

Case No: [REDACTED]

Organization Name: Theta Tau

Charge Date: 2019-02-04

Hearing Date: April 8, 2019

- Incident report/complaint - p.2
- Interim suspension notice - p. 5
- Notice of investigation/meeting request - P.7
- Notice of charges - p. 13
- Response to charges (none)
- Outcome letter - p. 17
- Appeal - p. 24
- Appeal decision - p.167

### **Case Snapshot**

**Opened:** 5/18/2018  
**Days open:** Less than 24 hours  
**Last modified:** 5/19/2018 2:09 PM  
**Intake method:** Hotline Web  
**Status:** Open  
**Alert:** Green

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### **General Case Info**

**Case number:** OTHER-223  
**Received/Reported date:** 5/18/2018  
**Language:** English  
**Assigned tier:** OUCI

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### **Issue**

**Primary issue:** Other

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### **Case Details**

#### **Reported tier information**

**Case type:** Allegation  
**Intake method:** Hotline Web

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#### **Location**

**Location/Address:** Theta Tau

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#### **Reporter contact information**

**Is the reporter an employee?** No  
**Reporter anonymous:** Yes

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#### **Case Information**

**Relationship to Institution:** Anonymous  
**Please identify the person(s) engaged in this behavior:** [REDACTED]  
**Do you suspect or know that a supervisor or management is involved?** Yes  
**If yes, then who?** Theta tau alumni  
**Is management aware of this problem?** Do Not Know / Do Not Wish To Disclose

**What is the general nature of this matter?** Theta tau has one of the worst hazing policies and infringements I've seen. Butt chugging, serious alcohol poisoning, and extreme personal hazing towards minorities. The kid that fell down the stairs and died is soon to happen at Thera Tau with their practices. Someone should seriously investigate every class since 2011.

**Where did this incident or violation occur?** Chapter house at OSU

**Please provide the specific or approximate time this incident occurred:** 2011,2012,2013,2014,2015,2016

**How long do you think this problem has been going on?** More than a year

**How did you become aware of this violation?** Other

**If other, how?** I was apart of it in 2012

**Please identify any persons who have attempted to conceal this problem and the steps they took to conceal it:** Every person (and alumni) in theta tau OSU

**Details:** I was a third party brought in after a party to help haze them. It's pathetic I did but it happened. It's only gotten worse. Some kids can't get into the frat because they can't handle drinking so much so fast and getting so sick.

## Follow-ups

There are no additional notes for this incident.

## Questions/Comments and Reporter Responses

**5/19/2018 - Glaros, Chris**

**Comment:** Thank you for the information provided. We will begin investigating this matter as soon as possible. As we proceed with our investigation, we may need additional information from you. Please use your identification key and password to periodically check for additional questions or comments concerning this matter.

## Chat Transcripts

There are no chat transcripts for this incident.

## Assignments & Access

**Case assignee(s):** None

**Restricted access:** None

**Case access list:** Brennan, Kellie; Carson, Katelyn; Garrity-Rokous, Gates; Glaros, Chris; Newell, Brian; Patton, Kevin; Test, NAVEX Global; Tobias, Jessica

## Info Contributors

None

## Participants

Name	Job Title	Relationship	Role	Results	Notes
		None	None	None	

## Items

**Name Description Loss Type Final Outcome Amount Taken Amount Recovered Amount to Recover**

Totals: \$0.00 \$0.00 \$0.00

## Agencies

None

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## Attachments

None

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## Synopsis

### Outcome of case

**Primary outcome:** - Select One -

**Secondary outcome 1:** - Select One -

**Secondary outcome 2:** - Select One -

**Action taken:** - Select One -

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### Additional details

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## Tasks

None

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## Case Notes

None

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## Related Cases

### Cases Marked as Related to This Case

Case OTHER-223 has no listed relationships.

August 20, 2018

Theta Tau

Sent electronically to [REDACTED]

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]

August 20, 2018

Dear [REDACTED]

I have determined that there is reasonable cause to believe that the Sigma Chapter of Theta Tau's activities pose a significant risk of substantial harm to the safety or security of themselves, others, or to property. This determination is based on hazing allegations, including the dangerous use of alcohol with new members and guests during the spring 2018 semester.

Accordingly, I hereby immediately place the Sigma Chapter of Theta Tau on Interim Suspension and temporarily discontinue the Sigma Chapter's registration as a recognized student organization by the university, pending a full investigation by Student Conduct.

During the period of this Interim Suspension, the Sigma Chapter shall not be eligible to participate in any recognized student organization activities including, but not limited to, organizational meetings or programs, Homecoming/BuckeyeThon/Welcome Week activities, intramural sporting events, recruitment of new members, organizational social events, or social events with any other student organizations. **In addition, all new member activities must cease during the period of Interim Suspension.** Failure to adhere to the terms of this Interim Suspension may subject the organization and participating individual members to further disciplinary action under the Code of Student Conduct. This Interim Suspension will remain in effect until the completion of the disciplinary process as administered by Student Conduct.

Please be aware that your peer organizations may be informed of this order.

You have the right to appeal this Interim Suspension by submitting to me, within three (3) working days of the date of receipt of this letter, a written petition detailing the reasons why you believe that the Interim Suspension should be modified, together with any supporting evidence that you deem relevant. Please consult the Code of Student Conduct, Section 3335-23-20, for a complete description of this process. Should you submit such a petition, I will review your submission, and then advise you of my determination without undue delay.

Please read the attached letter from the Director of Student Conduct and follow the instructions to schedule your preliminary conference. Additionally, **you must immediately confirm receipt of this notice by emailing Ms. Smith at [smith.4941@osu.edu](mailto:smith.4941@osu.edu).**

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Couch". The signature is fluid and cursive, with the first name "Matt" and last name "Couch" clearly distinguishable.

Matt Couch, PhD  
Associate Dean of Students

CC: Senior Director of Parent and Family Relations and Greek Life - Ryan Lovell  
Director of Sorority and Fraternity Life - Kim Monteaux De Fritas, Ed.D.  
Director of Student Conduct - Kelly Smith, J.D.  
Assistant Vice President for Student Life and Dean of Students - D'Andra Mull, PhD.  
Advisor - Bradley Clymer, PhD

August 20, 2018

Theta Tau

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]

To the members of Theta Tau:

Our office received information that describes conduct by Theta Tau from 2011 through 2016 and during spring 2018 semester. I am investigating whether this conduct may have violated the following sections of the university's Code of Student Conduct:

- 3335-23-04 (M): Hazing: Doing, requiring or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.
- 3335-23-04 (B1) Endangering behavior: Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action.
- 3335-23-04 (J): Alcohol: Use, production, distribution, sale, or possession of alcohol in a manner prohibited under law or applicable University policy
- 3335-23-04 (C) Sexual Misconduct– University Policy 1.15: Non-consensual sexual contact
- 3335-23-04 (C) Sexual Misconduct– University Policy 1.15: Non-consensual sexual intercourse
- 3335-23-04 (C) Sexual Misconduct– University Policy 1.15: Sexual Harassment

As a leader of the organization, you must contact Student Conduct by August 23, 2018 to schedule a preliminary conference with me. The purpose of this conference is twofold. First, I will explain and answer your questions about the Student Conduct process. Second, you will have the opportunity to explain what happened, to provide materials, and to identify other individuals with information about the alleged incident. Please submit any relevant materials (including your own written statement, text messages, photos, emails, etc.) by email to me at [smith.4941@osu.edu](mailto:smith.4941@osu.edu) prior to our meeting.

