris, Dean of Students, represented The University.

Bob Baker, Registrar, was called as a witness for the University and testified that Thomas visited his office in June, 2008 and at that time Thomas stated that he had attended University of Georgia prior to his admission to The University of Texas at Austin in 2006. Mr. Baker stated that he verified the social security number of Thomas to ascertain that the signed application submitted was indeed his. That application was submitted as Exhibit 1. Mr. Baker also testified that during that meeting he asked Thomas to read items on the application which requests disclosure of post-secondary schools attended and studies in progress, both of which were blank on Thomas’ application. In addition, Baker testified that he called Thomas’ attention to item 307 on the application which asks the applicant to declare circumstances that may possibly influence the admission of the applicant and to the signature block which requires the applicant to certify that the application is correct and informs the applicant that “false or incomplete information may result in dismissal from the university.” Baker reported that Thomas’ response to his question of why Thomas had not listed all post-secondary institutions attended was that Thomas did not think that he had to submit transcripts. Mr. Baker stated that he called Thomas’ attention to the admissions requirements stated in the 2006-07 catalog, submitted as Exhibit 2, regarding the admission of transfer students (p. 1), requirements for admissions (p. 2), procedures to be followed (p. 4) and the declaration of previous college work attempted (p. 5).

Thomas’ transcript from the University of Houston was presented as Exhibit 3 and Thomas’ transcript from the University of Georgia became Exhibit 4. Mr. Baker testified that Thomas had attempted 24 semester hours prior to the fall of 2006 with a cumulative GPA of 1.53 and that Thomas was on academic probation at both The University of Houston and University of Georgia. Such academic probation would have resulted in Thomas not being in good standing at the last institution attended. Either of those conditions disqualified Thomas from being admitted to The University of Texas at Austin.

Sue Sands, Assistant Registrar, testified that she had prepared the memorandum to the Dean of Students, admitted as Exhibit 5. The memorandum states that if Thomas had given all the true information requested on the application, he would not have been granted admission because he was not in good academic standing at the last school attended and did not have a 2.0 GPA on all previous work attempted.
Thomas called Jane Brown to testify. She stated that she had many occasions to work with Thomas. Thomas asked her to testify about admissions policies at Oxford University regarding cases of this nature. The question was not allowed because I consider hearsay evidence on the admissions policies of another institution to be inappropriate and irrelevant to this hearing.

Bill Wilson testified, as a professor who worked with Thomas, that Thomas is a good student, that he is conscientious, active, and inquisitive, and that he demonstrated the ability to improve his academic performance during the sequence of classes taught by him. He said that he considers Thomas to be an exemplary student. In response to this testimony, I wish to note that the scholarly activities of Thomas, however meritorious, are not an issue in this case. The issue is the falsification of the admissions application as it pertains to eligibility for enrollment.

Thomas testified next that he spent one year at the University of Houston and then attended the University of Georgia. In 2006, Thomas filled out the application that is Exhibit 1. He explained that he did not declare his work at those two institutions because he did not wish to transfer credits from either school. The admissions application does not give such an option. It is explicit in its requirement to list all prior post-secondary academic work.

Thomas stated that he did not intend to mislead The University when he filled out the application. However, during the years he attended The University of Texas at Austin, Thomas made no effort to provide a true and complete record to the Registrar. In response to Mr. Baker’s question about whether the information on the application was true and complete when it was signed in 2006 and today, Thomas stated that it was not complete then or now.

Dr. Harris, Dean of Students, testified about university policy in cases where a student falsifies an application for admission and the student signs a waiver admitting to the charges. He responded that in cases where a student has falsified an application and did not meet admission requirements, the student has been permanently expelled from the university and any semester hours completed while the student was fraudulently enrolled have been stricken from the record. As the disciplinary officer of the university, Dean Harris stated that students are not permitted to profit from course work they have not legally had the right to take.

