

November 18, 1999

MEMORANDUM

TO: Mark G. Yudof
President

FROM: Members of the Review Panel

- Sara Evans, Professor
- Betty Hackett, Director
Student Judicial Affairs
- Mark B. Rotenberg
General Counsel
- Julie A. Sweitzer, Director
Equal Opportunity and Affirmative Action
- Kathryn F. Brown
Associate General Counsel

RE: Review Panel's Recommendations on Sexual Misconduct and Domestic Abuse Investigations

This report is in response to your charge of July 9, 1999 to this Review Panel regarding the Outside Counsel's Report on the Issue of Alleged Interference in Sexual Misconduct and Domestic Abuse Investigations. Specifically, you requested the Panel to consider the following issues, and where appropriate, to recommend policies and procedures to address areas of concern:

- Are the current disciplinary procedures within the Student Conduct Code, the Residence Hall Rules, and the Student-Athlete Handbook adequate to deal with allegations of sexual misconduct or domestic abuse?
- Is a "behavioral contract" or other informal mechanism an appropriate vehicle for resolution of matters involving allegations of sexual misconduct or domestic abuse? If such a vehicle is appropriate, what University entity should negotiate and enforce such a mechanism?
- What policy should govern who should be present at internal interviews of witnesses, crime victims, or alleged perpetrators,

especially in matters involving allegations of sexual misconduct or domestic abuse?

- What additional mechanisms are necessary to assure adequate coordination and communication among University entities with responsibility for the handling of student misconduct, such as sexual misconduct or domestic abuse?
- Other related issues which are presented during the course of your review and consultation.

REVIEW PROCESS

Since receiving your charge, the Panel has reviewed the Outside Counsel's Report and sought input from several individuals upon your recommendation and our own initiative, including: Jamie Tiedemann, Director of the Program Against Sexual Violence; Sally Kenney, Associate Professor, Hubert H. Humphrey Institute; Chris Voelz, Director of Women's Athletics; Mary Ann Ryan, Director of Housing and Residential Life; Dave Haden, Program Director, Housing and Residential Life; Joy Rikala, former Chief of University Police; Carolyn Chalmers, attorney/consultant on sexual assault issues at Carleton College; Mark Dienhart, Director of Men's Athletics; and Jeff Schemmel, Associate Director of Men's Athletics. Throughout this process, the Review Panel also had the benefit of input from Betty Hackett, Director, Student Judicial Affairs, and Nicholas Barbatsis, Grievance Officer. Ms. Hackett replaced Mr. Barbatsis on the Panel midway through the Panel's work. Members also spoke with Jane Canney, Associate Vice President for Student Development and Athletics. The Panel also made numerous attempts to reach a representative of the Minnesota Student Association and arranged one meeting. Ultimately, no representative appeared before the Panel. Finally, the Panel also considered written correspondence from Fred Morrison, Chair of the FCC, on the issues.

CURRENT PROCESS

Existing Disciplinary Codes – The Board of Regents Policy on Student Conduct (attached as Appendix A) establishes what is commonly known as the Student Conduct Code ("Conduct Code", or "Code"), and defines the disciplinary offenses which are actionable by the University. The Code recognizes the dual responsibility of students as both members of the University community and citizens of the state. It states that the "University neither substitutes for nor interferes with regular legal processes", and that the "University will decide on the basis of its interest and the interest of the student whether or not to proceed with its internal review simultaneously or defer action." Appendix A, Board of Regents' Policy on Student Conduct, Section III.

"Procedures for Disciplinary Proceedings - Twin Cities Campus" were adopted by the Regents in 1970, and are distributed in a pamphlet entitled "A Statement of

Standards of Student Conduct Enforceable by University Agencies.” (A copy is attached as Appendix B.) The procedures provide that “violations of rules or policies established by a college, department, administrative unit, or student organization will be processed the first instance” by that unit. Appendix C, page 7. As a result it is important to look first at other units with disciplinary authority.