You may bring one advisor and a registered co-leader (if applicable) to your preliminary conference. Your advisor can be any person who is not involved as a witness or other participant in the case. Employees of the university's Student Advocacy Center (<http://advocacy.osu.edu>) are available to provide advisor services or other support throughout this process upon request. To find out more information about these services or to request advisor services, please e-mail the Student Advocacy Center at [advocacy@osu.edu](mailto:advocacy@osu.edu).

You will find the Code of Student Conduct and information about our process at <http://studentconduct.osu.edu>. Additionally, I have attached a Statement of Student Rights and a description of the university's Hearing Procedures to this letter.

Students are responsible for requesting accommodations when they feel they are needed. Should you need an accommodation based on the impact of a disability during the Student Conduct process, please contact the university's ADA Coordinator's office at (614) 292-6207 (voice), (614) 688-8605 (TTY), [ada-osu@osu.edu](mailto:ada-osu@osu.edu), or visit <https://ada.osu.edu/>. One week's notice will allow for seamless access. Should you need additional time in order to seek any appropriate accommodation, please contact me immediately.

If you do not contact our office by August 23, 2018 to set your preliminary conference appointment, I may place a disciplinary hold on your university account. This hold could prevent you from scheduling classes; viewing grades; or receiving transcripts, diplomas or refunds. Please note that if you do not participate in our process, I may continue this investigation without your input. This could result in charges, a hearing, and sanctions if a violation is found.

To schedule your preliminary conference, please call Student Conduct at (614) 292-0748 between 8:00 a.m. and 5:00 p.m. Thank you in advance for your prompt attention to this matter.

Sincerely,

Kelly B. Smith, J.D.  
Director



### **Statement of Student Rights**

1. **Written notice of university charges** (3335-23-07 A.)
  - a. Students shall be notified of university charges in writing, unless a more effective form of notification is deemed appropriate. Charges may be presented in person, by placement in a student's residence hall mailbox, by email to the accused student's official university email address (which may direct the student to view the notice on a secure website), or by mail to the accused student's local or permanent address.
  
2. **Meeting with a University Official** (3335-23-07 C.)
  - a. Students are strongly encouraged to and shall be afforded the opportunity to meet with a university official for the purpose of explaining the university student conduct process and discussion of the charges.
  
3. **Hearing** (3335-23-08)
  - a. In all cases, a student charged with one or more violations of the code of student conduct has the right to a hearing.
  - b. [A] student may request in writing to have a decision as to appropriate action made administratively by a hearing officer rather than have the charges referred to a hearing officer or board for a hearing.
  - c. Following an administrative decision, the student retains the right to request an appeal of the original decision, but may do so only upon the ground that the sanction is grossly disproportionate to the violation committed.
  
4. **Notice of Hearing** (3335-23-09 A.)
  - a. If a hearing is to be held, written notification will be provided
  - b. The notice may be hand delivered; placed into a student's residence hall mailbox; sent by email to the accused student's official university email address, which may direct the student to view the notice on a secure website; or mailed to the last known address of the student, by first class mail, no fewer than ten (10) calendar days prior to the hearing
  - c. Unless already provided to the student, the notification will include the charge(s), date, time, and location of hearing, the designated hearing officer or board, a statement of the student's rights, and information on the hearing procedures.

5. **Postponement** (3335-23-09 B.)
  - a. The accused student may request a postponement for reasonable cause or a separate hearing from other accused persons. A request for a postponement for reasonable cause must be made in writing, include supporting rationale, and be received by the person sending the hearing notification at least two (2) business days before the scheduled hearing.
  
6. **Advisor** (3335-23-10 B.)
  - a. The accused student may have an advisor throughout the disciplinary process
  - b. The advisor may only counsel the student and may not actively participate in the disciplinary process, unless clarification is needed as determined by the hearing officer or board.
  
7. **Written statements and witnesses** (3335-23-10 C.)
  - a. The accused student:
    - i. May submit a written statement;
    - ii. May invite relevant factual witnesses to attend;
    - iii. May invite character witnesses to submit written statements;
    - iv. May ask questions of witnesses called by others;
    - v. Will be notified of potential witnesses to be called;
    - vi. Must submit a list of potential witnesses to the hearing officer at least two (2) business days prior to the hearing.
  
8. **Standard of Evidence** (3335-23-10 F.)
  - a. A student will only be found in violation if a preponderance of the evidence supports the charges.
  
9. **Attendance** (3335-23-11)
  - a. No inference will be drawn against a student for failing to attend a hearing or remaining silent.
    - i. The hearing will proceed and the conclusion will be based on the evidence presented.
  - b. No decision shall be based solely on the failure of the accused student to attend the hearing or answer the charges.

**10. Record of proceedings (3335-23-12)**

- a. A single record consisting of written notes, tape recording, or other method selected by the hearing board or officer, will be made of all hearings.
  - i. Such record will remain property of the university but will be made available to the accused for review during the appeal period.
- b. A written notice of the decision, and, if found in violation, information regarding appeal procedures will be provided to the accused student.

**11. Hearing Bodies (3335-23-13 B.)**

- a. The accused student has the right to accept responsibility for the charges, which will result in an administrative decision or choose to have a hearing.

**12. Hearing Bodies (3335-23-13 C.)**

- a. Students will generally be afforded the right to choose an administrative or a board hearing, except under special circumstances where, in order to ensure a fair and just process, the hearing officer may determine the appropriate hearing venue.

**13. Right to appeal (3335-23-18 A.)**

- a. A student found to have violated the Code of Student Conduct has the right to appeal the original decision.

**14. Right to appeal (3335-23-18 A.)**

- a. In cases involving charges related to sexual harassment, the victim may appeal the original decision in accordance with the appeals procedures provided in this section
  - i. Such charges include, but are not limited to, sexual misconduct and stalking.

### Hearing Procedures

#### **3335-23-10 Hearing procedures**

Although the procedural requirements are not as formal as those existing in criminal or civil courts of law, to ensure fairness, the following procedures will apply and, unless already provided to the student, be included within the hearing notice:

- A. **Attendance** – Attendance at hearings is limited to those directly involved or those requested by the hearing officer or board to attend. The hearing officer or board will take reasonable measures to assure an orderly hearing, including removal of persons who impede or disrupt proceedings
- B. **Advisor** – The accused student may have an advisor throughout the disciplinary process. The advisor may only counsel the student and may not actively participate in the disciplinary process, unless clarification is needed as determined by the hearing officer or board
- C. **Written statements & witnesses** – The accused may: submit a written statement invite relevant factual witnesses to attend, invite character witnesses to submit written statements, ask questions of witnesses called by others, and will be notified of potential witnesses to be called. The accused must submit a list of potential witnesses to the hearing officer at least two (2) business days prior to the hearing. The university may present witnesses as well as question those presented by the accused
- D. **Witness absence** – The hearing officer or board coordinator may allow written statements if, for good reason, a fact witness cannot attend the hearing
- E. **Consultants** – In cases requiring special expertise, the board coordinator may appoint individuals with appropriate expertise to serve as consultants to the board. The consultants may be present and provide information as called upon during the hearing but will not vote
- F. **Standard of evidence** – A student will only be found in violation if a preponderance of evidence supports the charges. In the event of a tie, the board will continue to deliberate. If after the board determines that exhaustive deliberations have occurred and a majority decision is not reached, the student will be found not in violation
- G. In cases where prompt review is essential (e.g., when graduation or the end of the academic year is imminent) the accused may be offered the option of an expedited administrative review consisting of an administrative decision or administrative hearing. The accused student may decline such expedited review without the expectation that the process can be completed on an expedited timeline.

