PROPOSALS

TO AMEND THE UNIVERSITY OF MICHIGAN

STATEMENT OF STUDENT RIGHTS AND RESPONSIBILITIES

RESPECTFULLY SUBMITTED BY

THE CODE OF CONDUCT ADVISORY BOARD

NOVEMBER 1, 2006
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1
THE BOARD

The University of Michigan Code of Conduct Advisory Board (“CCAB” or “the Board”) is composed of student representatives from the University of Michigan. The Board is constituted by both the MSA and by agreement with the Student Relations Advisory Committee (“SRAC”).

The following students serve as members of the Board and participated in the drafting and adoption of these proposals:

Sylvia Cho, LS&A
Emmett Hogan, Law
Mitch Holzrichter, Law (Chair)
Alan Martinson, Law
Mike Ruttinger, Law
Mark Shevin, Engineering
Perry Teicher, LS&A
Noam Wiener, Law

The Board would also like to acknowledge and thank Joshua Gewolb (Law ‘06), who served as Chairperson until his graduation in April 2006, and Lyric Chen (LS&A ‘06), who served as a member of the Board until her graduation in April 2006.

THE PROPOSAL PROCESS

An agreement reached between MSA, CCAB, SRAC, and OSCR in 2003 provided that proposals would be submitted by OSCR (on behalf of the University administration) and CCAB (on behalf of the MSA) in the fall of every even year. The proposals are presented to the Student Relations Committee of the faculty senate, which makes recommendations to the University President. The President ultimately decides whether to accept the proposals.

Since the adoption of the last proposals in spring 2005, the Board has researched and adopted these 23 proposals. The Board thanks the many students, administrators, and faculty members of the University who have come forward with observations, comments, and suggestions. In crafting a coherent and complete Statement, the Board was unable to include all of the ideas brought forth; but many of those ideas are included here as formal proposals.
**PREAMBLE**

The Board recognizes several important purposes of the Statement:

First, the Statement is an expression of the community’s values. The rights and responsibilities, the violations, and resolution process, and the sanctions all reflect the values of the University, and in particular the student body.

Second, the process should be corrective and educational. The University has an obligation to create good citizens. While the academic and professional education is perhaps more obvious, the moral and social education is no less important. The Statement resolution process is an important opportunity to intervene in the life of a wayward student and help him become a better citizen, before his problem escalates or harms himself or others.

Third, the process is intended to prevent, investigate, and remedy student misconduct, with serious consequences for both the victims and the accused students, in order to create a safe and just community. For the victim, it is important that the process effectively resolve and remedy past misconduct and the resulting harm. For the accused student, it is imperative that the process be fair and transparent. Additionally, for the community, it is important to deter and prevent future offenses and minimize harm to the University.

In drafting these proposals, the Board attempted to balance two goals: creating a resolution process which is both (1) corrective, instructive, and educational, and (2) fair for all participants. We believe the goals of education and safety, and the desire to have a fair system, are not mutually exclusive; they can go hand-in-hand.

An education process is one which focuses on the accused student’s behavior and seeks to correct it, so as to prevent future misconduct and to produce a more morally and socially competent individual for society. The mission of the University is to educate and prepare students for life as adults in a larger community—not just academically, but morally and socially. It would be negligent of the University not to teach its students to be better citizens, as well as better professionals and scholars.

But a process which is focused only on education undermines its own mission. Students are initially suspicious of any process which accuses them of misconduct and threatens them with sanctions. Even if the process is largely for their own benefit, students will be instinctively defensive unless they are provided some procedural assurances of fairness and transparency. If students are not afforded some procedural guarantees, they will more likely focus on (and blame) the process and not themselves, undermining the corrective nature of the system.

A fair process is one which balances the interests of the victim, the accused student, and the University community. All parties deserve assistance, guidance, and even representation.

Therefore, these proposals seek to balance fairness and education, and thereby aid both causes. A process which provides certain procedural assurances to accused students will not allow the students any excuse to be defensive or to blame the process; they will instead be left only to reflect upon their own conduct and its consequences—and that is the ultimate goal.
§ 1. DISMISSAL OF BASELESS OR INAPPROPRIATE COMPLAINTS

The Resolution Process has expansive jurisdiction with respect to students. There is the potential for the process to be abused by students with personal grievances against other students. The resolution of personal problems might be better resolved by a different process or with other resources, which do not invoke the disciplinary authority of the University or require the creation of an official record.

Additionally, some complaints might simply be frivolous or unsubstantiated. In such instances, the RC should be able to use his or her discretion to dismiss the complaint without any action. The Board believes that the RC currently has the authority not to pursue all complaints. We believe that this authority should be made explicit.

The Board also recommends that OSCR offer an “unofficial” mediation process, which is not a part of the Statement and which would not affect a student’s official University record. Such an unofficial process would offer conflict resolution for “personal disputes” without impact on a student’s life within the University. (Such an unofficial mediation process would not be included within the Statement, and is therefore not included within this Amendment proposal.)

Proposal:

INSERT a new sentence as part of a new paragraph in “Stage 1: Initiating the Resolution Process”:

The RC may dismiss the complaint at any stage if the RC reasonably believes that the complaint is baseless or otherwise unsupported by the available evidence, or that the underlying grievance or problem is better resolved in a different manner.
§ 2. PROTECTION OF GENDER EXPRESSION

The Board supports inclusion of “gender expression” within the list of protected characteristics. Last year, the Michigan Daily wrote about Michigan students who expressed themselves, in attire and by other means, with their opposite gender. The University has always been a leader in tolerance, and we hope the University will continue to embrace and support additional subsets of the University community.

Proposal:

AMEND the second paragraph of “II. Student Rights”:

Students have the right to be treated fairly and with dignity regardless of age, color, creed, disability, gender identity, marital status, national origin or ancestry, race, religion, sex, sexual orientation, gender expression, or veteran status. The University has a long-standing tradition of commitment to pluralistic education. Accordingly, the University, through this Statement, will not discriminate on the basis of group status.
§ 3. Hyperlinked Definitions of Offenses

The Board recommends that OSCR’s online version of the Statement include hyperlinks or references to more expansive definitions or explanations of offenses. Such a reference is already included for Sexual Harassment.

We do not propose amending the language to include more precise definitions. Such a proposal would require more time and consideration than is currently available. But we want students to better understand violations which are sometime obscure, subjective, or elusive (such as hazing). We also believe that these definitions will help guide OSCR, the RCs, and the Panelists.

Proposal:

There is no proposed amendment to the Statement associated with this proposal.
§ 4. LIMITS OF APPEAL

The Board recommends that the right to appeal be differentiated between the accused student and the complainant. Currently, both parties have the same right.

In many systems of law, the defendant has a broader right to appeal than the prosecution. The judicial process intrudes upon the defendant and induces angst and worry. As soon as one fact-finder has determined that the defendant is not guilty, then the process is concluded. A prosecutor is not given the chance to continue prosecuting a person now assumed to be innocent, since the continued prosecution is itself a form of punishment.

The University system is not a criminal process, but the process nonetheless imposes more heavily upon the accused student than it does upon the complainant. Therefore, the complainant should have a narrower right to appeal. Specifically, the complainant should only be given an appeal for procedural error or for evidence not available during the hearing but which would have caused a different outcome.

Proposal:

AMEND the first paragraph of “Stage 3: Appealing the Resolution Process”:

An appeals process is an essential safeguard for an imperfect human process that attempts very hard to be fair. The appeal process is available to each party. Appeals may be filed by the accused student and granted for the following reasons: proper procedures were not followed, the evidence clearly does not support the finding(s), sanctions are insufficient or excessive relative to the violation, or there is new evidence not reasonably available at the time of the hearing and which would likely have resulted in a different outcome. Appeals may be filed by the complainant and granted if proper procedures were not followed or if there is new evidence not reasonably available at the time of the hearing and which would likely have caused a different outcome. All appeals must be submitted in writing to the RC within 10 academic calendar days after notification of the Dean of Students’ decision to accept or modify the recommendations resulting from the hearing. The VPSA may waive the 10 day limitation when a late submission is reasonable. . .
§ 5. SIX-MONTH STATUTE OF LIMITATIONS

This addition to Statement is designed both to encourage more active investigation of reported incidents by University officials as well as to reduce student anxiety over being “surprised” by allegations brought against them an unreasonable time after alleged incidents occurred. It will provide reassurances to accused students that, while they will be held responsible for violations of the Statement, they will not have to fear being surprised by a revived case against them an unreasonable amount of time after the alleged incident took place. The proposal to have a six-month statute of limitations which may not be waived represents a compromise position within the Board, balancing these two interests. It is hoped that this proposal will fulfill the following goals:

- Facilitate a more smooth and responsive handling and investigation of alleged violations of the Statement by University officials.
- Provide incentives for University officials to actively pursue serious allegations.
- Alleviate student concerns over possible responsibility for minor incidents an unreasonable time after the alleged incidents occurred.