Housing and Residential Life publishes “Community Behavioral Standards”, which include the residence hall regulations and the disciplinary procedures. (A copy is attached as Appendix C.) (This document and process were under review and revision by Housing prior to the panel review.) If the regulations are allegedly violated, a staff member or resident writes an Incident Statement. Incidents involving possibly criminal behavior are referred to the police as well, and Housing’s general practice in recent years was to refer more serious cases to the central Student Judicial Affairs (described below). If a resident is involved, the residence hall staff will provide an opportunity for the resident to respond, and will consider an informal resolution. The Coordinator for Student Behavior for all residence halls may become involved, and there is an opportunity for a formal hearing. A case may be appealed to the Campus Committee on Student Behavior (a University Senate committee described below.)

Directly relevant to the incidents prompting this review are the University of Minnesota Student Athlete Conduct Guidelines, and the Men’s Athletic Department Student-Athlete Code of Conduct. (A copy of these codes, as contained in the 1998-99 Men’s Intercollegiate Athletics Student-Athlete Handbook, are attached as Appendix D.) The Student-Athlete Code of Conduct specifically identifies sexual violence and physical violence as covered by the Student-Athlete Code. It provides for an automatic suspension from team activity if a student-athlete is charged with “violating the law and personal rights of others”. Penalties relate to team membership and financial aid, and can be imposed “in advance” of any campus disciplinary actions.

Student Judicial Affairs process – The director of Student Judicial Affairs administers the disciplinary process for all cases referred to the central disciplinary process. (Appendix E is a chart summarizing the process, and Appendix B outlines these procedures in more detail.) All alleged violations are initially directed to the Conduct Code Coordinator. The Conduct Code Coordinator, who is not a member of the office of Student Judicial Affairs and who carries these responsibilities in addition to his or her regular duties, reviews the allegation to determine whether the complaint, if proven, appears to be a violation of the Conduct Code. If the Coordinator issues a complaint, the Student Judicial Affairs director informs the student, listens to the response, and attempts an informal resolution based on an educational development approach. The director is authorized to make findings of fact and to impose sanctions, but in practice does so only with the agreement of the student. If an agreement is not reached, the case is referred to the Campus Committee on Student Behavior (“CCSB”). The director may refer a case directly to the CCSB if the complaint is too serious or

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complex, the complaints against a student are too numerous, or the evidence too conflicting or irreconcilable. (Appendix B, page 11)

The CCSB members are appointed by the President and the Senate Committee on Student Affairs. They include students and faculty. The chairperson is a faculty member. The CCSB generally operates only during the regular academic year.

If a hearing is needed, the CCSB secretary establishes a hearing date and informs the student who is the subject of the complaint, the presenter for the University (usually a student affairs staff member), any advocate for the accused student, and the chairperson. The entire CCSB is notified of the date, and panel members are solicited. Once the quorum of 5 members has confirmed, the hearing goes forward. Witnesses are presented and can be questioned, and documents may be offered. The findings and sanctions are reported to all parties in writing.

When a criminal investigation is also pending, the practice of Student Judicial Affairs in recent years is to defer any action on the complaint until resolution of the criminal proceedings. This practice is based on years of experience with requests from police and prosecutors to avoid any risk of contaminating the criminal proceedings. A criminal conviction often provides a greater penalty, and virtually assures the basis for University disciplinary action. It may create a potentially substantial delay in University action, however, that can affect the victim's ability to move on with life, and may allow the perpetrator to avoid some of the impact of University discipline.

Appeals - A separate policy governs the appeals procedure. (A copy is attached as Appendix F.) The CCSB may hear appeals from other disciplinary bodies described above, but appeals from CCSB decisions are heard by the President's Student Behavior Review Panel (a standing presidential advisory committee that functions only as an appellate body.) The appellate body (either the CCSB or the Student Behavior Review Panel) reviews the record, and can amend or reverse the previous decision. Grounds for appeal include procedural unfairness, relevant evidence that was not available at the time of the initial hearing, sanctions inconsistent with the violation, the decision was contrary to the weight of the evidence, or the interests of the people or entities involved were not adequately considered. (Appendix F, page 5). Additional support and counseling services are available to students at University Counseling and Boynton Health Service.