February 4, 2019

Theta Tau  
Sent electronically to [REDACTED]

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]

[REDACTED]

I am writing about your chapter's unresolved Student Conduct case. Attached you will find a Charge & Process Form ("CPF"). Please note that based on the information produced during the investigation, we are **not moving forward** with any charges related to allegations concerning the university's sexual misconduct policy.

Because your chapter's previous president notified the university that your chapter had decided to deactivate from the university, any currently enrolled student who was a member of the Sigma chapter during the fall 2018 semester, preferably a member who held or currently holds an officer position, may complete and return the CPF on behalf of the chapter. Please coordinate the return of just ONE CPF, signed by a currently enrolled member of Theta Tau, with your local advisor and Theta Tau's Executive Director, Michael Abraham. Both are copied on this letter.

I encourage you to consult with your local and national advisors as you consider a response. As you consider your response, you may want to review the investigation packet, which contains relevant documents from our investigation. You can view the packet at the following Box link:

[REDACTED]

When prompted, use this password: [REDACTED]

Additionally, your current and recent members may still participate in this process by sharing information through this website: [http://go.osu.edu/\[REDACTED\]](http://go.osu.edu/[REDACTED])

The CPF is due by 4:30 p.m. on February 11, 2019. You may return it by email to [smith.4941@osu.edu](mailto:smith.4941@osu.edu). If you do not timely return the CPF, I will proceed with scheduling an administrative hearing to resolve the charges. Do not hesitate to call me if you have questions about this process.

Sincerely,



Kelly B. Smith, J.D.  
Director

CC: Bradley Clymer, PhD. Alumni Advisor  
Michael Abraham, Executive Director

[Redacted]

Director of Sorority and Fraternity Life - Kim Monteaux De Freitas  
Senior Director of Parent and Family Relations and Greek Life - Ryan Lovell

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]

**CHARGE & PROCESS FORM**

Name: Sigma Chapter, Theta Tau

**I. Charge(s):** You are alleged to be in violation of the following section(s) as listed in the OSU Code of Student Conduct:

- ♦ 3335-23-04 (M): Hazing: Doing, requiring or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.
  
- ♦ 3335-23-04 (B1) Endangering behavior: Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action.
  
- ♦ 3335-23-04 (J): Alcohol: Use, production, distribution, sale, or possession of alcohol in a manner prohibited under law or applicable University policy

It is alleged that during the 2017-18 academic year, your chapter participated in, required, encouraged or facilitated activities or other conduct for new members that caused or created a substantial risk of causing mental or physical harm or humiliation, *including but not limited to:*

- Consumption of alcohol as part of a new member activity
- Consumption of alcohol in a manner or amount likely to cause substantial impairment or other ill health outcomes (vomiting, passing out)
- Chores
- Calisthenics

Your chapter also provided or facilitated providing alcohol to individuals under the age of 21.

**II. Acceptance/Non-Acceptance of Responsibility:** To resolve these charges, place your initials next to your selection.

\_\_\_\_\_ The Chapter accepts responsibility for the violation(s) of the Code of Student Conduct as listed in Section I of this form and accordingly requests an **Administrative Decision**.

\_\_\_\_\_ The Chapter does not accept responsibility for one or more of the violations of the Code of Student Conduct as listed in Section I of this form and requests an **Administrative Hearing** before a University Hearing Officer.

\_\_\_\_\_The Chapter does not accept responsibility for one or more of the violations of the Code of Student Conduct as listed in Section I of this form and requests a hearing before the **University Conduct Board**.

**Failure to return this form by the stated deadline will result in an Administrative Hearing.**

**III. Possible Sanctions:** If you are found in violation, please understand that you may be subject to formal reprimand, disciplinary probation, suspension, dismissal or any other sanction or combination of sanctions in the Code of Student Conduct.

This form is due by 4:30 pm on **February 11, 2019**.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



July 1, 2019

Theta Tau  
Sent electronically to [REDACTED]

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]

Dear [REDACTED] and Members of Theta Tau:

I am writing to notify you of the outcome of the Sigma Chapter of Theta Tau's Administrative Hearing which took place on April 8, 2019. After a review of the testimony and evidence, I have found Theta Tau **in violation** of the following charges:

- 3335-23-04 (M): Hazing: Doing, requiring or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.
- 3335-23-04 (B1) Endangering behavior: Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action.
- 3335-23-04 (J): Alcohol: Use, production, distribution, sale, or possession of alcohol in a manner prohibited under law or applicable University policy.

Specifically, it is alleged that during the 2017-18 academic year, your chapter participated in, required, encouraged or facilitated activities or other conduct for new members that caused or created a substantial risk of causing mental or physical harm or humiliation, including but not limited to:

- Consumption of alcohol as part of a new member activity
- Consumption of alcohol in a manner or amount likely to cause substantial impairment or other ill health outcomes (vomiting, passing out)
- Chores
- Calisthenics

Your chapter also provided or facilitated providing alcohol to individuals under the age of 21.

I considered the following factors in determining appropriate sanctions:

- Theta Tau's recent conduct history

- the response of Theta Tau’s president and members throughout the conduct process
- the totality and severity of the violations when considered on a continuum

This outcome letter does not replace or nullify any sanctions or stipulations set forth by your organization’s inter/national headquarters, advisors, Sorority and Fraternity Life, or the IFC.

## Outcome

The incidents related to the charges in this case occurred during the 2017-2018 academic year when Theta Tau was a registered fraternity and student organization. As of September 6, 2018, the Sigma Chapter of Theta Tau deactivated its registration from Ohio State. Since that time, Sigma Chapter has not been recognized as a fraternity or student organization at Ohio State and no longer has the rights and privileges afforded to a recognized fraternity or student organization. Those rights and privileges include, but are not limited to, the following:

- Listing in the online student organization directory
- \$250 line-of-credit to be used in the Resource Room
- Opportunity to apply for Operating Funds and Programming Funds
- Discounted rates for on-campus space reservations
- Opportunity to register for the Student Involvement Fair
- Opportunity to register for the Homecoming Parade
- Opportunity to apply for office or locker space in the KBK Center for Student Leadership and Service
- Access to Student Organization Success Coaches
- Access to enhanced trainings and workshops through Student Activities
- Access to free marketing resources
- Access to use the university’s name and other visual brand elements
- Access to free website hosting, email address and/or email listserv
- Participation in governing council and SFL community events and programming put on by SFL staff or the Greek Programming Board
- Membership in honor societies such as Order of Omega
- New and active member ongoing education via the Standards of Excellence program and council programming
- Recognition in the Sorority and Fraternity Life Awards program
- Ability to host social events with National Panhellenic Conference (NPC) sororities and their members in the Panhellenic Association.

Due to the severity of the incidents in this case, it has been determined that Theta Tau cannot reestablish a chapter at the university until August 6, 2023. If you choose to reestablish Theta Tau at Ohio State, **your national organization must begin communication at least one year prior to reestablishing, but no sooner than January 1, 2022.**

Further, any student using your organization’s name or likeness (e.g., Greek letters) while alleged to have violated the Code of Student Conduct will be investigated and, if applicable, charged as an individual in the Student Conduct process.

In discussing its return to our community, Theta Tau’s representatives must meet with the Director of Sorority and Fraternity Life, or designee, to discuss the current campus environment and what requirements must be completed before the reestablishing process and during the

chapter's first year. These conversations will occur in consultation with the Director of Student Conduct, or designee.