The Board believes that a six-month “statute of limitations” provides a sufficient amount of time for officials to conduct a full investigation of allegations and determine whether to pursue judicial action against a student. This six-month period operates so that the official “charging” of a student must happen within six-months inclusive of the date on which an alleged violation of the Statement was discovered. By requiring that this six-month period may not be waived, University officials must, without exception, officially notify a student of judicial proceedings against them within this period of time.

In the vast majority of cases, six-months will be a more than sufficient period of time for any new evidence of a violation to come to light and for the University to initiate official proceedings against a student. In the vast majority of cases, any proceedings that have not been initiated within six months will suffer from “stale” evidence or the trail “going cold.” As such, the Board believes that it will be a rare situation indeed in which the University would begin proceedings against a student more than six-months after a violation. Moreover, in the few instances when a violation may be of such a severe nature that reasonable minds would consider “tolling” or extending this period, the conduct will often be criminal in nature and recourse may still be taken through the criminal justice system rather than the University.

Additionally, there are compelling reasons to make this six-month period strict. It is the belief of the Board that by prohibiting charges taking place more than six months after a violation, University officials will be encouraged to investigate all complaints with due diligence. We do not believe that six months is too little time to investigate a complaint, but it does require that officials not “sit-on” claims or hold a claim aside for later use against a student. Prompt investigation of possible violations in the interest of the University, by creating a more efficient and respected judicial process. By compelling officials to begin investigations quickly, evidence will be more fresh, other student witnesses will remain accessible rather than possibly graduating before an investigation is completed, and the procedures used by investigators will necessarily
become more stream-lined and oriented towards a speedy process. Additionally, it is in the interest of students as well by providing reassurance that investigations of them will not continue in perpetuity and that past incidents that were not pursued will not be forever held over their head, to hang over their head and be initiated at a much later time.

The Board is aware that in rare situations, serious violations may not come to light until long after a violation occurs. As a result, the six-month period will not begin until a violation is discovered, rather than the date it actually occurs. As a result, the University will not be accidentally barred from investigating violations that are not immediately discovered. We believe that even in complicated cases, University officials will be able to conduct a sufficient investigation to initiate any judicial proceedings in under six-months and that violations will therefore not go without some sort of judicial consequence. In the rare exceptional case, the benefits both to students who need not worry about unending investigations into allegations, and to the University in a more efficient, swift process, will outweigh these very few exceptions – the most serious of which will be covered by criminal penalties anyway.

Proposal:

| AMEND the first paragraph of “Stage 1: Initiating the Resolution Process”: |
| . . . All complaints must be submitted to the Resolution Coordinator (RC), in writing, within six months of discovery of after the incident(s) alleged in the complaint. The RC may waive the six-month limitation when a late submission is reasonable. |
§ 6. **RIGHT TO CALL WITNESSES**

Currently, the Statement alludes to witnesses but does not specify who may call them or for what purposes. The Board therefore proposes to explicitly empower both the accused student and the complainant to call witnesses.

But the Board further proposes to permit the RO to exclude any witness who is duplicative. While accused students should generally be permitted to call any witness, we worry that this may be abused and delay the hearing process. But similarly, we worry that an RO may unnecessarily exclude an informative witness. Therefore, we propose that the RO’s decision to exclude a witness be grounds for appeal, akin to a procedural error.

**Proposal:**

*INSERT two new sentences at the end of the current-fourth paragraph of “C. Hearing”:*

. . . Witnesses may be present in the hearing room only when they are presenting information. At any time during the hearing, the accused student may request a recess to consult with his advisor. The accused student and the complainant may call any witness whose information is of value to the case, but the RO may exclude a witness if the witness is duplicative. In such instances of exclusion, the RO will announce his rationale, which may itself constitute grounds for appeal.*
§ 7. Appointment of Resolution Officers

Currently, most Resolution Officers (ROs) are appointed by the Division of Student Affairs. Many ROs are recommended by OSCR or some other office with close affiliation to resolution process. This weakens the perception that the RO is an independent officer unaffiliated with the investigation and prosecution of the complaint.

We also believe that there is merit to involving the faculty. While OSCR and DSA administer the process, the community is composed chiefly of the faculty and students. We therefore seek to encourage involvement by the faculty. We think a balance of three administrators and faculty, chosen equally by the VPSA and the Faculty Senate, is an appropriate compromise.

Finally, ROs likely require some training before serving in the resolution process. By selecting a pool of persons for the year, OSCR may provide training to them in advance of their service, akin to the training provided to the pool of panelists.

Proposal:

AMEND the final paragraph of “C. Selection of Mediators, Student Panelists, and Resolution Officers”:

Resolution Officers are recommended by the Faculty Senate and/or the VPSA. The Faculty Senate and the VPSA will each appoint three ROs to serve for the academic year. An RO will be chosen randomly from among those six to serve for a given complaint.

Each Student Resolution Panel will consist of five voting student panelists and a non-voting Resolution Officer who will oversee the proceedings.
§ 8. Outcomes of Appeals

There are several options currently available to the Appeals Board: affirm the decision of the hearing process, alter the sanctions, or provide a re-hearing. The Board believes that these options should be clarified to reflect the proper role of the Appeals Board.

The Appeals Board is not the fact-finder. While the Appeals Board may consider a record of the evidence, it does not have access to all of the information presented during the initial hearing, such as the demeanor of the parties and an ability to assess the credibility of witnesses. The proper role of the Appeals Board is to ensure that the fact-finder, whether a student panel or a Resolution Officer, adheres to the procedures and acts within the limits of their authority.

This Board (CCAB) recommends that the “recommend a re-hearing” option be divided into two options: a partial re-hearing by the original fact-finder, or a new full hearing by a new fact-finder. If, for example, the Appeals Board believes the original fact-finder should consider new evidence or should re-evaluate the sanctions, then a partial re-hearing before the same fact-finder is appropriate, with instructions from the Appeals Board aimed to correct the problem. But if, for further example, the Appeals Board believes that a new hearing is needed, and prejudice should be avoided because of an error in the first hearing, the Appeals Board may elect to order a new hearing before a new fact-finder (such as a new student panel composed of students who did not participate in the first hearing).

Proposal:

<table>
<thead>
<tr>
<th>INSERT a new clause in the fourth-to-last sentence of “Stage 3. Appealing the Resolution Process”:</th>
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<tbody>
<tr>
<td>. . . (a) confirming the decision made through the hearing process, (b) altering the sanction(s), (c) striking the initial finding of responsibility and/or sanction(s) and remanding to the original fact-finder for further consideration with corrective instructions from the Appeals Board, or recommending a re-hearing (d) ordering a new hearing before a new fact-finder.</td>
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</table>
§ 9. REFLECTION TIME BEFORE ACCEPTING RESPONSIBILITY

Most complaints are resolved when the student accepts responsibility, without a hearing or mediation. This reflects the relatively minor nature of the majority of complaints. However, we believe students should be permitted to wait at least one day following their meetings with OSCR before a decision is “final,” and that this decision to change his/her mind should not affect further proceedings.

We want students to be comfortable with the process generally—and particularly with any admission of guilt or acceptance of responsibility.

If a student changes his/her mind and denies responsibility (after previously accepting it), the resolution process would continue as if the student had never accepted responsibility. The “without prejudice” clause requires that the initial (rescinded) acceptance of responsibility be kept confidential and out of any record; i.e., it could not be introduced as evidence in a hearing.

