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SR-94-95-(2)109(SCW)

Marshall University

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**STUDENT CONDUCT AND WELFARE COMMITTEE
RECOMMENDATION**

SR-94-95-(2)109(SCW)

That the attached **STUDENT JUDICIAL PROCESS** proposal shall be adopted as university policy with the following changes:

Line 185: The phrase, "and 2 alternates," shall be included after the word "justices" and before the word "randomly."

Line 233 and continuing to Line 234: The phrase, "an alternate will be used," will replace the phrase, "a replacement must be found."

RATIONALE: The creation of a student advocates corps will allow for better representation of student defendants at judicial proceedings. Under the current system, student defendants are often unprepared and intimidated by the judicial process. The student advocate will assist the student defendant with gathering evidence, calling witnesses and representing the defendant's best interests during the proceedings. The student advocate system has been successfully used at other institutions such as the University of North Carolina.

FACULTY SENATE PRESIDENT:

APPROVED
BY SENATE: Brian W Gross DATE: 10/5/94

DISAPPROVED
BY SENATE: _____ DATE: _____

UNIVERSITY PRESIDENT:

APPROVED:  DATE: 10/10/94

DISAPPROVED: _____ DATE: _____

COMMENTS:

2 INTRODUCTION

3 Marshall University has as its primary mission the development
4 of an intellectual community within an environment which fosters
5 respect, integrity and individual growth among its members. The
6 University is responsible for maintaining an environment which
7 allows individuals maximum opportunity to pursue the goals of
8 academic and personal growth consistent with the University's
9 mission.

10 Therefore, the basic philosophy of discipline at Marshall
11 University emphasizes the education of students. The major goal is
12 to increase awareness of the consequences of conduct violations and
13 the importance of responsibility to the University community for
14 one's actions. The discipline system focuses on the growth and
15 development of individual student potential by encouraging self
16 discipline and by fostering a respect for the rights and privileges
17 of others.

18 The formal responsibility for discipline rests with the
19 Student Program Advisor for Judicial Affairs, faculty, staff and
20 student judicial officers and ultimately, with the President.

21 Students serve three roles in the judicial system: University
22 Advocates, Student Advocates and Justices. Regardless of the means

23 by which discipline is processed, the end remains the same: to
24 redirect the behavior of the student into acceptable patterns and
25 to protect the rights of all students on campus.

26 DEFINITIONS:

27 *Administrative Hearing Examiner:* Faculty or staff member versed in
28 the judicial process who has received an investigative report from
29 the Student Program Advisor and will hear the case regarding an
30 alleged violation. Sanctions will also be determined by the
31 Examiner in these cases.

32 *Advocate:* A full-time student who meets established criteria and
33 has successfully completed a University-sponsored training program.

34 *Appellate Panel:* The group of student justices and faculty or staff
35 members assigned to hear a specific appeal.

36 *Hearing Officer:* An Marshall University faculty or staff member
37 well versed in the judicial process whose function is to insure
38 that hearings are conducted fairly and in compliance with stated
39 policy.

40 *Hearing Panel:* The group of student justices and hearing officer
41 assigned to hear a specific case.

42 *Justice:* A full-time student who meets established criteria and has
43 successfully completed a University-sponsored training program.

44 *Student:* Any person who has been admitted to an institution to
45 pursue a course of study, research, or service, who is currently
46 engaged in an institutional-sponsored activity, or who has some
47 right or privilege to be on campus or in the facilities of the
48 institution, or who yet has some right or privilege to receive any
49 benefit, service, or recognition or certification from the
50 institution, under the rules, regulation, or policies of the Board
51 of Trustees or the institution.

52 *Student Judiciary:* A judicial body comprised of Student Justices.

53 *Student Program Advisor for Judicial Affairs:* A full time staff
54 member responsible for coordinating the student judicial process at
55 Marshall University.

56 **ADVOCATES**

57 Students serve as advocates for the University as well as for
58 any accused student desiring student representation. At the
59 accused's request, a student advocate will assist any student in
60 the preparation of his or her case, outline the University's
61 hearing procedures, and aid with the presentation of the case and
62 any appeals that may follow. Students retain the right to self-

63 representation. The student-advocacy principle enhances due process
64 by creating a more level "playing field." Currently, students are .
65 required to argue their cases against individuals who are expected
66 to be skilled advocates. By implementing a student based system,
67 the inequity of a professional arguing against a student is
68 eliminated.

69 Disciplinary Process

70 In disciplinary proceedings before a hearing panel, the
71 following procedural standards will be observed.

72 A hearing is to be held at the date, time, and place specified
73 (unless postponed for good cause shown) and will provide the
74 student at least five days notice from the serving of the charges
75 (unless such notice is waived by the student).