In determining whether to permit reestablishment of a chapter at Ohio State in August of 2023, Sorority and Fraternity Life and Student Conduct will take into consideration the organization's efforts to remedy or eliminate underground activity while the chapter remains deactivated. We encourage Theta Tau representatives to provide Student Conduct with any documentation related to these efforts.

I invite the organization to submit a memorandum identifying actions it will take when re-joining our campus community. Memorandum topics could include:

- recruitment strategies
- new member reviews and criteria
- alumni and advisor involvement
- selection of consultants and new chapter coordinators
- new member education plans
- alcohol and risk management policies

This optional submission is due no later than August 1, 2019.

### **Requests for Extensions and Modifications**

Any request for an extension or a modification of any outcome must come from the chapter president to [haque.66@osu.edu](mailto:haque.66@osu.edu). The request must contain a detailed explanation of the reason for the request.

### **Staffing Change**

Should Student Conduct no longer employ me or if my role were to change, another staff member will monitor sanction completion. To account for such a change, please include the general Student Conduct email address on all sanction items described above. That address is [studentconduct@osu.edu](mailto:studentconduct@osu.edu).

### **Appeal**

A student or organization found to have violated the Code of Student Conduct has the right to appeal. To do so, you must submit your appeal in writing, directed to the Senior Vice President for Student Life, no later than 4:00 p.m. on July 9, 2019. Use the online appeal form found at <https://go.osu.edu/appeals> to submit your appeal. You may also submit a written appeal using the form attached to this letter. Please turn in the signed form along with any relevant documentation to the Office of Student Conduct, 550 Lincoln Tower, 1800 Cannon Dr., Columbus, OH 43210, by the deadline. If you do not submit an appeal, this decision will be effective at the end of your appeal period.

You are strongly encouraged to consult with the Student Advocacy Center (<http://advocacy.osu.edu>) and/or your advisor of choice as you consider your options. Additionally, students are responsible for requesting accommodations when they feel they are needed. Should you need an accommodation based on the impact of a disability during the

Student Conduct process, please contact the university's ADA Coordinator's office at 614-292-6207 (voice), 614-688-8605 (TTY), [ada-osu@osu.edu](mailto:ada-osu@osu.edu), or visit <https://ada.osu.edu>. One week's notice will allow for seamless access. Should you need additional time in order to seek any appropriate accommodation, please contact me immediately.

If you have any questions concerning this matter, please do not hesitate to contact me at 614-292-0748 between 8:00 a.m. and 5:00 p.m. Monday through Friday.

Sincerely,

Nadia Haque, J.D.  
Associate Director and Deputy Title IX Coordinator

CC: Bradley Clymer, PhD.- Alumni Advisor  
Michael Abraham- Executive Director



Director of Sorority and Fraternity Life - Kim Monteaux De Freitas  
Senior Director of Parent and Family Relations and Greek Life - Ryan Lovell

## **STUDENT CONDUCT APPEALS**

### **Student Appeals**

- A student or organization found to have violated the Code of Student Conduct has the right to appeal the original decision. **The appeal is not intended to re-hear or re-argue the same case, and is limited to the specific grounds outlined below.** The appeal must state the specific grounds for the appeal and should include all supporting documentation. The appeal must be postmarked or hand delivered to the appropriate appeal officer, or sent via email, **by the deadline provided in the decision letter**, which is usually five (5) working days after the date on which notice of the decision is sent to the student. Each student or organization shall be limited to one appeal. **The decision of the appeal officer is final.**
- In cases involving charges relating to sexual harassment as defined in applicable university policy, the victim may appeal the original decision. Such charges include, but are not limited to, sexual misconduct and stalking.
- A student who (or organization that) has accepted responsibility (Administrative Disposition) for violating the Code of Student Conduct waives the right to appeal, except on the basis that the disciplinary sanction is grossly disproportionate to the violation(s) committed.
- Each party shall be limited to one appeal. The decision of the appeal officer is final.

### **Grounds for appeal**

An appeal may be based only upon one or more of the following grounds:

1. Procedural error that resulted in material harm or prejudice to the student (i.e., by preventing a fair, impartial, or proper hearing). Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results;
2. Discovery of substantial new evidence that was unavailable at the time of the hearing, and which reasonably could have affected the decision of the hearing body; or
3. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating factors.

**Non-attendance by the accused student may not be the sole grounds for an appeal. Dissatisfaction with a decision is not grounds for appeal.**

### **Appeal Procedure**

1. Complete the Appeal Request Form, including signing the form.
2. If applicable, attach supporting documentation.
3. Turn in the signed form and any added documentation to Student Conduct by the deadline. Student Conduct will ensure that the appeal officer receives the appeal and the record of the case.
4. Students neither meet with nor make oral presentations to the appeal officer, except at the request of the appeal officer in order to obtain relevant information.
5. Students who do not submit their appeals by the date/time specified in their decision letter waive their opportunity to appeal.
6. Students who do not provide information concerning the basis of their appeal waive their opportunity to an appeal.

**APPEAL REQUEST FORM**

Name: \_\_\_\_\_ Student ID#: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

I am the: \_\_\_\_\_accused student \_\_\_\_\_victim in a sexual harassment/violence case

I am basing my appeal on one or more of the following reasons [If you check a basis, you must provide facts, documentation or perspective that supports your appeal. It is important to provide information that is as detailed and accurate as possible, so that the appeal officer can make an informed decision regarding the appeal. You may attach additional sheets as needed].

\_\_\_\_\_1. Procedural error that resulted in material harm or prejudice to the student (i.e. by preventing a fair, impartial, or proper hearing). Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results.

Please identify the procedural error(s) that took place and how the error(s) prevented a fair, impartial or proper hearing.

\_\_\_\_\_2. Discovery of substantial new evidence that was unavailable at the time of the hearing, and which reasonably could have affected the decision of the hearing body.

Please describe the new evidence and, if appropriate and possible, attach it to this appeal. Indicate why the information was not provided at the time of the hearing. Also indicate why the information is sufficient to alter the original decision in the case.

\_\_\_\_3. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating circumstances.

Please explain how the sanction is grossly disproportionate to the violation (i.e. unreasonably harsh or light, given all of the relevant circumstances).

I certify that the information presented in my appeal is accurate, to the best of my knowledge. I understand that providing false information is a violation of the Code of Student Conduct and subject to disciplinary charges.

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Signature \_\_\_\_\_ Date \_\_\_\_\_

For Student Conduct Staff:

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Received by: \_\_\_\_\_ Time \_\_\_\_\_

Date Stamp:

Delivered to Appeal Officer

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Date \_\_\_\_\_

**APPEAL REQUEST FORM**

Name: Sigma Chapter of Theta Tau Student ID#: Case No.  \_\_\_\_\_

Phone:  \_\_\_\_\_ Email:  \_\_\_\_\_

I am the:  accused student  victim in a sexual harassment/violence case  
**I am the representative of the respondent**

I am basing my appeal on one or more of the following reasons [If you check a basis, you must provide facts, documentation or perspective that supports your appeal. It is important to provide information that is as detailed and accurate as possible, so that the appeal officer can make an informed decision regarding the appeal. You may attach additional sheets as needed].

1. Procedural error that resulted in material harm or prejudice to the student (i.e. by preventing a fair, impartial, or proper hearing). Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results.

Please identify the procedural error(s) that took place and how the error(s) prevented a fair, impartial or proper hearing.

Please see attached addendum

2. Discovery of substantial new evidence that was unavailable at the time of the hearing, and which reasonably could have affected the decision of the hearing body.