Proposal:

<table>
<thead>
<tr>
<th>AMEND the first paragraph of “Stage 2: Resolution Process”:</th>
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<tbody>
<tr>
<td>The RC will meet with the accused student to explain the complaint and the resolution process. The student may be accompanied by an advisor. The student will have the opportunity to ask questions and make a statement. The RC will inform the accused student (1) that statements the student makes to the RC may be considered at any hearing, (2) that he does not have to make a statement at the initial meeting, (3) that all OSCR records are confidential to the extent permitted by law, and (4) that he has a right to know the potential sanctions before admitting responsibility (but may not appeal if he accepts responsibility without asking about sanctions), and (5) that the student may consult with his adviser before accepting responsibility.</td>
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<thead>
<tr>
<th>INSERT a new sentence after the first sentence of “A. Acceptance of Responsibility”:</th>
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<tbody>
<tr>
<td>The RC will inform the student that he/she may change his/her acceptance or denial of responsibility within at least twenty-four hours after his/her initial decision without prejudice.</td>
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</tbody>
</table>
§ 10. **GOOD FAITH**

The purpose of this amendment is to make explicit what is, undoubtedly, implicit: those who run the adjudicatory process established by this Statement ought to abide by core principles of good faith and fundamental fairness. While RCs and other officials have shown a high degree of professionalism in approaching their tasks, students are entitled to demand this as a positive right. This is especially important given the Administration’s view of the adjudicatory process as both educational and disciplinary: not only does this mean that the administration should not teach the wrong lessons about fairness, but it also means that it should not educate through punishment that leads to an unjust result.

Under the amendment, as written, students may not be subjected to proceedings that are essentially inquisitorial in nature while being initially addressed by the RC. They will be protected from the “soft” pressure that figures in authority can often exercise over them. They will be protected from RCs who might be tempted to threaten stiff or harsh penalties, as a negotiation strategy, in the hopes of coercing the student into agreeing on a lesser settlement.

We propose amending Section II of the Statement for this purpose. Although this provision could be added to Section VI: Procedures, we feel that it would carry more weight in the earlier section, because it would more likely be understood as a fundamental element of fairness when it appears along with the other ringing declarations of this Section.

**Proposal:**

*INSERT three new paragraphs at the end of “II. Student Rights”:*

Students have the right to have all disputes arising under this Statement adjudicated or otherwise resolved in good faith. “Good faith” means that proceedings are conducted in a manner that reflects a primary and overriding interest in the fair and reasonable administration of justice under the terms of the Statement.

Sanctions will always be commensurate to the degree of wrong. RCs will only recommend or offer, and fact-finders will only impose, sanctions which are proportionate to the alleged violation during every stage of the resolution process.

The requirement to respect this right to good faith rests with all those involved in administering the resolution of disputes arising under this Statement.
§ 11. Random Selection of Panelists

The Statement is the work of the student body, and should be administered as much as possible by the student body at large. While we greatly appreciate the work of student leaders, they are not always representative of the “average student” or of the student body’s values and experiences. We therefore propose to randomize the selection of panelists.

First, this will ensure that accused students are subject to a “jury of their peers,” which is truly representative of the Michigan student body and its values. Second, this will provide a constructive way for OSCR to reach out to the “average student” and to provide those students with a means to be involved in Michigan’s leadership.

Students who are not selected randomly but wish to be involved may continue to serve as student mediators, or in some other capacity with OSCR.

Proposal:

AMEND the last sentences of the first paragraph of “C. Selection of Mediators, Student Panelists, and Resolution Officers”:

The student government of each school and college, in consultation with its Dean or designee, will appoint a number of students proportionate to its college’s share of the total University enrollment. Graduate students will be appointed through their home school or college. It is expected that each student government will appoint a diverse pool of students to serve as panelists. The VPSA or designee will generate a random ordered list of potential student panelists using a method approved by the MSA. The students will be contacted and asked if they will serve as panelists for the following year, until the designated number of student panelists has been appointed.
§ 12. Flexible Number of Panelists

Currently, 60 students are selected each year to serve as panelists. These panelists undergo a lengthy 16 hour training program. However, on average, only three student panels (4% of all cases) have been convened per year over the last decade. Most of the student panelist students do not serve on panels, despite completing an extensive and time-consuming training program. The current program could have its resources allocated more carefully. If fewer students were appointed, then more training could be explored as an option to train a dedicated core of panelists more likely to actually apply what they are taught.

This amendment would ensure that the number of panelists more closely matches the number of panelists that are actually needed. It gives the VPSA and OSCR discretion to appoint an appropriate number of panelists at its discretion. It also sets a floor of 20 panelists, to ensure that a reasonable number of panelists is appointed.

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<th>Student Arbitration Panel Cases</th>
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Proposal:

AMEND the first sentences of the first paragraph of “C. Selection of Mediators, Student Panelists, and Resolution Officers”:

University mediators will be selected by the VPSA. A list of trained non-university mediation services will be maintained by the Office of the Vice President for Student Affairs. The VPSA will try to identify non-university mediators who will serve parties at no charge or on a sliding fee scale. A neutral mediator will be assigned to each mediation. Each winter term 60 students will be appointed to serve as panelists for the following academic year. Each winter term, the VPSA or designee will appoint such a number of students as it deems appropriate to serve as panelists for the following academic year. The number of panelists will be no fewer than 20.
§ 13. Rotation of Appeals Board Members

Currently, there are three members of the Appeals Board and three Alternates. However, because there are few appeals, the Alternates rarely serve. Additionally, there have been allegations that previous OSCR officials chose Appeals Board panelists who were “easier” to work with.

The Board proposes a set rotation between two otherwise-equal representatives of each of the faculty, the student body, and the administration. This will provide all six members of the Appeals Board with equal experience and ensure an objective selection of the panel.

Proposal:

*AMEND the first paragraph of “Stage 3: Appealing the Resolution Process”:

The appeal will be reviewed by an Appeals Board composed of two students appointed by the Michigan Student Assembly, two faculty members appointed by the Faculty Senate, and two administrators appointed by the President. MSA, the Faculty Senate, and the President will each appoint one alternate member to the Appeals Board. MSA, the Faculty Senate, and the President will each appoint two members to the Appeals Board panelist pool who will be, respectively, students, faculty members, or administrators. Each time an appeal is filed, OSCR will constitute an appeals board consisting of one person from each group (one student, one faculty member, and one administrator). Whichever Appeals Board panelists did not serve on the previous panel will be the first to be invited to serve on the next panel, such that the two members of each group alternate.*
§ 14. **Choice of Fact-Finder**

The purpose of this amendment is to ascertain that the fact-finder in the hearing will be of a nature suitable to the complainant, or possible victim of the act, who brought on the action, as well as to the accused student.

Currently, the choice of fact-finder is granted solely to the accused student. While this arrangement affords maximum deference to the interests of the person who stands to lose most by the procedure, it completely ignores the interests of the complaining student.

The proposed amendment offers an arrangement which provides the accused student with the option to choose the fact-finder by default, but allows the complainant to ask for a different type of hearing if she feels the venue chosen by the accused will in someway be to her disadvantage. Should a disagreement arise, a RO, as an independent and responsible third person will weigh the reasons the each side raises in its request for a specific type of hearing and will decide which venue best fits the case at hand.

For expediency’s sake, the process will be conducted in writing, enabling a quick resolution should a conflict arise, but providing additional flexibility and taking into account compelling interests of the complainant should these arise.

**Proposal:**

**AMEND the first paragraph of “C. Hearing”:**

The accused student may choose to have a Resolution Officer or a Student Resolution Panel arbitrate the dispute. In cases which involve more than one accused student, the students will have the option of choosing whether they have the same or separate hearings. If students cannot agree, the hearings will be separate. **The complaint may be heard before a Resolution Officer or a Student Resolution Panel according to the following process:**

1. The accused student will indicate whether he/she wishes to have his/her case heard before a RO or a panel.

2. In instances where the complainant is a student, the complainant may either agree to the accused student’s choice, or else submit in writing why he/she would prefer a different option. If there is a disagreement, then the accused student may also explain his/her choice in writing.

3. Should the complainant disagree with the accused student’s choice, a RO will determine whether a RO or a panel is most appropriate for the complaint based on the explanations submitted by the parties. **The decision of the RO will be written and will be grounds for appeal for procedural error if the decision is unreasonable.**
§ 15. Alcohol Offenses

Illegal possession or use of alcohol is a violation of the Statement according to Section IV.H of the Statement. The Board recognizes that the University has a duty both to enforce the law and to ensure that students are safe and responsible. But acknowledging a violation of the Statement does not require disciplinary action in all cases. The University is able to take corrective action short of full sanctions under the Statement.

The Board believes that alcohol violations warrant official sanctions under the Statement in two circumstances: (1) when a student repeatedly violates the Statement, or (2) when the welfare of the student warrants intervention by the University.