Program Against Sexual Violence - Although it is not a disciplinary or grievance office, the Program Against Sexual Violence ("PASV") plays an important role in providing support services for University students and staff who are victims of sexual violence. The program is operated through Student Development and Athletics, and provides a 24-hour crisis phone line. PASV staff and volunteer advocates are trained, and will coordinate transportation, contacting police, emergency medical

services, writing orders for protection, accompanying victims to police/medical/Student Judicial Affairs/court appointments, and provide support referrals. Finally, the program provides training to University students on sexual violence, through new student orientations, Housing and Residential Life programs, student organizations including the Panhellenic Council, and athletics. (A copy of PASV's Mission Statement and list of services are attached as Appendix G.)

GUIDING PRINCIPLES

After reviewing the Outside Counsel's Report and receiving input from those listed above, the Panel established principles to guide its recommendations. The Panel identified these principles as necessary to create an effective and efficient process to resolve allegations of sexual assault under the jurisdiction of the Student Conduct Code. We will use the phrase "sexual assault" to cover the full range of offenses encompassed by the terms "sexual misconduct" and "domestic abuse" as used in the questions presented to the Panel including, but not limited to, physical violence, and threats of physical violence. The Panel was guided by the following principles:

1. The University's value of no tolerance for sexual assault must be reaffirmed for the entire community, and validated for each victim.
2. Any allegations of sexual assault should be brought to resolution promptly.
3. The process for resolution of sexual assault allegations should be clearly communicated to all involved.
4. The process for resolution of sexual assault allegations must allow any needs for safety and health of the victim, the safety of the community, and protection of University resources to be addressed immediately.
5. The response to sexual assault allegations should be consistently professional.
6. The process for resolution of sexual assault allegations must respect the legal rights of all involved.
7. The University has an obligation, separate and distinct from a criminal judicial process, to enforce its values and to respond to violations of community standards.

PANEL RECOMMENDATIONS

1. Are the current disciplinary procedures within the Student Conduct Code, the Residence Hall Rules, and the Student-Athlete Handbook adequate to deal with allegations of sexual misconduct or domestic abuse?

Our conclusion is that the current Student Conduct Code provides adequate coverage to enforce the prohibition against sexual assault in circumstances that directly affect the University of Minnesota learning community. The Code's effectiveness can be enhanced, however, by altering discretionary practices which have delayed its application and by creating a special investigative process upon receipt of sexual assault allegations. Any other disciplinary rules, such as the Housing and Residential Life rules and Men's Athletic Department Student-Athlete Code of Conduct, or college/program codes of conduct, should provide for referral of sexual assault cases to the special process in Student Judicial Affairs as outlined below.

The following recommendations are made to improve the handling of cases of sexual assault under the Student Conduct Code. We believe most of our recommendations should be adopted for certain other acts of serious misconduct, e.g. those related to violence including acts of stalking, physical aggression or threats of physical aggression.

1. The Panel recommends that as a general rule the University's internal investigation and disciplinary processes proceed independently of any civil or criminal actions in the courts. The Panel recognizes that care must be taken not to interfere with a police investigation or criminal prosecution. Cases may proceed concurrently unless an individual case presents circumstances which merits deviation from this general recommendation.

2. The Panel recommends that the following model be utilized in cases of alleged sexual assault.

- A. First, each campus administrative unit (e.g. Men's and Women's Athletics Departments, Housing and Residential Life, Recreational Sports, Campus Activity Center, etc.) and any academic unit, with the exception of any person who has a statutory legal privilege, shall promptly forward any allegation of sexual assault to Student Judicial Affairs. To avoid multiple processes, the referring department shall take no further action except as directed by Student Judicial Affairs. The victim should also promptly be referred to the University's Program Against Sexual Violence ("PASV") for support services. The PASV should continue to encourage victims to report to Student Judicial Affairs and the University Police. The University Police Department should continue to inform Student Judicial

Affairs and PASV consistent with data privacy obligations, and retains its' independent authority and obligation to investigate. All three offices should continue to work cooperatively with each other while honoring any applicable statutory obligations to maintain confidentiality.