Please describe the new evidence and, if appropriate and possible, attach it to this appeal. Indicate why the information was not provided at the time of the hearing. Also indicate why the information is sufficient to alter the original decision in the case.



X   3. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating circumstances.

Please explain how the sanction is grossly disproportionate to the violation (i.e. unreasonably harsh or light, given all of the relevant circumstances).

Please see attached addendum

I certify that the information presented in my appeal is accurate, to the best of my knowledge. I understand that providing false information is a violation of the Code of Student Conduct and subject to disciplinary charges.



July 15, 2019

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Signature

Date

For Student Conduct Staff:

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Received by:

Time

Date Stamp:

Delivered to Appeal Officer

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Date

July 15, 2019

VIA EMAIL ([Couch.28@osu.edu](mailto:Couch.28@osu.edu))

Dr. Matt Couch  
Associate Dean of Students, The Ohio State University  
1739 N. High St.  
Columbus, Ohio 43210

RE: Appeal of Sigma Chapter of Theta Tau / Case No. [REDACTED]

Dr. Couch:

On behalf of the Sigma Chapter of Theta Tau (“Sigma Chapter”) at The Ohio State University (“OSU”), I respectfully appeal the July 1, 2019 order (the “Order”) of the Office of Student Life Student Conduct (the “Conduct Office”) finding Sigma Chapter in violation of the Hazing, Endangering Behavior, and Alcohol provisions of OSU Code of Student Conduct (the “Code”) and suspending Sigma Chapter for four years, until August 6, 2023. Sigma Chapter appeals the Order because procedural errors caused material harm and prejudice and the four year suspension is a grossly disproportionate sanction.

First, despite repeated requests, the Conduct Office refused to provide Sigma Chapter with the identities of those who made accusations against it. This refusal impermissibly denied Sigma Chapter the ability to prepare its defense and to confront and cross-examine its accusers.

Also, only minutes before the hearing, Sigma Chapter received a redacted report prepared by Purdue University (“Purdue”) declaring that Sigma Chapter hazed students at an event involving Theta Tau members from Purdue (the “Purdue Report”). Sigma Chapter had no foreknowledge of this report, and Sigma Chapter had no opportunity to participate in or challenge Purdue’s investigative process.

Finally, the record is devoid of previous misconduct concerning Sigma Chapter, much less violations warranting a suspension until 2023. Thus, due to material procedural errors and grossly disproportionate sanctions, Sigma Chapter requests that OSU overturn the Order and repeal the suspension.

## **I. FACTUAL HISTORY**

### **A. In April 2018, The Purdue Chapter Of Theta Tau Visited Sigma Chapter As Part Of Local Tradition**

Theta Tau Fraternity (“Theta Tau”) is the nation’s oldest engineering fraternity, and Sigma Chapter, which was established in 1921, is the local chapter at OSU. Through recruiting, mentoring, and engineering networking opportunities, Sigma Chapter has tripled its membership in the last few years.

One of the local traditions is for the Purdue Theta Tau Chapter (the “Purdue Chapter”) to visit OSU. In April 2018, Purdue Chapter members visited Sigma Chapter. On a Saturday morning, Purdue Chapter members toured OSU and then returned in the evening for a brotherhood gathering. Prior to the start of the gathering, Purdue Chapter members sequestered themselves in a closed room. As Sigma Chapter later

learned, Purdue Chapter members engaged in an activity known as “Fighting the Bear,” where participants drink a mixture of alcohol designed to curdle in the stomach, often causing pain, inebriation, and vomiting. Purdue Chapter had purchased and snuck in its own alcohol for this activity, and Sigma Chapter did not know about, condone, or engage in the activity.

Later in the evening, Sigma and Purdue Chapter played a variety of games designed to foster brotherhood and knowledge of Theta Tau. Games included quizzes about fraternity history and table pong, which was played with water. Although beer was present during the evening for those over 21, alcohol was not served to those who were under 21 and no one was forced to drink alcohol.

At around 12:30AM, a group of Sigma and Purdue Chapter members moved to a room converted into a large sleeping area with couches and mattresses. There were multiple Sigma and Purdue Chapter members in the room, and they were talking in the early morning hours. One of the Purdue Chapter pledges, ██████████ fell asleep on a couch, and, as a prank, a Sigma Chapter pledge put tape across his body. When ██████████ awoke a few minutes later, he asked to have the tape removed and it was immediately done. The entire taping incident took place with the lights on, in a crowded room, and in front of multiple Sigma and Purdue Chapter members.

The next day, Purdue Chapter left OSU without complaint or incident. It is Sigma Chapter’s understanding that upon Purdue Chapter’s return to Purdue, a meeting was held and, for reasons having nothing to do with the OSU visit, Purdue Chapter brothers voted ██████████ out of the pledge class. ██████████ (██████████ another pledge, then left as well because he was ██████████ roommate and friend. It is Sigma Chapter’s understanding that both ██████████ and ██████████ had planned on living in the fraternity house the following year, and that those plans had been dashed when Purdue Chapter voted out ██████████

**B. Anonymous Complaints Were Made Against Sigma Chapter In May 2018 And Sigma Chapter Was Suspended And Notified Of An Investigation Three Months Later**

On May 18, 2018, OSU received an anonymous complaint (the “Anonymous Complaint”) alleging that Sigma Chapter had abused its members from 2011 through 2016, with acts of “[b]utt chugging, serious alcohol poisoning, and extreme personal hazing towards minorities.” A copy of OSU’s Investigation Hearing Packet is attached as Exhibit 1 (the “Packet”). The Anonymous Complaint is at Packet p. 1-3.

On May 30, 2018, Krystal Reeb (“Reeb”), an Associate Director in the Conduct Office, emailed Director Smith about a phone call she had had with Purdue. While discussing a separate matter, Reeb had learned that an anonymous Purdue student had complained about events that occurred while visiting Sigma Chapter. *Id.* at p. 4. Although the Conduct Office never identified the anonymous student to Sigma Chapter, it is Sigma Chapter’s belief that the complaining student was ██████████ Sigma Chapter suspects that the Conduct Office interviewed ██████████ and ██████████ in June 2018. The Conduct Office, however, has never confirmed either student’s identity.

At no point in summer 2018 did OSU notify Sigma Chapter about the Anonymous Complaint or the Purdue allegations. On August 20, 2018, Sigma Chapter received notice it was being immediately suspended as a threat to public health and safety because of hazing allegations (the “Suspension Notice”). *Id.* at p. 5-6.

Per the Suspension Notice, Sigma Chapter could not participate in recognized student organization activities and had to cease all new member activities.

Along with the Suspension Notice, Sigma Chapter received an investigation notice (the “Investigation Notice”) from Conduct Office Director Kelly Smith (“Director Smith”). The Investigation Notice stated that the Conduct Office was investigating Sigma Chapter for conduct from 2011 through 2016 and the spring 2018 semester. Specifically, Director Smith warned that she was investigating potential violations of: (i) Hazing; (ii) Endangering Behavior; (iii) Alcohol; (iv) Sexual Misconduct – Non-consensual sexual contact; (v) Sexual Misconduct—Non-consensual sexual intercourse, and; (vi) Sexual Misconduct—Sexual harassment. *Id.* at p. 7. Sigma Chapter later learned that the potential sexual misconduct charges stemmed solely from the Anonymous Complaint’s butt chugging (i.e. alcoholic enema) claims.