76 In all discipline cases every effort is made to assure that
77 each student is given due process. Due process may be defined as an
78 appropriate protection of the rights of an individual while
79 determining his/her liability for wrongdoing and the applicability
80 of sanctions.

81 The right to due process is something constitutionally
82 guaranteed to every citizen of the United States. Students are
83 citizens and as such are entitled to all the rights guaranteed a

84 citizen by the United States Constitution. They do not, nor can
85 they be required to, sacrifice their rights as a condition of
86 enrolling at the institution.

87 Procedural due process requirements insure that a student: 1)
88 has received written notification that a complaint has been filed
89 and is being investigated. Upon investigation, the student must
90 receive adequate written notice of the charges against him/her, the
91 section of the Code upon which the charges are based, and the
92 sanctions which may be applied if the charges are proven; 2)
93 receives written notice of the date, time and place of the hearing
94 (this should accompany the charges); 3) be advised of the names of
95 witnesses who will appear against him/her; 4) receives a fair
96 hearing before a hearing panel or administrative hearing officer;
97 5) has the right to present a defense and witnesses in his/her own
98 behalf, and the right to cross-examine defense witnesses; and 6)
99 has access to a tape recording of the proceedings and the findings
100 of the Judiciary.

101 In the interest of maintaining order on the campus and
102 guaranteeing the broadest range of freedom to each member of the
103 campus community, the Student Code of Conduct reasonably limits
104 some activities and proscribes certain behavior which is harmful to
105 the orderly operation of the institution, and the pursuit of its
106 legitimate goals. All students are to be informed of these rules
107 which are printed in the Student Handbook and other printed media.

108 A limitation of twenty-one days is imposed for the filing of a
109 complaint. Complaints will be investigated within seven (7) days.
110 Extensions of this time may be granted.

111 If a student is accused of a violation of any rule and denies
112 guilt, he/she is guaranteed the option of a speedy and fair hearing
113 before an Administrative Hearing Officer or a student-based
114 Judicial hearing panel. Appropriate due process safeguards have
115 been built into the judicial procedures so that no permanent or
116 recorded sanction shall be in force until the student accused shall
117 have had a fair chance to be heard. Appropriate appeals may follow
118 the decision of the Student Judiciary or Administrative Hearing
119 Officer.

120 STUDENT JUDICIARY

121 Student justices comprise the Student Judiciary which carries
122 out the mission of the judicial office: 1) to establish the facts
123 of cases; 2) to determine whether University Student Code of
124 Conduct regulations have been violated; and 3) to recommend
125 appropriate sanctions for violations. The Student Judiciary is
126 comprised of Marshall University students who have studied and
127 received extensive training regarding the procedures for University
128 judicial hearings and the University Student Code of Conduct
129 regulations.

130 A Hearing Panel composed of student justices and a hearing
131 officer shall objectively hear all the evidence presented on both
132 sides of the issue and make a determination of innocence or guilt
133 based upon the information received during the course of the
134 hearing. At appropriate times during the hearing, justices are
135 allowed to ask questions of the accused and of each witness.

136 When all evidence has been received, the justices, along with
137 the Hearing Officer, meet in closed session to review the evidence
138 and to make a decision of guilt or innocence. The hearing panel
139 will make its findings based upon a Preponderance of Evidence and
140 reach its determination by a two-thirds majority vote of the
141 justices. If the panel's decision includes the imposition of
142 disciplinary sanction, the nature of the action taken and the
143 period of its applicability must be specified for the record. A
144 report of a dissenting opinion or opinions may be submitted by a
145 panel member. The actual vote of the panel will not be disclosed.

146 GENERAL REPORT FORMS UTILIZED

147 Reports of misconduct are filed with the Judicial Affairs
148 Office in one of four ways:

- 149 1. Incident Report - usually completed by the University staff
150 member most directly involved in the incident.

151 2. Police Report - filed by the M. U. Police Officer who
152 responded to the call, if Marshall University Police
153 Department is involved.

154 3. General Complaint Form - generally filed by one student
155 against another.

156 4. Letter or Memorandum - most often used by faculty and
157 administrators who wish to register a complaint about a student.

158 PROCESSING OF A REPORT OF MISCONDUCT

159 A student or organization suspected of misconduct may be
160 referred by any member of the University community to the Office of
161 Judicial Affairs. The referral should be a clear written account of
162 the incident. Once a report is received, the Student Program
163 Advisor for Judicial Affairs will investigate the incident. This
164 investigation will include meeting with the student or organization
165 alleged to have violated a provision of the Student Code of Conduct
166 and persons with information concerning the incident.

167 The Student Program Advisor also has the option of conferring
168 with the Sub-Committee on Codes and Policies of Student Conduct and
169 Welfare to assist in ascertaining if there is probable cause to go
170 forward with an investigation.