The Dean of Students made the point that because Thomas did not supply all information required by the Office of Admissions and Registrar when making application for admission and because he signed the application form which states that he certifies that all information given is correct, he has been fraudulently enrolled since the fall term of 2006. Dean Harris argued that the university is not an open admissions university and that Thomas did not meet all requirements for admission. If all the information required for application had been provided, Thomas would not have been admitted. Therefore, he argued, Thomas was not entitled to enroll in any courses at the university and should not receive academic credit for courses completed.

Given all the pertinent evidence presented at the hearing of November 13, 2008, I find that Thomas’ application for admission to the University was incomplete and therefore incorrect in 2006. Mr. Baker’s testimony that Thomas would not have been admitted to The University if the required transcripts had been submitted further confirms my belief that Thomas had reason to withhold this information at the time of application. However, there is reasonable doubt in my mind that Thomas’
intention was to deceive the University. But motive, while helpful in determining facts, is not the basis for deciding a fraudulent enrollment case. I was impressed by the fact that Thomas voluntarily informed the Registrar of his prior academic work and supplied the required transcripts in 2008. That is important because it suggests that Thomas recognized and attempted to correct the error. Such action does not, however, relieve Thomas of responsibility for falsifying his application for admission.

After carefully weighing all the testimony presented at the hearing, the evidence is irrefutable that Thomas did falsify his application in 2006. Thomas testified under oath that he thought it unnecessary to declare prior course work that he did not wish to transfer, yet he also testified that he thought he might get into trouble for not providing the information. As University Hearing Officer, I have ruled on other similar cases of fraudulent enrollment over the past several years. In those instances, when students have falsified their applications and would not have been eligible for admission if all information had been supplied to the Office of Admissions at the time of application, students have been permanently expelled. Admission policies must be consistently applied to all students admitted to the university.

In recognition of Thomas’ voluntary submission to the Registrar of transcripts and his service to the University while a student, I find that the semester hours that Thomas earned be allowed to stand. However, my decision is that Thomas is responsible for fraudulent enrollment and that he is permanently expelled, effective at the conclusion of the Fall 2008 semester.

Thomas has the right to appeal this decision to the President of the University. The appeal must be filed with the President no later than fourteen (14) days from the date of this decision.

Entered this 14th day of January, 2009.

__________________________________________
Hearing Officer
A hearing was held on March 26, 2008, concerning the allegations that Bethany Hall and Amber Cooper, students in the UTHSC-SA School of Nursing, engaged in an act of scholastic dishonesty by cheating on an examination taken on January 2, 2008, for their N3813 Adult Theory III course. The hearing was held in a conference room in the Office of Student Affairs for the School of Nursing, and was attended by the following persons:

- Dr. Chris Jenkins (hearing officer)
- Oscar Hernandez (attorney for hearing officer)
- Maxine Baker (Dean of School of Nursing)
- Michael Collins (attorney for Dean)
- Bethany Hall (student)
- Robert Wright (attorney for Ms. Hall)
- Amber Cooper (student)
- Rachel Durk (attorney for Amber Cooper)
- Lisa Crawford (employee of School of Nursing; ran audio recorder)

### Allegations

Dr. Maxine Baker, Associate Dean of the School of Nursing, alleges that Ms. Cooper violated Section 6.03 of the UTHSC-SA’s Handbook of Operating Procedures (“HOOP”), which states:

> Unacceptable conduct that may subject a student to disciplinary action includes, but is not limited to the following:

> [...] 

> engaging in scholastic dishonesty such as cheating, plagiarism, collusion, submitting another person’s work or materials for credit, taking an exam for another person, acting in a manner that would give unfair advantage to him- or herself or another student, or attempting to commit such acts [...]

Dr. Baker also alleges that Ms. Cooper violated the University of Texas System Regents’ Rule 50101, Section 2.2, which states:

2.2 Academic Dishonesty. Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes but is not limited to cheating,
plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, any act designed to give unfair advantage to a student or the attempt to commit such acts.