### **C. Sigma Chapter And The National Theta Tau Fraternity Launched An Internal Investigation With A Former Federal Agent Within One Day Of The Suspension And Investigation Notices**

Sigma Chapter and Theta Tau took the allegations seriously and immediately launched an internal investigation. Within a day of receiving the Suspension Notice and Investigation Notice, Theta Tau flew in a Texas-based former police officer and federal agent, Michael Duncan (“Duncan”), to investigate the alleged misconduct. On August 23, 2018, only three days after OSU issued the Suspension Notice and Investigation Notice, Duncan produced a memorandum to OSU stating that he could find no evidence of butt chugging ever taking place at Sigma Chapter (the “Duncan Memo”). *Id.* at pp. 13-14. A copy of Duncan’s correspondence to OSU is attached as Exhibit 2.

In his memo, Duncan discussed the Purdue Chapter visit. Duncan concluded that as a prank, and in front of both Purdue Chapter and Sigma Chapter members, a pledge who had fallen asleep had been briefly taped to a couch, and that the tape had been removed in about five minutes of the student waking up. Duncan stated “there was no forced alcohol consumption of any kind involved and that it was just horse play between two individuals.” In the memo, Duncan also referenced an unspecified event where Sigma Chapter pledges had cans taped to their hands, and had to get rid of the liquid in the cans to have the tape removed. Duncan stated that, although the cans could be beer, students were never forced to drink alcohol, could drink water or non-alcoholic beer, or could just dump out the liquid. Ex. 1 at pp. 13-14.

In good faith Sigma Chapter and Theta Tau authorized Duncan to produce the Duncan Memo to OSU, and he did so on August 23, 2018. In Duncan’s email to OSU, he proposed a mutually agreeable package of sanctions, including suspension of all Sigma Chapter activities for the fall 2018 semester, mandatory alcohol training for all Sigma Chapter members, any additional training or education proposed or sponsored by OSU, and a review of Sigma Chapter activities and additional training from Theta Tau. Ex. 2. Following OSU’s receipt of the Duncan Memo, Director Smith met with Sigma Chapter representatives and engaged in emails with Sigma Chapter and Theta Tau. In these meetings, Sigma Chapter and Theta Tau requested that OSU cease its investigation into the sexual misconduct allegations because there was no supporting evidence. Director Smith, however, refused to end the sexual misconduct investigation. Further, on August 28, 2018, Theta Tau was targeted in a phishing scam that had emanated from OSU’s Office of Sorority and Fraternity Life. According to an independent forensic investigator, the scam was designed to uniquely harm Theta Tau and was not a generic mass attack on fraternities.

Sigma Chapter disaffiliated from OSU on September 6, 2018. Ex. 1 at p. 17-18. A copy of Sigma Chapter's disaffiliation notice is attached as Exhibit 3.<sup>1</sup>

Five months later, on February 4, 2019, Director Smith notified Sigma Chapter that OSU was not moving forward with charges related to sexual misconduct, but that OSU was charging Sigma Chapter with violating the Code's Hazing, Endangering Behavior, and Alcohol provisions (the "Charge Notice"). A copy of the Charge Notice is attached as Exhibit 4. The Charge Notice stated that OSU was bringing these charges because of conduct that had occurred at some point during the "2017-2018 academic year." The Charge Notice claimed that Sigma Chapter had provided alcohol to individuals under 21 and forced new members to consume alcohol and to do chores and calisthenics.

With the Charge Notice, Sigma Chapter also received OSU's Investigation Hearing Packet (the "Packet"). The Hearing Packet contained redacted and anonymous interviews with students from Purdue and OSU.

#### **D. In April And March 2019, Sigma Chapter Submitted Objections To OSU's Procedural Violations**

In March and April 2019, Sigma Chapter submitted multiple objections to OSU for its procedural violations. On March 29, Sigma Chapter submitted the following objections, which are attached as Exhibit 5:

- Deficiency of Notice: Sigma Chapter objected to the Charge Notice because it did not provide sufficient notice under Code 3335-23-07 or federal law. Specifically, the Charge Notice did not identify where or when the alleged violations took place or who was involved. As a result, Sigma Chapter was forced to deduce which, if any, members may have been responsible for the charges, when and where the alleged conduct occurred, and who might have been around to witness the conduct in question.
- Denial of Right to Confront and Cross-Examine Accusers: Sigma Chapter objected to OSU's failure to identify its accusers and those who were interviewed during OSU's investigation process. Because Sigma Chapter could not identify its accusers, Sigma Chapter could not adequately prepare its defense, confront, and/or cross-examine in a case where witness credibility was critical.
- Lack of Jurisdiction: Sigma Chapter objected to OSU's charges for lack of jurisdiction. Under Code 3335-23-02, the Code applies only to "students," which includes "registered student organizations." Because Sigma Chapter disaffiliated from OSU on September 6, 2018, it was not a "registered student organization" when OSU brought charges on February 4, 2019.
- Impermissible Gender Bias: Sigma Chapter objected to the anti-male bias of Director Smith and OSU. On August 20, 2018, the same day OSU issued the Investigation Notice, a federal court reinstated an equal protection claim against Director Smith and OSU for disparately disciplining

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<sup>1</sup> On September 5, 2018, one day before Sigma Chapter's disaffiliation, OSU interviewed a single alumni about the sexual misconduct allegations from 2011 through 2016. See Ex. 1 at pp. 53-54. OSU did not provide Sigma Chapter with notice of this sole interview until February 2019. The identity of the person who submitted the Anonymous Complaint has never been established.

male students. This court had also held there was evidence that OSU was under pressure from the U.S. Department of Education's to aggressively target and discipline male students.

- Retaliation for Lawful Public Records Request: Sigma Chapter objected to the charges as retaliation for Sigma Chapter's multiple public records requests for documents about investigations into Sigma Chapter.

On April 1, Sigma Chapter objected to OSU's failure to provide a Packet witness key. Specifically, Sigma Chapter argued that, without a witness key, it could not adequately prepare its defense because it did not know who made what specific claims against Sigma Chapter, what events supported OSU's charges, or which persons were witnesses to those events. On April 3, 2019, Director Smith responded stating that OSU did not identify witnesses in hazing investigations because OSU "must allow individuals the opportunity to share information without fear of retaliation. Accordingly, we do not share personally identifying information for witnesses." Ex. 6 at p. 5. Later that same day, Sigma Chapter objected to OSU's refusal to provide a witness key as violating due process, hindering Sigma Chapter's ability to defend itself or identify and call witnesses. A copy of Sigma Chapter's witness key objections, and Director Smith's response, is attached as Exhibit 6.

On April 3, Director Smith responded to Sigma Chapter's objections. She rejected Sigma Chapter's deficiency of notice, gender bias, jurisdiction, and public records retaliation objections. She did not address Sigma Chapter's request to identify, confront, and cross-examine its accusers. A copy of Director Smith's response is attached as Exhibit 7.

On April 4, Sigma Chapter objected to the charges as retaliation for Theta Tau's investigation into the phishing scam that had emanated from OSU. On April 5, Director Smith rejected Sigma Chapter's objection. On April 6, Sigma Chapter renewed its objection to OSU's lack of jurisdiction, noting that it had disaffiliated from OSU prior to the start of a disciplinary matter. A copy of the April 4-6 objections and response is attached as Exhibit 8.

#### **E. Minutes Before The Hearing, Sigma Chapter Received An Inaccurate, Biased, And Redacted Purdue Report That Identified Director Smith As A Witness Against Sigma Chapter**

On April 8, 2019, the Conduct Office held a hearing related to Sigma Chapter. Minutes before the hearing, the Conduct Office provided Sigma Chapter with the Purdue Report, which was dated August 29, 2018. The Purdue Report is attached as Exhibit 9. The report resulted from Purdue's investigation into Purdue Chapter for its hazing activities, separate from the April 2018 visit. The Purdue Report was heavily redacted and a portion contained an inaccurate and biased account of Purdue Chapter's visit.