- B. The Panel addressed the interim action taken in your memorandum of July 9, 1999, which directed that automatic suspensions of athletes implemented under the Men's Intercollegiate Athletics' Student Code of Conduct in response to criminal charges for sexual misconduct or domestic abuse could not be lifted except by the University Grievance Officer. The authority was subsequently changed to a three-person panel in your memorandum of August 20. The Panel supports the continuation of this interim measure, and recommends that in the future it be modified to allow the suspension to be lifted only by a designated senior administrative officer responsible for academic or student affairs who does not have responsibility for athletics. (Consideration should be given to expanding this measure to include all automatic suspensions implemented under the Men's Athletics' Student Code of Conduct.) In cases of sexual assault, the senior officer should obtain the recommendation of the investigator, as described above, whenever possible.
- C. Student Judicial Affairs will determine the next appropriate step(s). If Student Judicial Affairs determines that further investigation is not warranted, the matter will proceed to resolution under its direction. If Student Judicial Affairs determines that further investigation is warranted, Student Judicial Affairs will initiate an investigation. At present, the University has not designated anyone to conduct internal investigations of sexual assault. The Panel recommends that the University designate or employ an appropriately qualified person for this important role. Qualifications should include: 1) investigatory skills; 2) thorough knowledge of legal rights for victims and accused individuals; and 3) knowledge of unique issues that arise in the context of sexual assault. This investigator shall be an agent authorized within the student disciplinary system.
- D. The investigator will interview the victim, the alleged perpetrator and any other witnesses or persons with relevant knowledge. The investigator will prepare a report of factual findings, and make a recommendation on whether discipline is appropriate, and if so, the type or severity. This report will be forwarded to Student Judicial Affairs.

- E. Student Judicial Affairs will review the report and make a decision on discipline. The victim and the alleged perpetrator will be informed of this decision. If either party is dissatisfied with the outcome, the matter may be referred to a formal hearing before the Campus Committee on Student Behavior in accordance with the Student Conduct Code.
3. The Panel recommends the following practices regarding the Campus Committee on Student Behavior ("CCSB"):
- A. Training for CCSB. The Panel recommends that any CCSB members who will sit on a panel which will hear sexual assault allegations, and anyone who will present cases on behalf of the University at such hearings, must have attended training specifically on issues arising in matters of sexual assault and the hearing of sexual assault cases. This could occur either at the beginning of the academic year or, as needed, prior to a hearing.
 - B. Scheduling for CCSB hearings. The Panel recommends that the CCSB hear allegations of sexual assault as soon as possible and give priority to such cases over those involving less serious offenses. One possibility is to schedule, at the beginning of the year, a set number of days spread throughout the year for CCSB members to hold as potential hearing dates. This would avoid any delay associated with the scheduling of a hearing. The Panel also suggests that hearings begin during the day and avoid late night proceedings.
 - C. Selection of CCSB hearing panel. The Panel recommends that a CCSB hearing panel be composed of a designated number of individuals, not to exceed the current required quorum of five.
 - D. Administrative hearing procedures for the CCSB hearing panel. The Panel recommends that the CCSB consider limiting its review to documentary evidence, (e.g. written questions, witness statements, etc.), and otherwise modify its procedures to minimize the adversarial nature of the process while ensuring a fair hearing.
 - E. Training for CCSB hearing chairs. The Panel recognizes that a hearing on allegations of sexual assault can present many challenges for a hearing panel chair. Thus, the Panel recommends that a hearing chair(s) be selected who is sensitive to these concerns and who can chair all sexual assault cases to ensure consistency, and that the chair be given appropriate training to prepare him/her for the unique challenges of such cases.

- F. Facilities for CCSB hearings. The Panel recommends that hearings be held in locations which allow for appropriate separation of witnesses, to the extent any witnesses are present, and confidentiality in cases of sexual assault allegations.

2. Is a "behavioral contract" or other informal mechanism an appropriate vehicle for resolution of matters involving allegations of sexual misconduct or domestic abuse? If such a vehicle is appropriate, what University entity should negotiate and enforce such a mechanism?