Finally, Dr. Baker alleges that Ms. Cooper violated School of Nursing Policy S1020, which essentially restates Section 6.03 of the HOOP.

Findings of Fact

1. Ms. Cooper was enrolled in the School of Nursing in the most recent academic semester and, pending the result of this hearing, is eligible to continue enrollment in the next semester. Moreover, Ms. Cooper engaged in conduct prohibited by section 6.03 of the HOOP while she was enrolled and otherwise eligible to continue enrollment at the UTHSC-SA. Accordingly, Ms. Cooper is a “student,” as the term is defined in Section 6.03 of the HOOP.

2. Ms. Cooper was given at least 10 days notice of the date, time, and place for the hearing, the name of the hearing officer, and a written statement of the charge(s). Ms. Cooper was provided a summary statement of the evidence supporting such charge(s) in accordance with the rules.

3. The Dean presented the testimony of two witnesses: Sharon Fairmont and Danielle Finley.

4. Ms. Fairmont testified that she also took the exam, and after completing it, heard Ms. Hall and Ms. Cooper talking as they completed the exam. She also testified that she saw Ms. Cooper make a hand signal for “5” to Ms. Hall and whisper the number “26” to her. Finally, she testified that Ms. Cooper and Ms. Hall appeared to be exchanging answers on the exam.

5. Ms. Finley, the proctor for the exam, testified that Ms. Hall and Ms. Cooper were seated in the exam room so that only one empty seat separated them. During the exam, Ms. Finley saw Ms. Hall and Ms. Cooper look at each other’s exam booklets and open their booklets so that they lay toward the middle of the empty seat between them, making it possible for each student to see the other’s booklet. She also testified that before turning in her exam, Ms. Cooper began to erase items on her exam booklet, even after being told that she need not do so. Finally, Ms. Finley noted a number of large, handwritten letters and numbers on each student’s exam booklet, many of which were so large that the other student could have seen them.

6. Ms. Cooper presented the testimony of seven witnesses: Bethany Hall, Amber Cooper, Harriet Brown, Adele Ackman, Abby Thompson, Richard Cooper, and Paul Hall.

7. Ms. Brown, Ms. Ackman, and Ms. Thompson all took the exam that day as well. Each testified that she did not see or hear Ms. Hall and Ms. Cooper cheating from one another. To different degrees, Ms. Brown, Ms. Ackman, and Ms. Thompson, Mr. Cooper, and Mr. Hall vouched for the character or Ms. Hall and/or Ms. Cooper.

8. Ms. Hall and Ms. Cooper denied cheating or attempting to cheat on the exam.
9. There were 80 questions on the exam.

10. Apart from all circled answers and other innocuous marks, there were at least 37 legible, handwritten notations (“notations”) in Ms. Hall’s and Ms. Cooper’s exam booklets. Each notation appears to be the number of a particular exam question. Each notation is large to unusually large in size, and was added to the test booklet by either Ms. Hall or Ms. Cooper. Some of the notations remain in pencil, while others were erased but remain legible. In addition, some of the notations appear on the pages where computer-printed text appears, while others appear on the empty reverse side of those pages.

11. Each student answered each question for which a notation appears.

12. On XX of the XX (XX.X%) questions for which a notation appears on either student’s exam booklet, the students answered identically.

13. By comparison, on 31 of the remaining 43 (72.1%) questions for which there is no notation (other than a circled answer or other innocuous mark), the students answered the question identically.

14. The students provided identical wrong answers for 7 of 11 (63.6%) questions they missed in common.

15. Ms. Hall and Ms. Cooper received identical scores on the exam.

Conclusions

1. Because Ms. Cooper is a student, the Hearing Officer had jurisdiction to hold the hearing and render this order.

2. A process has been afforded to Ms. Cooper that is in accordance with University rules.

3. The Hearing Officer ruled on Ms. Hall’s and Ms. Cooper’s Objections 1 and 2 during the hearing. However, Objections 3 (collateral estoppel), 4 (laches) and 5 (equal protection) are legal objections. Because this proceeding is not held in a court of law that can assess the worth of these objections, the Hearing Officer will not rule on them.