Sigma Chapter had no foreknowledge of the Purdue Report and could not adequately prepare its defense to a document rife with inaccuracies and that contained Purdue's imprimatur. No Sigma Chapter members were interviewed by Purdue to examine Purdue Chapter's false narrative and desire to shift blame in a larger hazing investigation. The Purdue Report was also the first time that Sigma Chapter learned that Purdue Chapter had snuck in alcohol and engaged in "Fighting the Bear," which explains the claimed inebriation and illness of Purdue Chapter members.

Further, none of the Purdue students were identified in the report, which further undermined Sigma Chapter's ability to prepare its defense and identify and confront its accusers. The only individual identified was Director Smith, who "confirmed" that a Purdue Chapter pledge had "blacked out, and when he awoke the next morning, his hands were bound with packing tape." Ex. 9 at p. 4. Director Smith had no personal knowledge of events, and, as she testified, had not interviewed any Purdue students during OSU's investigation. To the extent she could have "confirmed" what had happened based upon the Purdue student's OSU interview, there were significant differences. For example, in the OSU investigation, the student never claimed that he had "blacked out" or suggested that he had been taped until "the next morning." Ex. 1 at p. 42. The student also claimed to OSU that "his arms and legs were bound with masking tape or duct tape," while claiming to Purdue that "his hands were bound with packing tape." *Id.*; Ex. 9. Accordingly, even if Director Smith had relied exclusively on a third-party's interview notes, she could not have confirmed the narrative in the Purdue Report.

That Director Smith made this erroneous "confirmation" on or before August 29, 2018 strongly suggests that the investigation into Sigma Chapter was biased. Further, by providing the redacted, inaccurate, and largely anonymous Purdue Report only minutes before the hearing, Sigma Chapter could not adequately prepare for or defend itself against these accusations.

**F. Sigma Chapter Presented Evidence At The Hearing To Refute The Charges, But Was Denied The Ability to Confront And Cross-Examine Its Accusers**

At the hearing, Sigma Chapter reiterated all of its written objections and objected to having only just been presented with the Purdue Report, which hampered its ability to prepare an adequate defense. Sigma Chapter also presented the testimony of [REDACTED] [REDACTED] denied that any Purdue students were endangered during their visit to Sigma Chapter. Further, both stated that, although alcohol was available to those who were over 21, alcohol was not given to those who were underage and no one was pressured, much less ordered, to drink. Further, both denied that any Sigma Chapter pledges were required to do chores or calisthenics. As for the chores, there is a rotating weekly schedule of brothers and pledges who, together, clean the house's common areas prior to Sunday night meetings. [REDACTED] testified that it violates Sigma Chapter's policy for pledges to clean a member's bedroom.

Besides [REDACTED] testimony, Sigma Chapter also presented a supplemental memo from Duncan (the "Duncan Supplement"). A copy of the Duncan Supplement is attached as Exhibit 10. In the supplement, Duncan provided greater detail about Purdue Chapter's visit. As Duncan stated:

I did not find any evidence that Sigma Chapter served alcohol to anyone under the age of 21 at [the Purdue Chapter gathering]. I did not find any evidence that hazing, endangering behavior, or forced alcohol consumption took place at this event.

Later in the evening, a Purdue Chapter pledge fell asleep on the couch. This individual fell asleep because of the late hour; I did not find any evidence that this person had been rendered unconscious due to alcohol. While this Purdue Chapter pledge was asleep on the couch, an OSU pledge taped him to the couch. This act was done in full view and with the acknowledgment of Purdue pledges and actives. The Purdue Chapter pledge woke up

a few minutes later, laughed about the situation, and asked for the tape to be removed. The tape was promptly removed at his request. It is my understanding that the entire event lasted less than ten minutes and was mere horse play. At no point was this individual hazed or in danger.

Ex. 10 at p. 1-2.

Sigma Chapter also presented written statements from [REDACTED] and from [REDACTED] who respectively believed they were Students 506 and 505 in the Packet. Copies of these statements are attached as Exhibit 11. In these statements [REDACTED] denied that he had ever been forced to do calisthenics (Student 506's interview was the sole reference to calisthenics in the Packet), and that, occasionally, pledges and brothers would engage in physical strength competitions for fun and in good spirit. Ex. 11 at p. 1. Both [REDACTED] denied ever being forced to drink alcohol during pledgship. *Id.* at p. 1-3.

Only Director Smith testified against Sigma Chapter. No Purdue students appeared. Despite repeated objection, Sigma Chapter did not have the ability to know the identities of its accusers, or to confront or cross-examine them at the hearing. There was no evidence presented of any prior misconduct issues concerning Sigma Chapter. In response to questioning from the Hearing Officer, [REDACTED] stated that he hoped Sigma Chapter could again become a registered organization with OSU.

On July 1, 2019, the Hearing Officer issued the Order finding Sigma Chapter in violation of the Code's Hazing, Endangering Behavior, and Alcohol provisions. Per the Order, Sigma Chapter was suspended from OSU until at least August 6, 2023.

## **II. ARGUMENT**

Sigma Chapter respectfully requests that OSU overturn the Order and repeal the four year suspension because procedural errors, which violated both the Code and federal law, caused material harm and prejudice, and because a four year suspension is grossly disproportionate in this case.

### **A. Procedural Violations Caused Material Harm And Prejudice To Sigma Chapter**

Sigma Chapter requests that the Order be overturned and the four year suspension be repealed due to prejudicial procedural error. Case law is clear that due process requirements must be met in any student misconduct hearing. "Notice and an opportunity to be heard remain the most basic requirements of due process," with greater due process required when penalties include suspension from a public university. *Flaim v. Med. College of Ohio*, 418 F.3d 629, 635 (6th Cir. 2006). *See also Sigma Chi Fraternity v. Regents of Univ. of Colo.*, 258 F. Supp. 515, 528 (D. Colo. 1966). For notice to be sufficient, it must provide a student with a full account of the charges so they may prepare their defense. *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 603 (D. Mass. 2016). When credibility is at issue, due process mandates the opportunity for cross-examination, and "if a public university has to choose between competing narratives to resolve a case, the university must give the accused . . . an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder." *Doe v. Baum*, 903 F.3d 575, 578 (6th Cir. 2018).



These due process protections are listed in the Code, which guarantee that a respondent must receive written notice of the charges, be able to invite relevant factual witnesses, be able to question the witnesses of others. See Ex. 1 at p. 9-10 (citing Previous Code 3335-23-07(A) and 3335-23-10(C)). Here, the Conduct Office violated the Code and federal law.

1. *The Conduct Office Failed to Provide Sufficient Written Notice of The Charges*

The Charge Notice did not provide sufficient notice to Sigma Chapter so that it could adequately prepare its defense. The Charge Notice, which was issued on February 4, 2019, merely stated that Sigma Chapter had violated the Code at an unknown point, or points, during the 2017-2018 academic year. The Charge Notice did not refer to a specific person, place, time, or event, thereby requiring Sigma Chapter to guess who might have been responsible for the charges, when and where the alleged conduct occurred, and who might have been around to witness it. As such, Sigma Chapter could not identify, must less invite, relevant factual witnesses for its defense, in violation of both the Code and federal law's requirements for sufficient written notice. Thus, Sigma Chapter requests that the Order and suspension be reversed.