The Board therefore proposes that first offenses, unless there is concern the student’s welfare, not be prosecuted under the Statement. If a student violates the Statement a second time, then the offense is prosecuted unless the student self-initiates contact with one of the University help resources (e.g., University Health Services) (or unless, again, there is concern for the student’s welfare). If a student violates the Statement a third time, then the offense is prosecuted under the Statement.

The Board hopes the address alcohol problems without prejudicing a student’s future; a disciplinary record, by contrast, requires reporting to graduate schools and some future employers. The Board further hopes to put the onus on students to seek information and help from alcohol help resources, which might be better able to correct dangerous behavior.

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<th>Substance Abuse Warning Letters</th>
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Proposal:

INSERT a new paragraph in “Stage 1: Initiating the Resolution Process”:

Offenses involving illegal possession or use of alcohol will be handled in the following manner: For the first offense, students will be contacted by OSCR, but no formal action will be taken unless there is serious concern for the welfare of the student. For the second offense, students will be again contacted by OSCR, but no formal action will be taken if the student self-initiates contact with help resources, unless there is serious concern for the welfare of the student. For third and subsequent offenses, the student will be charged with violation of this Statement.
§ 16. Monetary Compensation

The Board believes that restitution should be limited to monetary compensation, and not service, and to the fair, reasonable value of the loss.

First, the imposition of restitution is potentially discriminatory against lower-income students. If a student causes an inordinate amount of damage, he or she should not be prohibited from registering because of an outstanding fine from the resolution process. If the University (or the victim of the loss) desires to seek compensation for the damage, then it should avail itself of the civil justice system. But the Statement Resolution Process is not a substitute for that system. Therefore “unreasonable” restitution should not be imposed through the Statement.

Second, compensation should be limited to monetary compensation. Currently, theoretically, a student could be required to perform service for another student under the Statement. That is not acceptable. Compensation should be limited to monetary compensation.

The University, however, can require service through Paragraph G. This enables the University to embrace restorative justice that will help both the student and the community.

Proposal:

AMEND paragraph C of “VII. Sanctions”:

C. Monetary Restitution Compensation. Monetary compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement, not to exceed the fair amount of loss, damage, or injury, unless that compensation is unreasonable.
§ 17. NOTICE TO STUDENTS WHEN RECORD IS SHARED

In the spirit of Michigan’s support for confidentiality, the Board proposes that OSCR provide notice to students whenever their records are shared. This will also remind students of the external consequences of their actions; i.e. other institutions, such as graduate schools and government authorities, are concerned with student conduct.

Proposal:

AMEND the first paragraph of “D. Record of Resolution Actions”:

Records will be maintained by the RC with regard to any and all actions taken under the Statement. Accordingly, records will be maintained by the RC of complaints, mediations, hearings, findings, and sanctions. For each case in which a complaint is issued, including cases where the student accepts responsibility, the record will recite the facts of all conduct found or admitted to be in violation of the Statement with sufficient specificity to indicate that a violation of the Statement occurred. Confidentiality of records will be maintained to the extent permitted by law and the University of Michigan Student Rights and Student Records Policy. Should OSCR release a record, it will notify all students whose names are released and indicate to whom they are released. If a student is suspended or expelled, a notation will be made on the student's academic record. The notation of suspension will be removed at the time the student is readmitted to the University.
§ 18. LIMITS OF SANCTIONS

Article VII, “Sanctions,” delineates the role of sanctions in addressing violations of the Statement and outlines the possible sanctions. The sanctions ranging from a formal reprimand to expulsion are laid out with the sentence, “One or more of the following sanctions may be recommended.” There is some ambiguity as to whether sanctions can be imposed that do not coincide with those listed. It would be best to clearly limit possible sanctions to those listed in the interest of both parties in a hearing. The respondent would have notice of all possible sanctions to be levied against him/her and the RO/student panel would be directed to proven, yet flexible sanctions. The RO/panel would not however be unduly restricted in their choice of particular sanctions. There is much leeway in existing sanctions such as the type and duration of service hours, class/workshop attendance, and removal from courses and activities. There is plenty of room in the listed sanctions to accommodate the wide variety of cases which OSCR encounters.

Furthermore, no sanction should automatically impose other sanctions following future offences. Paragraph three of Section II, “Student Rights,” states “Accordingly, this statement will not deprive students of the appropriate due process protections to which they are entitled.” Automatically imposing sanctions for future violations ties the hands of those tasked with imposing sanctions. While the conflict resolution system is not a court it is committed to a “balanced and fair system of dispute resolution.” Automatic sanctions mechanize the conflict resolution process and interfere with a system of fair and educational punishment to fit the severity of a violation. The respondent should be given the right to an impartial hearing without sanctions tied to previous offences. Those who repeatedly violate the Statement should have sanctions assigned on an individual case-by-case basis with consideration of the nature and duration of any pattern(s) of unacceptable behavior. In addition, OSCR reserves the right to levy additional sanctions for failure to comply with currently assigned sanctions. The line must be drawn, however, at sanctions that roll into effect with violations in the nature of Section IV of the statement.

Proposal:

AMEND the first paragraph of “VII. Sanctions”:

Sanctions are designed to promote the University's educational mission. Sanctions may also serve to promote safety or to deter students from behavior which harms, harasses, or threatens people or property or is motivated by bias because of membership in a group listed in II¶2. Some behavior is so harmful to the University community or so deleterious to the educational process that it may require more serious sanctions: removal from housing, removal from specific courses or activities, suspension from the University, or expulsion. **No sanction will be imposed which is not listed here, and no sanction will automatically impose other sanctions following future offences. . . .**
§ 19. DECLARATION OF INTENT TO SUSPEND OR EXPEL

In order to enable students to participate actively in the process and pay attention to the substantive problem, the Board believes that they must be provided some initial assurances. The most angst-inducing sanctions are suspension and expulsion. If a student understands that neither suspension nor expulsion will result from the resolution process, he is more mentally available to be engaged in the problem of his conduct.

Since most complaints are minor, or against first-time offending students, they rarely result in suspension or expulsion. We believe that the RC should declare upfront that she will not pursue suspension or expulsion if the complaint does not warrant it.

Proposal:

*INSERT a new sentence at the end of the first paragraph of “Stage 2: Resolution Process”:*

The RC will present the student with a letter defining the charges against him/her. The RC may state that he/she (the RC) will not, during any stage of the resolution process, recommend suspension or expulsion. If the RC at any time states that he/she will not recommend suspension or expulsion, then the RC will not so recommend to the fact-finder during any subsequent hearing.

*INSERT a new sentence at the end of the second paragraph of “B. Mediation”:*

Mediated agreements will not result in suspension or expulsion.
§ 20. **Finality of Fact-Finder’s Decision**

The purpose of this amendment is to ascertain that a decision to sanction or not to sanction a student is made by a person or a panel who heard that person state his case in person.

The results of a disciplinary hearing can be quite deleterious to an accused student. A student found responsible of an infringement of the Statement might find herself expelled, suspended or required to perform public service. Moreover a formal finding of responsibility can affect a student’s ability to continue on with graduate study. It is considered a basic principle of justice that a person who might suffer injury be able to argue her case before whomever has the power to decide her case.

The results of a disciplinary hearing are also of importance to the community in which the offensive measure had occurred. As such, first hand impression of the background, intent and severity of the action in question is of utmost importance. The decision upon the extent of the sanction handed down is therefore dependant directly on the impressions of the persons presiding over the hearing regarding the persons involved.

It is for this reason that for ages innumerable, punitive procedures have been carried out in the presence of the accused. It is also partially for this reason that the principle of *res judicata*, the finality of the judicial decision has been developed – in order to ascertain that a final decision is made by persons who have had a chance to hear all the evidence and arguments first hand.

The current situation, whence after the entire hearing process, the decision regarding the outcome of the hearing is made by the Dean of Students (in regular proceedings) or by the Vice President for Student Affairs (in appellate proceedings), who are not present during the proceedings, is completely contradictory to the whole idea of a hearing. We thus suggest in the proposed amendment that the decision of the panel or RO in regular cases, or the Appeals Board in cases of appeals be final.

In extreme cases, where a serious miscarriage of justice has been made, both by the panel and at the appellate level, the Vice President for Student Affairs may exercise a discretionary power of pardon. This power should be exercised with utmost discretion, as it is directly contradictory to the idea of procedural justice.
Proposal:

AMEND the last paragraph of “C. Hearing”:

All arbitrated resolutions will result in findings of fact. The fact-finder will also make recommendation(s) regarding sanctions to the Dean of Students, who may accept or modify the recommendation(s). Where the student has been found responsible based on the findings, the panel or resolutions officer will decide upon a sanction. The fact-finder will not recommend suspension or expulsion unless also recommended by the RC during the hearing. The Dean may not modify a sanction to include suspension or expulsion. However, when expulsion is recommended, the Dean may instead suspend the student.