4. The Hearing Officer finds the testimony of each witness except Sharon Fairmont partly or entirely credible. The Hearing Officer makes no judgment on Ms. Fairmont’s credibility and has not relied on it in reaching her decision.

5. The greater weight of the credible evidence demonstrates that Ms. Cooper has committed the violations alleged in the Complaint filed by Dean Baker.

6. In reaching this conclusion, the Hearing Officer is persuaded by:
a. the credible testimony of Danielle Finley, whose observations indicated that Ms. Hall and Ms. Cooper were cheating or attempting to cheat from one another;
b. Ms. Finley’s observation that each student placed her exam booklet in a manner that would easily allow the other student to see her writings;
c. Ms. Finley’s observation that Ms. Cooper was attempting to erase certain marks she made in her exam booklet;
d. the notations found in the students’ exam booklets;
e. Hall Exhibit No. 1, which reflects the seating positions of Ms. Hall and Ms. Cooper;
f. the physical proximity of each notation relative to both students’ seating positions, given Ms. Finley’s testimony about the placement of their booklets, the Hearing Officer’s review of the exam booklets and the Hearing Officer’s viewing of the exam room; and
g. the high correlation between the notations and identical answers found in each student’s scantron sheet.

7. Dean Baker has met her burden to prove, by the greater weight of credible evidence, that Ms. Cooper committed the alleged violations.

8. Accordingly, the Hearing Officer concludes that Ms. Cooper engaged in scholastic dishonesty by cheating, acting in a manner that would give unfair advantage to herself or another student, or attempting to commit such acts.

**Disciplinary Action**

The appropriate sanction for this violation is the assignment of a failing grade for the January 2, 2008, examination. This sanction is authorized by Section 6.03, Part I.B. of the HOOP, and is hereby imposed.

Entered this 2nd day of April, 2008

___________________________________
Dr. Chris Jenkins
Hearing Officer
On June 9, 2010 a hearing was held in Main Building Room 1.101 in a case against student William Mitchell. Mr. Mitchell was charged with conduct in violation of Series 50101.2, Section 2 of the Rules and Regulations of the Board of Regents of the University of Texas System (Regents’ Rules) and Section 20.20 (d) (3), (14), (16), and (27) of the Handbook of Operating Procedures of the University of Texas at San Antonio. (Exhibit 1).

**Jurisdiction:**

Mr. Mitchell argued in his Exhibit A, page 7 that as he is no longer a UTSA student this case should be dismissed. However, according to the Regents’ Rules, Mr. Mitchell falls within the definition of “student” for the purpose of this hearing because he was enrolled as a student at the time of the alleged violation. (See Regents’ Rules, Series 50101, Part 3: Definitions – Student.)

**The Hearing:**

The charge resulted from a statement e-mailed by Mr. Mitchell to Dr. Hanks and Dr. Richardson of the College of Sciences, Department of Biology. Both professors received the same statement entitled “Legal Notice and Memo of Medical Issues.”

In his statement, beyond outlining his health problems, Mr. Mitchell instructs the professors that he “may not be subjected to stress or duress, of threats or disability discrimination. If student is incited, he may become reactive. Verbally or physically arguing or fighting or provoking a fight with the student is ill advised. Student may not know or comprehend the wrongness of his actions, and he may not be held liable in civil, criminal or academic courts of law, due to the nature of his illness(s).” (Exhibit 7b)

Mr. Mitchell also states in his statement:

“If the student fails this course in terms of a final letter grade below 3.0, the student will be forced to file an academic grade appeal and also may have to file allegations or charges of disability discrimination with school, state, federal governmental entities, organizations or authorities.” (Exhibit 7c)
Throughout the statement, which is mainly written in the third person, Mr. Mitchell represents this statement as a legal document, giving legal direction to the professors. However, in his testimony Mr. Mitchell stated the statement was his composition and was not drafted by legal counsel. In it he states that open-ended accommodations will be required or will be necessary, and the professors should ask him “what else is necessary to accommodate the conditions(s).” (Exhibit 7b)

He states that the professors

“should consult with the student before making any final decisions . . . to ensure a satisfactory grade level . . .” (Exhibit 7b)

Dr. Hanks and Dr. Richardson as well as their dean, Thomas Schmidt, and Dean of Students’ Dana Woods testified they regarded these statements as threatening, coercive, intimidating and harassing. The first item quoted above was regarded as a threat of physical violence; the others were regarded as attempts to coerce and intimidate the professors into assuring Mr. Mitchell a grade of no less than a “B” before he even began the course. Contacting the professors with a demand for special accommodation outside the normal procedures with threats of action for noncompliance was regarded by them to be intimidating and harassing. In response to Mr. Mitchell’s statement, Dean Woods subjected Mr. Mitchell to “interim disciplinary action of suspension and bar from the University and from campus housing.” (Exhibit 2) Mr. Mitchell was charged as cited above, and a hearing was scheduled for June 9, 2010.

To follow the events leading to this hearing and the charges against Mr. Mitchell, it is helpful to give an outline of events.

**Sequence of Events:**

1. **Certification of Disability Status**
   
   A. August 31, 2009 a request for documentation of disability status was sent by the Office of Disability Services (ODS) to a physician, and the form was completed and faxed to ODS by the physician on September 8, 2008.
   
   B. January 14, 2010 Mr. Mitchell sent a memorandum by e-mail to a professor outlining his medical problems and indicating the problems he might encounter in class and the measures he might take to contend with his problems. He also stated his desire for “forbearance in testing, grading . . .” (Exhibit 6a)
   
   C. January 14, 2010 the professor forwarded Mr. Mitchell’s communication to Tyler Smith in ODS, who in turn forwarded it to Dean Woods. (Exhibit 6)
   
   D. January 26, 2010 the ODS sent a request for documentation of disability status to another physician which was completed the same day. (Exhibit 11, 11c)
   
   E. Sometime in late January or early February 2010, Dean Woods, Associate Dean of EPPS, Eric Nguyen, and Tyler Smith met with Mr. Mitchell. They explained to Mr. Mitchell the proper procedure for acquiring accommodations as a student with disabilities. They also instructed him...
that specific accommodations would be authorized by the ODS, and those accommodations would
be stated in a memorandum that Mr. Mitchell could give to each of his professors. Mr. Mitchell
was told not to communicate to his professors any demand for accommodations not granted by the
ODS. To do so would be a violation of University procedures. (Exhibit 2, 3a and testimony of
Tyler Smith and Dean Woods)

F. February 4, 2010 ODS coordinator Tyler Smith provided Mr. Mitchell a memorandum identifying
the authorized, reasonable accommodations his professors should allow. Mr. Mitchell could give
copies to his professors who would then be authorized to grant the accommodations outlined. Mr.
Mitchell acknowledged receipt of the memorandum the following day. (Exhibit 13)

2. Summer Semester 2010

A. May 19, 2010 Mr. Mitchell sent an e-mail to Dr. Richardson asking for a syllabus for the class he
was to attend that summer semester. (Exhibit 7)

B. May 20, 2010 Mr. Mitchell sent an e-mail to Dr. Hanks with an attached memorandum entitled
“Legal Notice and Memo of Medical Issues.” (Exhibit 8, 8a)

C. May 21, 2010 Dr. Hanks forwarded Mr. Mitchell’s memo to Dean Woods. (Exhibit 8)

D. May 21, 2010 Dr. Richardson e-mailed a syllabus to Mr. Mitchell. (Exhibit 7)

E. May 21, 2010 after receiving the e-mail from Dr. Richardson, Mr. Mitchell responded with an e-
mail that contained the same attachment he sent to Dr. Hanks. Dr. Richardson also forwarded Mr.
Mitchell’s memorandum to Dean Woods. (Exhibit 7, 7b, c)