The Panel recognizes that "behavioral contracts" are essentially agreements to resolve disputes and provide for corrective action without requiring a hearing. Everyone we interviewed found value in such opportunities; often alternative dispute resolution is preferred by victims. The concern raised by the Outside Counsel's Report was the risk of abusing behavioral agreements by using them to hide or minimize an individual's conduct. We recommend that behavioral agreements and other alternative dispute resolutions, including mediations with the victim and the accused person, be permitted, as long as they are created within this process and monitored by Student Judicial Affairs. Any informal resolutions arranged by disputants outside this administrative process are not enforceable by the University and will not satisfy this administrative process under the Student Conduct Code. University staff and faculty should not be involved in informal resolutions of sexual assault cases except within the Student Judicial Affairs process. The critical element is the presence of an independent authority who can objectively assess the proposed agreement and effectively monitor the implementation of its terms.

3. What policy should govern whom should be present at internal interviews of witnesses, crime victims, or alleged perpetrators, especially in matters involving allegations of sexual misconduct or domestic abuse?

The Panel considered who should be present at internal interviews. The Panel notes that the outside counsel's report did not reveal any issues regarding internal interviews other than those conducted by the University Police. This Panel defers to the University Police's judgment as to who should be present during interviews conducted by the police. For interviews conducted by investigators or Student Judicial Affairs under these recommendations, we recommend that an interviewee be permitted to bring a support person of her/his choice. The support person should not play an active role in the interview.

4. What additional mechanisms are necessary to assure adequate coordination and communication among University entities with responsibility for the handling of student misconduct, such as sexual misconduct or domestic abuse?

The Panel recommends that an administrative policy with an absolute prohibition of sexual assault, which describes applicable policies, the process, intake points and sources of support, be formally stated in writing and provided to all students, as well as faculty and staff. The Panel encourages training for appropriate faculty and staff who have ongoing student contact responsibilities to assure that they can provide proper advice and referrals to students with concerns regarding sexual misconduct.

The Panel recommends that Student Judicial Affairs maintain a central computerized repository for records of student discipline under the Student Conduct Code. This should include records from Housing and Residential Life, Recreational Sports, Campus Involvement Center, Athletics' Departments, academic discipline from the colleges, and any other student disciplinary systems. The discipline decision-maker needs a complete record of a student's discipline history in order to act appropriately and consistently, and to coordinate the University's response. These records should be maintained in Student Judicial Affairs in a manner consistent with state and federal law, and University policy.

5. Other related issues which are presented during the course of your review and consultation.

Of great concern to this Panel is potential harassment of victims or witnesses. Several individuals appearing before the Panel described that victims are often subject to peer harassment in attempts to dissuade them from pursuing any remedy. This Panel recommends that all victims report such harassment to Student Judicial Affairs and that timely disciplinary actions be taken. The Panel recommends all administrative units, including the Athletic Departments and individual coaches, expressly prohibit harassment, confront it promptly if it becomes known to them, and report it to Student Judicial Affairs.

We also recommend continuation of the interim measure prohibiting Athletics' Departments staff members from contacting victims. If staff members are contacted by victims, they should refer them to Student Judicial Affairs immediately in accordance with the policy recommendations set forth above.

The Panel concluded that the Student Conduct Code should be administered identically for all students, regardless of their participation in athletics or any other extracurricular activity. The Panel recognizes that the Men's and Women's Athletic Department and individual coaches retain the right to discipline student athletes under

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athletic department or team rules for violations not covered by these recommendations, and may take actions in addition to any discipline under the Student Conduct Code. However under the recommendations set forth above, the Men's Athletics Department Student-Athlete Code of Conduct, and as necessary any other departmental or program codes of conduct, should be modified to reflect that all cases of sexual assault will be handled by Student Judicial Affairs. The automatic suspension provision in the Men's Athletic Department Student-Athlete Code of Conduct, which is triggered by incidents that may or may not fall under the category of sexual assault, should be retained. The final discipline could include actions related to participation in athletics or other extracurricular activities.

Finally, our review provided ample evidence of the complexities of the current student disciplinary systems. While we believe we have provided adequate adjustments to address alleged sexual assault complaints, we suggest that a more comprehensive procedural analysis of the Student Conduct Code and the many related disciplinary systems would be worthwhile. We recognize that Housing staff are working on a simplified process now. Such a review was beyond the scope of our charge, and would require a differently constituted committee incorporating student and other perspectives.