AMEND section “Stage 3. Appealing the Resolution Process”:

. . . The Appeals Board will recommend one of the following actions to the VPSA: . . . [See Proposal § 9]. The VPSA may accept or modify the recommendation(s). The VPSA may not modify a sanction to include suspension or expulsion. However, when expulsion is recommended, the VPSA may instead suspend the student.

¶ If the VPSA believes that the finding of responsibility or the sanctions are seriously disproportionate to the conduct of a student found responsible under this Statement, and if no further appeal to the Appeals Board is available, then the VPSA may alter the finding of responsibility or reduce the sanctions imposed by the fact-finder. When exercising this discretion, the VPSA can either diminish the severity of the sanction initially imposed, or annul the finding of responsibility. The VPSA’s decision will be made in writing and will include a reasoning as to the special circumstances under which it was issued. The VPSA’s decision is final and non-contestable before the Appeals Board.
§ 21. Legal Advocates

Many universities are admittedly nervous about the use of true legal representation within their student disciplinary systems, and understandably so. Accused students being represented by lawyers risks (1) distanc[ing] the accused student from the process, and thereby minimizing the opportunity for the student to learn and mature, (2) bogging the process down in procedure and process, thereby distracting from the true behavioral problems at issue, and (3) inviting “clever lawyering” which helps the student escape responsibility on account of mere technicalities of process. Perhaps most importantly, the “sides” should be represented equally, such that the process is neither adversarial nor unfair.

But there does not need to be a choice between just two extremes: true legal representation akin to American criminal law, versus pro se mediation without due process. Many schools have found success with a hybrid of student self-representation and legal representation. Even this University has thus far permitted certain instances of advisors, including lawyers, to assist students during the process.

This proposal strikes a worthy balance, which aids the goals both of fair process and of education.

First, permitting students to be advised by and, during hearings, represented by employees or students of the University of Michigan drastically improves the assurance of fairness. People with legally training bring a valuable skill to the resolution process and demonstrate the University’s commitment to civil rights and due process.

But second, and perhaps most importantly, the presence of legal advocates will enhance the opportunity for the accused students to learn and mature. Instinctively, many students are apprehensive about the resolution process, not matter how much outreach OSCR does. And many students are initially defensive when accused of misconduct. They concentrate on and blame the process, rather than using the opportunity to self-reflect and learn.

The presence of legal advocates will be calming addition, not an adversarial one. They can advise the students on process and procedure and encourage the students to concentrate on the reasons for the conflict and the best way to move forward. An advocate’s presence means that an accused student cannot blame the process as being “unfair” or prosecutorial, when (now) there is full support in his corner. The University, by and through the advocates, is as much supporting the accused student as it is supporting a department or student-victim. Even if the University (OSCR) has always supported all parties, this will aid that perception and mute any argument of unfairness.
Proposal:

**INSERT a new paragraph after the first paragraph of “Stage 1: Initiating the Resolution Process”:**

Upon their request, both accused students and complainants will each be assigned a University of Michigan legal advocate who will assist them throughout the Statement resolution process. A legal advocate may be accompany, assist, and/or represented at any time during the resolution process by this person (or by another adviser of his choice, such as a student adviser or attorney), except as otherwise stated in these procedures.

**AMEND the second paragraph of “C. Hearing”:**

Each party may be accompanied at the hearing by a personal advisor, who may be an attorney; however, the advisor may not participate directly in the proceedings, but may only advise the party. For example, the advisor may not question witnesses or make presentations.

Both the accused student and the complainant may be accompanied by, advised by, and/or represented by a University of Michigan legal advocate, who may take on whatever duties and rights the accused student or complainant has during the hearing, including the right to present information and question witnesses. If either the accused student or the complainant chooses to be advised by a person other than a University of Michigan legal advocate, then that person may accompany and advise the accused student or the complainant but may not represent him/her during the hearing (such as questioning witnesses or presenting information).

If the victim of the alleged offense is not the complainant, then he/she may attend all hearings and may be accompanied by an adviser, but that adviser may not directly participate in the hearing (such as questioning witnesses or presenting information). The complainant will generally represent the best interests of the victim and the community. The victim may make a statement during the hearing if he/she wishes.

**INSERT a new “J. Legal Advocates” in Section VIII:**

**J. Legal Advocates**

OSCR will maintain a pool of University of Michigan legal advocates for the purposes of accompanying, advising, and representing students (both accused students and complainants) throughout the Statement resolution process. Legal advocates will (1) have at least one year of formal legal education, (2) be trained by OSCR in the Statement resolution process, and (3) be employed by or enrolled in the University of Michigan.
§ 22. Resolution Coordinators

The Resolution Coordinator (RC) wears many hats during the process. The complaint is first submitted to the RC; the RC investigates the complaint; the RC has first opportunity to negotiate sanctions with the accused student; the RC presents findings of his investigation to a fact-finder. This is a mix of police, judge, and jury which might leave students confused. It undermines the appearance of neutrality.

The Board therefore proposes to divide the role of the RC between two persons: an investigator and a negotiator. The OSCR staff member who investigates the complaint would be a different person than the staff member who meets with the accused student to negotiate a mutually-acceptable sanction.

Further, the Board recognizes that not every victim will want to be a complainant. While OSCR staff members are generally never complainants, we believe that they are best suited to sometimes serve as complainants when the victim is unable.

Specifically, we imagine the horrible incident of an assault. Asking a victim to confront and prosecute his or her alleged attacker is inappropriate. And nor should the onus be on that victim to find someone to file the complaint on his or her behalf. The only obligation of a victim should be to report the offense (though he or she may always choose to be the complainant).
Proposal:

AMEND the first paragraph of “Stage 1: Initiating the Resolution Process”:

Any student, faculty member, or staff member may submit a complaint alleging a violation of the Statement. A student, faculty member, or staff member may also submit a complaint based upon information reported to that person. If a victim of an alleged offense is unwilling or unable to be the complainant, then the RC will designate a member of the OSCR staff to serve as the complainant. The person submitting the complaint is the complaining witness and complainant. . . . The RC will forward all complaints to a different member of the OSCR staff, who will conduct an investigation. If the RC--OSCR investigator determines, based on an the investigation, that the alleged behavior may be in violation of the Statement, then he/she will notify the accused student with a letter identify the charges and present the findings of the investigation and to the RC. The RC will schedule a meeting as described below in Stage Two.

AMEND the original-fourth paragraph of “C. Hearing”:

During the hearing, the RO, RC, accused student, complaining witness complainant, and student panelists (if applicable) have the right to question the complaining witness complainant and the RC. Each of the above-enumerated persons may also ask questions of (1) the accused student, if he chooses to testify and (2) of any witnesses who have presented information. Silence by the accused will not be used as evidence of responsibility for a charge.

AMEND the original-fifth paragraph of “C. Hearing”:

The accused student, complaining witness complainant, and RC may also present written reports to the panel or RO. The accused student and complaining witness complainant may make statements to the panel or RO at the beginning and end of the proceeding.

AMEND the original-sixth paragraph of “C. Hearing”:

To ensure the privacy of the parties and to maximize the educational potential of the process, both parties the accused student, the complainant, and the RC must agree to the admission of any other people (except witnesses or advisors) to the hearing. To ensure fairness and consistency, and to maximize the educational potential of the process, panelists must have access to details, rationales, and results of past cases. The student is presumed not responsible unless clear and convincing evidence is presented that a violation of the Statement has occurred.
§ 23. SETTLEMENT AND MEDIATION

Currently, the Statement provides for three means of resolution: (1) acceptance of responsibility, (2) mediation, or (3) hearing resolution. The purpose of mediation is to provide the two principal parties with the opportunity to reach a mutually-agreed-upon resolution.

The current Statement does not define “party.” It could mean the complainant, but the complainant is not always the victim; the complainant could be a third-party. But mediation only achieves its educational value when the **effectuated**-parties are involved. Therefore the Board proposes to specify the mediation parties as the accused student and the victim, thereby bypassing any third-party complainant.