F. May 26, 2010 Dean Woods, after considering the contents of Mr. Mitchell’s memo, instituted
immediate “interim disciplinary action of suspension and bar from the University and from campus
housing ...” This action was taken pending a hearing. (Exhibit 2)

G. May 26, 2010 Mr. Mitchell, having received Dean Woods’ letter (Exhibit 2), responded by
informing Dean Woods he was leaving the campus housing and requesting a refund of prepaid
charges. (Exhibit 4)

H. June 1, 2010 Dean Woods sent a notice of hearing to Mr. Mitchell’s campus address and an address
he gave in Boerne, Texas. (Exhibits 3 and 5)

I. June 9, 2010 the hearing was held in the UTSA Main Building, Room 1.101.

The Issues:

The issues in this hearing were: did the contents of his “Legal Notice and Memo of Medical Issues” that
Mr. Mitchell sent to his professors violate any of the provisions of the Regents’ Rules and the University’s
Handbook of Operating Procedures (HOP) as cited above? Also, did sending his “Legal Notice and
Memo of Medical Issues” directly to his professors violate any of the provisions of the Regents’ Rules and
the University’s HOP as cited above?
**Charge A:** Mr. Mitchell conducted himself in a manner that significantly endangered the health and safety of members of the University; this includes but is not limited to physical abuse, verbal abuse, threats, intimidation, harassment and coercion. (Based on Regents’ Rules, Series 50101.2.4 and HOP section 20.20 (d)-(3)).

There is no evidence that Mr. Mitchell engaged in physical or verbal abuse as he was barred from campus before classes met. The statement in which Mr. Mitchell claimed that under some circumstances he could become “reactive” and could not be held accountable for his actions was seen by both professors, their dean and Dean Woods as a threat. (Testimony of each witness) Mr. Mitchell states in his Exhibit A and testified orally that there was no intent to threaten but only to advise. Applying the standard of how a reasonable person would react to the statement, I find the statement threatening, not only as potentially a physical threat, but also as a threat of harassment. Mr. Mitchell insisted he be assured of a “B” even before the class began, and that if it were denied there would be consequences. This statement is in no way veiled; it is a direct threat of harassment. This is a clear case of attempted coercion and intimidation.

**Charge B:** Mr. Mitchell engaged in inappropriate and disruptive behavior that interfered with the orderly functioning of the University. (Based on Regents’ Rules, Series 50101.2.5 and HOP section 20.20 (d)(14)).

The specific activities mentioned as examples in HOP 20.20 (d)-(14) do not fit in any direct way with the allegations made against Mr. Mitchell. What falls under this clause is that Mr. Mitchell sent demands for special considerations and accommodations directly to his professors in violation of procedures on how special accommodations are to be authorized. Such instructions first must be authorized by the ODS, which drafts a statement the qualified student may give to his or her professors. In his statement Mr. Mitchell represented his statement as a legal directive with threatened consequences for noncompliance. Mr. Mitchell lacked any authority to send such demands and in effect was attempting to usurp the University’s authority.

**Charge C:** Mr. Mitchell failed to comply with a verbal or written request or instruction of an official of the University acting in the course of his or her duties. (Based on HOP section 20.20 (d)-(16)).

In January 2010, another professor received a memorandum somewhat similar to the ones sent to Dr. Hanks and Dr. Richardson, but that did not contain some of the more problematic language. (Exhibit 6 a, b) Following that event, Mr. Mitchell was called to a meeting with Dean Woods, Associate Dean Eric Nguyen and Tyler Smith. During that meeting Mr. Mitchell was told how to seek academic accommodations. He was told not to communicate directly with the professors with demands for accommodation, but to work through the ODS. (Testimony of Tyler Smith and Dean Woods). Nevertheless, on May 20 and May 21, 2010, Mr. Mitchell sent the statements that are the subject of this investigation directly to Dr. Hanks and Dr. Richardson in direct violation of instructions given him in their official capacity by Dean Woods, Eric Nguyen and Tyler Smith.