171 If the Program Advisor feels that there is sufficient evidence
172 of a violation, the student or organization will be given written
173 notice of the charges and be asked to respond. If there is
174 sufficient evidence of a violation, the student will be given the
175 opportunity to have the case adjudicated informally. By choosing
176 the informal disciplinary hearing option, the student knowingly
177 takes full responsibility for the offense, admits to violating the
178 University Student Code of Conduct, and waives all rights to a
179 formal hearing. The Student Program Advisor will levy the sanction.

180 If the informal hearing option is declined (i.e., the student
181 denies violating University Student Code of Conduct regulations),
182 the student may have his or her case heard by either the Student
183 Judiciary or by an Administrative Hearing Examiner. As outlined
184 above, the Student Judiciary forms a Hearing Panel comprised of
185 three student justices and 2 alternates randomly selected from a pool of
186 approximately twenty justices, and a Hearing Officer. A vote of at
187 least two-to-one is required to find a student "in violation" of
188 the Student Code of Conduct and to recommend sanctions to the
189 Student Program Advisor. Dissenting justices may write separate
190 minority opinions.

191 The purpose of the administrative hearing option is to provide
192 an alternative forum for students who do not wish to present their
193 cases before the Student Judiciary. A faculty or staff member,
194 acting as Administrative Hearing Examiner, will hear the case,

195 . decide whether the student is "in violation" of the Student Code of
196 . Conduct, and determine the sanction(s).

197 HEARING A CASE

198 The Student Program Advisor meets with the student and hears
199 the student's side of the story.

200 If the student pleads innocent, additional investigation may
201 be necessary. If, after investigation, the Student Program Advisor
202 feels there is enough evidence for charges to be pressed, a hearing
203 is in order.

204 To summarize, a case can result in a hearing one of three
205 ways:

- 206 1. The student requests a hearing
- 207 2. The student pleads innocent
- 208 3. The student appeals a sanction

209 Once it is determined that a hearing is appropriate, the
210 following steps are taken:

- 211 1. The Student Program Advisor and accused student will decide a
212 hearing date.

- 213 2. The accused student is given a list of Judiciary members
214 and is advised of his/her right to delete names from the list.
215 for cause.
- 216 3. All names not deleted from the list are put on index cards and
217 the student randomly chooses who will serve on his/her panel.
- 218 4. A letter is written to the student listing date, time and
219 place of the hearing, the exact charges, a list of witnesses,
220 right to an advisor.
- 221 5. The letter is hand delivered to the student or sent certified
222 mail. If the student does not appear for the hearing and it
223 cannot be shown that the University made proper delivery of
224 the letter, the panel or administrative hearing examiner can
225 choose to drop charges. If proper delivery can be shown and
226 the student still does not appear for the hearing, the hearing
227 can continue without the presence of the accused student.

228 Every attempt is made to contact judicial panel members as
229 soon as possible so that they can make arrangements to be at the
230 hearing, However, occasionally, if the hearing is an emergency
231 situation, the Student Program Advisor may not be able to give much
232 advance notice. Also, occasionally a judicial panel member might
233 need to cancel out at the last possible minute and a replacement
234 must be found.

235 HEARING PROCEDURES

- 236 1. The Hearing Officer or Administrative Hearing Examiner opens
237 the hearing by announcing on tape the names of all those
238 present.
- 239 2. All witnesses having testimony before the hearing panel (in
240 cases of the Student Judiciary option) are sworn in.
- 241 3. The charges are read by the Hearing Officer or Examiner and
242 the accused is asked to respond either guilty or not guilty to
243 those charges. (If the plea is guilty, proceed to Number 10).
- 244 4. Both the University advocate and the accused student or
245 student advocate are asked to make opening statements
246 (regardless of the hearing option).
- 247 5. The University advocate makes his/her presentation which
248 includes testimony of all witnesses on behalf of the
249 University and any material evidence available. After each
250 witness is questioned by the University, the accused then has
251 the right to cross examine. After a cross examination by the
252 accused or student advocate, the judicial panel members are
253 given an opportunity to ask questions.
- 254 6. The accused or student advocate presents his/her case after
255 which the University is given the opportunity to cross examine
256 any witnesses. As with the University witnesses, hearing panel
257 members have the right to ask questions. At this time, the
258 accused may or may not choose to take the witness stand. If
259 he/she does the University and panel members have the right to
260 ask questions.
- 261 7. Both sides present summary statements to the panel or

- 262 administrative hearing examiner if they choose.
- 263 8. In the case of a hearing, justices and the hearing officer
264 meet in closed session to deliberate on guilt or innocence.
- 265 9. Everyone is called back into the room and the hearing officer
266 announces the verdict of guilt or innocence.
- 267 10. If guilty, both sides have an opportunity to make statements
268 prior to sanctioning. During this time the University may
269 present to the panel any past record the student may have.
- 270 11. Panel members and the hearing officer meet again in closed
271 session to determine an appropriate sanction for the student.
- 272 12. Everyone is called back into the room and the hearing officer
273 announces the sanction and the student's and complainant's
274 appeal rights.