If there is no “victim” (as when the complainant is a University department, or when the offense concerns alcohol), then mediation is probably not the appropriate form of resolution. But the goals of mediation (discussion and mutually-agreed-upon resolutions) could nonetheless be accomplished. Therefore the Board proposes to expand the Acceptance-of-Responsibility option by enabling the accused student and the RC to choose a sanction together. Rather than permitting the RC to simply elect a sanction, the accused student would participate in the process. The RC could still demand certain sanctions (and if they are not agreed to, then the case would be resolved by hearing).

Proposal:

**AMEND the title of “A. Acceptance of Responsibility”:**

A. Settlement and Acceptance of Responsibility

**AMEND the first sentence of “A. Acceptance of Responsibility”:**

The accused student has the option of accepting responsibility for the charges and accepting the sanction chosen by the RC, **sanction agreed-upon by the RC and the student.** The RC and the student will negotiate a mutually-acceptable sanction. The student may then elect to accept responsibility and the agreed-upon sanction.

**AMEND “B. Mediation”:**

If both parties (1) **both the accused student and the victim** agree to resolve the complaint through mediation, and (2) if the RC believes that mediation is an appropriate form of resolution, then the RC will make arrangements for the mediation to occur. The nature of some complaints, especially those involving violence, may make mediation an unrealistic option. When violence is involved, the RC must concur in the decision to use mediation.

Parties will be offered the choice of using a University or a non-university mediator. Mediation is a voluntary process which may or may not result in a mediated agreement. When a mediated agreement is reached by the parties, the case is resolved and parties are encouraged to use the RC as a resource for future questions. Mediated agreements may not be appealed. . . .
APPENDIX

STATEMENT WITH CUMULATIVE AMENDMENTS

This is the text if the Statement if all of the proposed Amendments were adopted. We believe it is important to understand the Statement—and these Amendments—in the larger context, as they operate together.

The bracketed numbers (e.g. [§ 1]) correspond to the Proposal numbers.

I. Introduction

The University of Michigan--Ann Arbor (the University) is dedicated to supporting and maintaining a scholarly community. As its central purpose, this community promotes intellectual inquiry through vigorous discourse. Values which undergird this purpose include civility, dignity, diversity, education, equality, freedom, honesty, and safety.

When students choose to accept admission to the University, they accept the rights and responsibilities of membership in the University's academic and social community. As members of the University community, students are expected to uphold its previously stated values by maintaining a high standard of conduct. Because the University establishes high standards for membership, its standards of conduct, while falling within the limits of the law, may exceed federal, state, or local requirements.

Within the University, entities (such as schools and colleges, campus, professional, and student organizations) have developed policies that outline standards of conduct governing their constituents and that sometimes provide procedures for sanctioning violations of those standards. This Statement of Student Rights and Responsibilities (the Statement) does not replace those standards; nor does it constrain the procedures or sanctions provided by those policies. This Statement describes possible behaviors which are inconsistent with the values of the University community; it outlines procedures to respond to such behaviors; and it suggests possible sanctions which are intended to educate and to safeguard members of the University community.

II. Student Rights

Students at the University have the same rights and protections under the Constitutions of the United States and the State of Michigan as other citizens. These rights include freedom of expression, press, religion, and assembly. The University has a long tradition of student activism and values freedom of expression, which includes voicing unpopular views and dissent. As members of the University community, students have the right to express their own views, but must also take responsibility for according the same right to others.

Students have the right to be treated fairly and with dignity regardless of age, color, creed, disability, gender identity, marital status, national origin or ancestry, race, religion, sex, sexual orientation, and veteran status. The University has a long-standing
tradition of commitment to pluralistic education. Accordingly, the University, through this Statement, will not discriminate on the basis of group status.

Students have the right to be protected from capricious decision-making by the University and to have access to University policies which affect them. The University has an enduring commitment to provide students with a balanced and fair system of dispute resolution. Accordingly, this Statement will not deprive students of the appropriate due process protections to which they are entitled. This Statement is one of the University's administrative procedures and should not be equated with procedures used in civil or criminal court.

[§10] Students have the right to have all disputes arising under this Statement adjudicated or otherwise resolved in good faith. “Good faith” means that proceedings are conducted in a manner that reflects a primary and overriding interest in the fair and reasonable administration of justice under the terms of the Statement.

[§10] Sanctions will always be commensurate to the degree of wrong. RCs will only recommend or offer, and fact-finders will only impose, sanctions which are proportionate to the alleged violation during every stage of the resolution process.

[§10] The requirement to respect this right to good faith rests with all those involved in administering the resolution of disputes arising under this Statement.

III. Student Responsibilities

Along with rights come certain responsibilities. Students at the University are expected to act consistently with the values of the University community and to obey local, state, and federal laws.

IV. Violations

The following behaviors contradict the values of the University community and are subject to action under this Statement:

A. Physically harming another person including acts such as killing, assaulting, or battering

B. Sexually assaulting another person

C. Sexually harassing another person (as defined in “Definition of Sexual Harassment” in Policies for Students: University of Michigan, http://www.studentpolicies.dsa.umich.edu.)

D. Hazing

E. Stalking, or harassing another person

F. Possessing, using, or storing firearms, explosives, or weapons on University-controlled property or at University events or programs (unless approved by the Department of Public Safety; such approval will be given only in extraordinary circumstances)
G. Tampering with fire or other safety equipment or setting unauthorized fires

H. Illegally possessing or using alcohol

I. Illegally distributing, manufacturing, or selling alcohol

J. Illegally possessing or using drugs

K. Illegally distributing, manufacturing, or selling drugs

L. Intentionally and falsely reporting bombs, fires, or other emergencies to a University official

M. Stealing, vandalizing, damaging, destroying, or defacing University property or the property of others

N. Obstructing or disrupting classes, research projects, or other activities or programs of the University; or obstructing access to University facilities, property, or programs (except for behavior that is protected by the University's policy on Freedom of Speech and Artistic Expression)

O. Making, possessing, or using any falsified University document or record; altering any University document or record, including identification cards and meal cards

P. Assuming another person's identity or role through deception or without proper authorization. Communicating or acting under the guise, name, identification, email address, signature, or indicia of another person without proper authorization, or communicating under the rubric of an organization, entity, or unit that you do not have the authority to represent

Q. Failing to leave University-controlled premises when told to do so by a police or security officer with reasonable cause

R. Conviction, a plea of no contest, acceptance of responsibility or acceptance of sanctions for a crime or civil infraction (other than a minor traffic offense) in state or federal court if the underlying behavior impacts the University community

S. Misusing, failing to comply with, or jeopardizing Statement procedures, sanctions, or mediated agreements, or interfering with participants involved in the resolution process

T. Violating University computer policies

**V. Scope of the Violations**

Behavior which occurs in the city of Ann Arbor, on University-controlled property, or at University sponsored events/programs may violate the Statement. Behavior which occurs outside the city of Ann Arbor or outside University-controlled property may violate the Statement only if the behavior poses an obvious and serious threat or harm to any member(s) of the University community.
The Statement of Student Rights and Responsibilities is intended to incorporate other specific University policies by reference. These policies are: the University Housing's Community Living at Michigan Handbook, the Information Technology Division's Condition of Use Statement, and the Computer Aided Engineering Network's Conditions of Use Policy. The Statement will be used to address violations of these policies only if the violation warrants a process or a sanction beyond what is available in these policies. In such cases, policy adjudicators may take intermediate action regarding a complaint as defined by their individual policy; however, final resolution will occur under the procedures outlined in this Statement.

VI. Procedures

The University will use the following procedures to respond to behavior which goes against the values of the University community as defined in this Statement. The University considers the procedures for resolving disputes a part of its educational mission and is committed to a process which provides both peer review and mediation. Persons who have questions about the Statement should contact the Resolution Coordinator who provides support to all participants. Resolution and appeal processes are administrative functions and are not subject to the same rules of civil or criminal proceedings. Because some violations of these standards are also violations of law, students may be accountable to both the legal system and the University.

Stage 1: Initiating the Resolution Process

Any student, faculty member, or staff member may submit a complaint alleging a violation of the Statement. A student, faculty member, or staff member may also submit a complaint based upon information reported to that person. [§22] If a victim of an alleged offense is unwilling or unable to be the complainant, then the RC will designate a member of the OSCR staff to serve as the complainant. The person submitting the complaint is the complaining witness and complainant. All complaints must be submitted to the Resolution Coordinator (RC), in writing, within six months [§5] after of discovery of the incident(s) alleged in the complaint. The RC may waive the six-month limitation when a late submission is reasonable. [§22] The RC will forward all complaints to a different member of the OSCR staff, who will conduct an investigation. If the RC OSCR investigator determines, based on the investigation, that the alleged behavior may be in violation of the Statement, then the RC he/she will notify the accused student with a letter identify the charges and present the findings of the investigation and to the RC. The RC will schedule a meeting as described below in Stage Two.