**Charge D:** Mr. Mitchell engaged in conduct that is inappropriate for members of an academic institution. (Based on HOP 20.20 (d)-(27)).

While the specific examples listed in that clause do not apply in this case, they are only examples. Making threats, attempting coercion, harassment and ignoring verbal or written requests or instructions of University officials acting in the course of their duties all fall under the rubric of inappropriate conduct. It has been shown above that Mr. Mitchell, by sending the statement at issue here directly to his professors and by the contents of the statement, committed all these offences.
Defense:

Mr. Mitchell’s contention that the University has no jurisdiction over him in this case because he is no longer a student has already been addressed. He also contends this is a case of retaliation for complaints he has made against the University. The serious nature of the charges here and the preponderance of the compelling evidence supporting the charges made against Mr. Mitchell allow these charges to stand on their own merit. Mr. Mitchell’s statements caused great concern and anxiety to members of the University faculty.

Mr. Mitchell insists his statements to the faculty member were only meant to be helpful in dealing with his particular problems. Nevertheless, a reasonable person would find his statements threatening. His insistence on a grade no less than a “B” was accompanied by attempts at intimidation and coercion as he made threats of legal action if any grade below that level were assessed.

Since Mr. Mitchell testified that he has been denied Social Security Disability benefits, he is dependent on financial support from Federal Stafford Loans that support his education, but with the stipulation that his grade average not fall below 3.0. This implies a motive for his attempt to assure that his grade average remain within that level.

Findings:

I find that Mr. Mitchell engaged in misconduct that violated all the charges outlined in the Charge Statement, Exhibit 1. Specifically, I find that he engaged in conduct that violated Series 50101.2, Section 2 of the Rules and Regulations of the Board of Regents of the University of Texas System and Sections 20.20 (d)-(3), (14), (16), and (27) of the Handbook of Operating Procedures of the University of Texas at San Antonio.

Penalty:

Dean Woods has had an opportunity to study Mr. Mitchell’s case. Her recommendations in this case appear to be based not only on the best interests of the University, but also on what would be good for Mr. Mitchell. Therefore, I accept the recommendations of Dean Woods, to wit:

The penalty is: Suspension from the University of Texas at San Antonio for a period of three summer terms and four long semesters, commencing with summer 2010. After the term of suspension, which expires at the end of summer 2012, and prior to reenrollment, Mr. Mitchell must provide information that he has been assessed by a private licensed psychologist of his choosing or from a referral list provided by the UT San Antonio Student Counseling Center. He must also provide information that he has successfully addressed the issues that resulted in the disciplinary charge against him, including his inappropriate intimidating and coercive communications, that he is able to behave appropriately in an academic community such as UT San Antonio, that he has the ability to handle the stress associated with such an environment, and that he has the ability to make accurate judgments regarding interactions with others and react appropriately. At least 90 days before the beginning of the semester in which he wishes to enroll he is required to provide to the Dean of Students’ office a letter from a licensed psychologist affirming that he has been assessed as specified above, that he has complied with recommendations of the assessor, and that he has met the conditions specified above. Additionally, at least 45 days before reenrollment Mr. Mitchell must meet with Disability Services staff and provide documentation supporting any disability that may need accommodation. Documentation must address the specific disability, including diagnosis, ensuing
limitations or impairments resulting from the disability, and any recommendations for accommodation. Recommendations from qualified professionals will be considered when the Disability Services staff reviews the student’s information; however, an independent decision regarding reasonable accommodation will be made.

Submitted June 19, 2010

Hearing Officer, Michael Dougall

Michael B. Dougall, Ph.D.
Professor of History
The University of Texas at San Antonio
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