275 APPELLATE PROCEDURE

276 Any individual or organization accused of violating the
277 Student Code of Conduct may appeal any decision of the University
278 Judicial System. All appeals must be in writing and submitted to
279 the Office of Judicial Affairs within five (5) working days. Any
280 appeal not filed in a timely manner may be denied by the appellate
281 body.

282 Any appeal must include the grounds for the appeal as well as
283 supporting facts and arguments. Grounds for appeal are limited to

284 the following: 1) procedural errors; 2) evidence not available at
35 the time of the hearing; 3) insufficient evidence to support the
286 findings of the hearing panel or examiner; 4) misinterpretation of
287 University policies and regulations by the hearing panel or
288 examiner; 5) a sanction or sanctions disproportionate to the
289 offense; 6) lack of jurisdiction. New evidence may not be presented
290 during the appeals process unless it can be shown that the evidence
291 was not available at the time of the hearing and could not have
292 been discovered with reasonable efforts.

293 Appeals from decisions of the Student Program Advisor or from
294 a Student Hearing Panel or an Administrative Hearing Examiner will
295 be heard by the Appellate Judicial Panel. This panel will consist
296 of three members of the Student Judiciary who did not participate
297 in the initial hearing and two faculty members. Three of the five
298 members must be in agreement in order to affirm or reverse a
299 decision.

300 In cases where the Appellate Judicial Panel upholds sanctions
301 of deferred suspension, suspension, or expulsion, the student or
302 organization may appeal to the President of the University. In all
303 other cases involving lesser sanctions, the appeal will be heard by
304 the Dean of Student Affairs.

305 After the hearing, the Appellate Judicial Panel shall make
306 findings of fact and recommendations for the disposition of the

307 case and sanctions to be imposed, if any, and forward the same to
308 the President of the institution. Within ten working days following
309 receipt of the appellate panel recommendations, the President shall
310 review the facts of the case and take such action as may be
311 appropriate under all the circumstances. Except in cases which
312 involve the sanction of expulsion, the decision of the President
313 shall be final.

314 In disciplinary cases where the institutional sanction is
315 expulsion, the Board of Trustees may, pursuant to such procedures
316 as it may specify, grant an appeal from the disciplinary action of
317 any President on the record of the case submitted and on leave of
318 the Board of Trustees first obtained. A student desiring to appeal
319 the sanction of expulsion must, within three working days, indicate
320 to the President in writing an intent to appeal the decision to the
321 Board of Trustees. A written petition of appeal must be filed with
322 the Chancellor of the Board of Trustees within fifteen days of the
323 institutional President's decision. If the Board of Trustees
324 determines that the petition will not be heard, the decision of the
325 President of the institution is affirmed and sanctions imposed
326 therein shall be effective upon the President's receipt of the
327 statement of denial.

328 If the appeal is granted, the sanction imposed by the
329 President's decision shall be stayed until the Board of Trustees
330 makes a final decision after a review of the case. In the event the

331 decision of the President is affirmed after such review, the person
332 appealing and the President shall be notified by certified mail and
333 the sanction shall be effective immediately upon receipt by the
334 President of the decision rendered by the Board of Trustees.

335 In reviewing student appeals involving the sanction of
336 expulsion, the Board of Trustees will review all relevant
337 information and records of applicable institutional disciplinary
338 proceedings to ensure that due process has been afforded. In any
339 case of any review of disciplinary action, the Board of Trustees
340 may take such action as it deems reasonable and proper in all the
341 circumstances and in answer to all its responsibilities under the
342 law.

343 PROCESSING OF A RESIDENCE HALL COMPLAINT

344 In an effort to improve the consistency of disciplinary action
345 taken in response to residence hall complaints, the proposed system
346 will utilize a centralized reporting process. All incident reports
347 will be delivered to a designated Residence Services official. The
348 designated official will then process all reported violations of
349 residence services policies and procedures. These minor Type III,
350 E offenses include but are not limited to:

- 351 (1) Quiet hours violations
- 352 (2) Visitation violations

- 353 (3) Unauthorized moves
- 354 (4) Improper maintenance
- 355 (5) Defacement
- 356 (6) Pets
- 357 (7) First time alcohol related offenses

358 All other violations of the Student Code of Conduct plus
359 repeated violations of the aforementioned policies will be turned
360 over to the Office of Judicial Affairs. Complaints against non-
361 residents will be processed through the Office of Judicial Affairs.
362 A student may appeal a decision of the Residence Services official.
363 If a student exercises his or her right to appeal, the appeal is
364 filed with the Student Program Advisor.

365 September 1994