[§1] The RC may dismiss the complaint at any stage if the RC reasonably believes the complaint is baseless or otherwise unsupported by the available evidence, or that the underlying grievance or problem is better resolved in a different manner.

[§21] Upon their request, both accused students and complainants will each be assigned a University of Michigan legal advocate who will assist them throughout the Statement resolution process. A legal advocate may be accompany, assist, and/or represented at any time during the resolution process by this person (or by another adviser of his choice, such as a student adviser or attorney), except as otherwise stated in these procedures.
§15 Offenses involving illegal possession or use of alcohol will be handled in the following manner: For the first offense, students will be contacted by OSCR, but no formal action will be taken unless there is serious concern for the welfare of the student. For the second offense, students will be again contacted by OSCR, but no formal action will be taken if the student self-initiates contact with help resources, unless there is serious concern for the welfare of the student. For third and subsequent offenses, the student will be charged with violation of this Statement.

Stage 2: Resolution Process

The RC will meet with the accused student to explain the complaint and the resolution process. The student may be accompanied by an advisor. The student will have the opportunity to ask questions and make a statement. The RC will inform the accused student (1) that statements the student makes to the RC may be considered at any hearing, (2) that he does not have to make a statement at the initial meeting, (3) that all OSCR records are confidential to the extent permitted by law, and (4) that he has a right to know the potential sanctions before admitting responsibility (but may not appeal if he accepts responsibility without asking about sanctions), [§9] and (5) that the student may consult with his adviser before accepting responsibility. [§19] The RC will present the student with a letter defining the charges against him/her. The RC may state that he/she (the RC) will not, during any stage of the resolution process, recommend suspension or expulsion. If the RC at any time states that he/she will not recommend suspension or expulsion, then the RC will not so recommend to the fact-finder during any subsequent hearing.

The accused student has a choice of the following methods of dispute resolution:

A. [§23] Settlement and Acceptance of Responsibility

The accused student has the option of accepting responsibility for the charges and accepting the sanction chosen by the RC sanction agreed-upon by the RC and the student. The RC and the student will negotiate a mutually-acceptable sanction. The student may then elect to accept responsibility and the agreed-upon sanction. [§9] The RC will inform the student that he/she may change his/her acceptance or denial of responsibility within at least twenty-four hours after his/her initial decision without prejudice. The accused student also has the option of accepting responsibility for the charges and requesting a hearing on the sanctions under the procedures outlined in VI.2.C “Hearings.”

B. Mediation

If [§23] both parties (1) both the accused student and the victim agree to resolve the complaint through mediation, [§23] and (2) if the RC believes that mediation is an appropriate form of resolution, then the RC will make arrangements for the mediation to occur. The nature of some complaints, especially those involving violence, may make mediation an unrealistic option. When violence is involved, the RC must concur in the decision to use mediation.

Parties will be offered the choice of using a University or a non-university mediator. Mediation is a voluntary process which may or may not result in a mediated agreement. When a mediated agreement is reached [§23] by the parties, the case is resolved and parties are encouraged to use
the RC as a resource for future questions. Mediated agreements may not be appealed. [§21] 
*Mediated agreements shall not result in suspension or expulsion.*

If the mediator reports that mediation has failed, the accused student has the choice of accepting responsibility or proceeding to a hearing.

**C. Hearing**

[§14] The accused student may choose to have a Resolution Officer or a Student Resolution Panel arbitrate the dispute. In cases which involve more than one accused student, the students will have the option of choosing whether they have the same or separate hearings. If students cannot agree, the hearings will be separate. [§14] The complaint may be heard before a Resolution Officer or a Student Resolution Panel according to the following process:

1. The accused student will indicate whether he/she wishes to have his/her case heard before a RO or a panel.
2. In instances where the complainant is a student, the complainant may either agree to the accused student’s choice, or else submit in writing why he/she would prefer a different option. In the latter option, the accused student may also explain his/her choice in writing.
3. Should the complainant disagree with the accused student’s choice, a RO will determine whether a RO or a panel is most appropriate for the complaint based on the explanations submitted by the parties. The decision of the RO will be written and will be grounds for appeal for procedural error if the decision is unreasonable.

[§21] Each party may be accompanied at the hearing by a personal advisor, who may be an attorney; however, the advisor may not participate directly in the proceedings, but may only advise the party. For example, the advisor may not question witnesses or make presentations.

[§21] Both the accused student and the complainant may be accompanied by, advised by, and/or represented by a University of Michigan legal advocate, who may take on whatever duties and rights the accused student or complainant has during the hearing, including the right to present information and question witnesses. If either the accused student or the complainant chooses to be advised by a person other than a University of Michigan legal advocate, then that person may accompany and advise the accused student or the complainant but may not represent him/her during the hearing (such as questioning witnesses or presenting information).

[§21] If the victim of the alleged offense is not the complainant, then he/she may attend all hearings and may be accompanied by an adviser, but that adviser may not directly participate in the hearing (such as questioning witnesses or presenting information). The complainant will generally represent the best interests of the victim and the community. The victim may make a statement during the hearing if he/she wishes.

At a hearing, the RC will be in charge of preparing and submitting information gathered during the investigation. Both parties may have access to all written or other information that will be
considered prior to the hearing. Both parties have the right to the names of witnesses providing information prior to the hearing.

During the hearing, the RO, RC, accused student, [§22] complaining witness complainant, and student panelists (if applicable) have the right to question the [§22] complaining witness complainant and the RC. Each of the above-enumerated persons may also ask questions of (1) the accused student, if he chooses to testify and (2) of any witnesses who have presented information. Silence by the accused will not be used as evidence of responsibility for a charge. Witnesses may be present in the hearing room only when they are presenting information. At any time during the hearing, the accused student may request a recess to consult with his advisor.

[§6] The accused student and the complainant may call any witness whose information is of value to the case, but the RO may exclude a witness if the witness is duplicative. In such instances of exclusion, the RO will announce his rationale, which may itself constitute grounds for appeal.

The accused student, [§22] complaining witness complainant, and RC may also present written reports to the panel or RO. The accused student and [§22] complaining witness complainant may make statements to the panel or RO at the beginning and end of the proceeding.

To ensure the privacy of the parties and to maximize the educational potential of the process, [§22] both parties the accused student, the complainant, and the RC must agree to the admission of any other people (except witnesses or advisors) to the hearing. To ensure fairness and consistency, and to maximize the educational potential of the process, panelists must have access to details, rationales, and results of past cases. The student is presumed not responsible unless clear and convincing evidence is presented that a violation of the Statement has occurred.

A tape recording will be made of Statement hearings, and will be made available (in the OSCR office) to the accused student or complaining witness upon request during the period in which an appeal may be filed or is pending. In all cases, the RO will issue a written decision containing findings of fact, conclusions as to responsibility, and rationales for all sanctions imposed.

All arbitrated resolutions will result in findings of fact. [§20] The fact-finder will also make recommendation(s) regarding sanctions to the Dean of Students, who may accept or modify the recommendation(s). Where the student has been found responsible based on the findings, the panel or resolution officer will decide upon a sanction. [§20] The Dean may not modify a sanction to include suspension or expulsion. However, when expulsion is recommended, the Dean may instead suspend the student.

Stage 3: Appealing the Resolution Process

An appeals process is an essential safeguard for an imperfect human process that attempts very hard to be fair. The appeal process is available to each party. Appeals may be filed [§4] by the accused student and granted for the following reasons: proper procedures were not followed, the evidence clearly does not support the finding(s), sanctions are insufficient or excessive relative to the violation, or there is new evidence not reasonably available at the time of the hearing and which would likely have resulted in a different outcome. [§4] Appeals may be filed by the complainant and granted if proper procedures were not followed or if there is new
evidence not reasonably available at the time of the hearing and which would likely have resulted in a different outcome. All appeals must be submitted in writing to the RC within 10 academic calendar days after notification of the Dean of Students’ decision to accept or modify the recommendations resulting from the hearing. The VPSA may waive the 10 day limitation when a late submission is reasonable. The appeal will be reviewed by an Appeals Board composed of [§13] two students appointed by the Michigan Student Assembly, two faculty members appointed by the Faculty Senate, and two administrators appointed by the President. MSA, the Faculty Senate, and the President will each appoint one alternate member to the Appeals Board. MSA, the Faculty Senate, and the President will each appoint two members to the Appeals Board panel pool who will be, respectively, students, faculty members, or administrators. Each time an appeal is filed, OSCR will constitute an appeals board consisting of one person from each group (one student, one faculty member, and one administrator). Whichever Appeals Board panelists did not serve on the previous panel will be the first to be invited to serve on the next panel, such that the two members of each group alternate. The Appeals Board will [§20] recommend one of the following actions to the VPSA: [§§8, 20] (a) confirming the decision made through the hearing process, [§§8, 20] (b) altering the sanction(s), [§§8, 20] (c) striking the initial finding of responsibility and/or sanction(s) and remanding to the original fact-finder for further consideration with corrective instructions from the Appeals Board, or [§§8, 20] recommending a re-hearing (d) ordering a new hearing before a new fact-finder. [§20] The VPSA may accept or modify the recommendation(s). The VPSA may not modify a sanction to include suspension or expulsion. However, when expulsion is recommended, the VPSA may instead suspend the student.

If the VPSA believes that the finding of responsibility or the sanctions are seriously disproportionate to the conduct of a student found responsible under this Statement, and if no further appeal to the Appeals Board is available, then the VPSA may alter the finding of responsibility or reduce the sanctions imposed by the fact-finder. When exercising this discretion, the VPSA can either diminish the severity of the sanction initially imposed, or annul the finding of responsibility. The VPSA’s decision will be made in writing and will include a reasoning as to the special circumstances under which it was issued. The VPSA’s decision is final and non-contestable before the Appeals Board.

VII. Sanctions

Sanctions are designed to promote the University's educational mission. Sanctions may also serve to promote safety or to deter students from behavior which harms, harasses, or threatens people or property or is motivated by bias because of membership in a group listed in II¶2. Some behavior is so harmful to the University community or so deleterious to the educational process that it may require more serious sanctions: removal from housing, removal from specific courses or activities, suspension from the University, or expulsion. [§18] No sanction will be imposed which is not listed here, and no sanction will automatically impose other sanctions following future offences. One or more of the following sanctions may be recommended:

A. Formal Reprimand: A formal notice that the Statement has been violated and that future violations will be dealt with more severely.
B. Disciplinary Probation: A designated period of time during which the student is not in good standing with the University. The terms of probation may involve restrictions of student privileges and/or set specific behavioral expectations.

C. Monetary Compensation Restitution: Monetary compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement, not to exceed the fair amount of loss, damage, or injury, unless that compensation is unreasonable.

D. Restriction from Employment at the University: Prohibition or limitation on University employment.

E. Class/Workshop Attendance: Enrollment and completion of a class or workshop that could help the student understand why her or his behavior was inappropriate.

F. Educational Project: Completion of a project specifically designed to help the student understand why her or his behavior was inappropriate.

G. Service: Performance of one or more tasks designed to benefit the community and help the student understand why her or his behavior was inappropriate.

H. University Housing Transfer or Removal: Placement in another room or housing unit or removal from University housing.

I. Removal from Specific Courses or Activities: Suspension or transfer from courses or activities at the University for a specified period of time.

J. No Contact: Restriction from entering specific University areas and/or all forms of contact with certain person(s).

K. Suspension: Separation from the University for a specified period of time or until certain conditions are met.

L. Expulsion: Permanent separation from the University

VIII. Related Procedures

A. Emergency Suspension

If a student's actions pose an immediate danger to any member of the University community, the VPSA or a designee may immediately suspend the student pending a meeting. Except in extraordinary circumstances that meeting will be scheduled within two academic calendar days. At this meeting, the student will be informed of the nature of the alleged violation, presented with available evidence, and given the opportunity to make a statement and present evidence. If the emergency suspension is continued, the student will be offered a hearing option within ten academic calendar days.

B. Procedural and Interpretive Questions
All procedural and interpretive questions concerning the Statement will be resolved by the VPSA or designee. At any time, the VPSA or the RC may consult the Office of the General Counsel about a case or procedures.

C. Selection of Mediators, Student Panelists, and Resolution Officers

University mediators will be selected by the VPSA. A list of trained non-university mediation services will be maintained by the Office of the Vice President for Student Affairs. The VPSA will try to identify non-university mediators who will serve parties at no charge or on a sliding fee scale. A neutral mediator will be assigned to each mediation. Each winter term 60 students will be appointed to serve as panelists for the following academic year. Each winter term, the VPSA or designee will appoint such a number of students as it deems appropriate to serve as panelists for the following academic year. The number of panelists will be no fewer than 20. The student government of each school and college, in consultation with its Dean or designee, will appoint a number of students proportionate to its college's share of the total University enrollment. Graduate students will be appointed through their home school or college. It is expected that each student government will appoint a diverse pool of students to serve as panelists. The VPSA or designee will generate a random ordered list of potential student panelists using a method approved by the MSA. The students will be contacted and asked if they will serve as panelists for the following year, until the designated number of student panelists has been appointed.

Resolution Officers are recommended by the Faculty Senate and/or the VPSA. The Faculty Senate and the VPSA will each appoint three ROs to serve for the academic year. An RO will be chosen randomly from among those six to serve for a given complaint.

¶ Each Student Resolution Panel will consist of five voting student panelists and a non-voting Resolution Officer who will oversee the proceedings.

D. Records of Resolution Actions

Records will be maintained by the RC with regard to any and all actions taken under the Statement. Accordingly, records will be maintained by the RC of complaints, mediations, hearings, findings, and sanctions. For each case in which a complaint is issued, including cases where the student accepts responsibility, the record will recite the facts of all conduct found or admitted to be in violation of the Statement with sufficient specificity to indicate that a violation of the Statement occurred. Confidentiality of records will be maintained to the extent permitted by law and the University of Michigan Student Rights and Student Records Policy. Should OSCR release a record, it will notify all students whose names are released and indicate to whom they are released. If a student is suspended or expelled, a notation will be made on the student's academic record. The notation of suspension will be removed at the time the student is readmitted to the University.

E. Student Access to Records

Records and documents that will be considered during a hearing will be made available in advance to all parties but may be redacted to protect the privacy rights of individuals not directly involved in the resolution process.
F. Reports of Actions

Statistical reports of actions taken through the Statement will be published following each academic term. These data will cover the number of complaints and the types of violations, resolutions, and sanctions. Periodic, regular review of records of resolution actions will be made available, in confidence, to the Code of Conduct Advisory Board Chair of MSA. Personally identifiable information will be removed from all records prior to any review.

G. Concurrent Legal and Statement Proceedings

If an accused student is undergoing civil or criminal action for the same behavior which forms the basis of a complaint under this Statement, the accused student may choose to delay a Statement resolution until the external proceedings come to fruition. By choosing to delay the Statement process, the accused student accepts suspension from the University and may not enter University property without authorization from the RC. The accused student or the complaining party may appeal the RC’s decision regarding suspension to the Vice President for Student Affairs or a designee. Such appeal must be filed in writing within five academic days of notice of the RC’s decision. Suspension or other reasonable restrictions may be imposed by the RC during the interim of an appeal.

H. Advisor Corps

The MSA, with approval of the General Counsel, has the option to develop a student peer advisor corps. These advisors will be available to any student party involved in Statement proceedings (excluding mediations). All potential peer advisors in the Advisor Corps must successfully complete training provided by the Office of Student Conflict Resolution. The Office of Student Conflict Resolution will develop and conduct training in consultation with the MSA.

I. Amending the Statement of Student Rights and Responsibilities

The Michigan Student Assembly, the Senate Assembly, or the Executive Officers of the University may propose amendments to the Statement. All proposed amendments will be reviewed by the Students Relations Committee of SACUA. After consultation with each of the above mentioned groups, the Student Relations Committee will forward the proposed amendments to the President of the University with the committee’s recommendation on implementation. The final decision on amending the Statement will be the President’s.

The president will endeavor to communicate his or her decision to accept or reject each of the proposed amendments in a public and timely manner, during the regular academic year. It is suggested that the president’s communication to the student body state a rationale for each decision to reject an amendment.

J. Legal Advocates

OSCR will maintain a pool of University of Michigan legal advocates for the purposes of accompanying, advising, and representing students (both accused students and complainants) throughout the Statement resolution process. Legal advocates will (1) have
at least one year of formal legal education, (2) be trained by OSCR in the Statement resolution process, and (3) be employed by or enrolled in the University of Michigan.