2. *The Conduct Office Failed To Identify Sigma Chapter's Accusers And Adverse Witnesses*

Likewise, the Order should be repealed because the Conduct Office refused to identify Sigma Chapter's accusers and adverse witnesses. Sigma Chapter repeatedly requested that the Conduct Office provide a witness key so it could determine who had made accusations against it and identify witnesses. Director Smith, however, refused this request, stating that as a matter of OSU policy, OSU does not identify witnesses in hazing misconduct investigations to avoid retaliation. Ex. 6 at p. 5. Nowhere in the Code does it state that OSU may withhold witness information, nor does it differentiate between hazing and non-hazing proceedings. Indeed, there are many proceedings where the fear of retaliation is even greater, such as in sexual assault cases, and witness information must be produced.

Further, the Code specifically states that respondents may invite relevant factual witnesses. Sigma Chapter could not invite relevant factual witnesses, much less conduct a cross-examination of their earlier statements, if the names of the relevant factual witnesses were withheld. Moreover, only minutes before the hearing, the Conduct Office presented the Purdue Report, which contained additional anonymous claims against Sigma Chapter. It is unknown if the Purdue students cited in the Purdue Report were even interviewed during OSU's investigation, and no Sigma Chapter members had the opportunity to address, confirm, or deny facts contained in the Purdue Report. The only identified witness in the Purdue Report was Director Smith, whose "confirmation" was third-hand and directly contradicted by the anonymous Purdue student's statements to OSU. Thus, the Order and sanctions should be repealed because Sigma Chapter was denied the identity of its accusers and adverse witnesses, and, therefore, denied the opportunity to identify relevant factual witnesses.

3. *The Conduct Office Failed To Give Sigma Chapter The Opportunity To Confront And Cross-Examine Its Accusers And Adverse Witnesses*

The Order should be repealed because, besides failing to identify accusers and adverse witnesses, the Conduct Office also failed to provide Sigma Chapter the opportunity to confront and cross-examine them.

The Conduct Office did not present oral testimony from a single student, instead relying upon anonymous written interview summaries conducted by OSU and Purdue. In contrast, Sigma Chapter presented oral testimony from two witnesses who directly contradicted these anonymous accounts.

When there are competing narratives concerning an event, the respondent must be given the opportunity to cross-examine adverse parties and witnesses. *See Doe v. Baum*, 903 F.3d 575, 578 (6th Cir. 2018). Moreover, under the Code, respondents must be given the opportunity to ask questions of witnesses. The Conduct Office cannot rely solely upon anonymous witness summaries and then deny respondent the opportunity to question witness narratives and credibility.

Sigma Chapter did not have the opportunity to cross-examine a single accuser or adverse witness. Further, Purdue Chapter members had a strong incentive to misrepresent Sigma Chapter's conduct, either because they were likely disgruntled former pledges who had lost their planned housing, or because they were fraternity members who wanted to minimize their own conduct, given Purdue's larger hazing investigation. Further, only minutes before the hearing started, Sigma Chapter received the Purdue Report, which contained further accusations and never-before-divulged claims from an unknown number of anonymous Purdue students. Sigma Chapter had no time to defend itself against the claims in the report. Although Sigma Chapter disputed the Purdue Report's claim, Sigma Chapter deserved to confront and question those who participated in Purdue's investigation.

Sigma Chapter's narrative directly contradicted Purdue Chapter's, and Sigma Chapter, in violation of both the Code and federal law, never had the opportunity to confront and cross-examine these accusers and adverse witnesses. Thus, because the Conduct Office denied Sigma Chapter its right to confront and cross-examine, Sigma Chapter requests that the Order be overturned and the four year suspension repealed.

#### 4. *The Conduct Office Did Not Have Jurisdiction Over Sigma Chapter*

The Order should be overturned because the Conduct Office did not have jurisdiction over Sigma Chapter. Per the Code, as in effect at the time of the February 4, 2019 Charge Notice, OSU had jurisdiction over only "students," which included "registered student organizations." Code 3335-23-03(B)(2). The Code had not yet been amended to grant the Conduct Office jurisdiction over former students. Code 3335-23-03(B)(3).

Here, Sigma Chapter disaffiliated from OSU on September 6, 2018, months before the Charge Notice. Although OSU had started its investigation of Sigma Chapter, there was no disciplinary matter (i.e. charges) pending at the time of Sigma Chapter's disaffiliation. Accordingly, because the Conduct Office did not have jurisdiction over Sigma Chapter at the time of the Charge Notice, Sigma Chapter respectfully requests that the Order and four year suspension be overturned and repealed.

#### **B. Sigma Chapter's Four Year Suspension Is Grossly Disproportionate**

The Order's four year suspension should likewise be repealed and reduced because it is grossly disproportionate to Sigma Chapter's violations. Sigma Chapter is an engineering fraternity with a long history at OSU. At the hearing, no evidence of any previous misconduct was presented.

Further, the evidence showed that a gathering of Sigma Chapter and Purdue Chapter members occurred in April 2018. Although there was alcohol present, it was not served to those under the age of 21, nor was anyone forced to drink. No one drank to the point of unconsciousness, and, to the extent Purdue Chapter members became inebriated, it resulted from their “Fighting the Bear” in a closed room prior to the event’s start, which Sigma Chapter did not know of, much less condone.

When a Purdue Chapter pledge fell asleep on a couch in the early morning hours, a harmless prank was pulled where he was taped to the couch for only a few minutes. This incident occurred in a fully lit room filled with Purdue and Sigma Chapter members. When the pledge awoke, he asked to have the tape removed, and it was taken off of him within minutes. As Duncan, a former police officer and federal agent, stated in his supplement: “At no point was this individual hazed or in danger.” Ex. 10 at p. 2.

Likewise, to the extent chores were done at Sigma Chapter, they were evenly distributed on a rotating schedule among pledges and brothers, and limited to only the house’s common areas before meetings. There was also no evidence of calisthenics being forced on pledges, although occasionally pledges and brothers would together engage in competitions as horseplay.

The events that occurred in spring 2018 semester were not gross or severe Code violations. Instead, they were harmless bonding activities among young engineering students. Further, Sigma Chapter would not have tripled its membership in recent years had it abused its brothers or pledges. Given that there is no evidence of any previous misconduct involving Sigma Chapter, a suspension lasting from August 2018 until August 2023 is disproportionate to Sigma Chapter’s conduct.

Accordingly, Sigma Chapter respectfully requests that the Order’s sanctions be repealed and, should they be replaced, that Sigma Chapter receive only a warning and/or probationary status.

### **III. CONCLUSION**

For all of the foregoing reasons, Sigma Chapter respectfully requests that the Order be overturned and the suspension until August 2023 be repealed.

Respectfully Submitted,

████████████████████  
██

August 7, 2019

Theta Tau  
Sent electronically to [REDACTED]

**PERSONAL AND CONFIDENTIAL**

Regarding Case Number: [REDACTED]


[REDACTED]

I have received your appeal of the sanctions that resulted from your disciplinary case. The Code of Student Conduct requires that an appeal state the basis on which you are appealing the outcome. Your appeal is based on your claims that a procedural error resulted in material harm or prejudice to you and that the sanction imposed is grossly disproportionate to the violation committed.

I have given your appeal careful consideration. Based on my independent review of the record and supporting documents, I do not find that a procedural error resulted in material harm or prejudice to you, and I do not find that the sanction imposed is grossly disproportionate to the violations committed. I have, therefore, decided to support the decision that resulted from this process.

If you have questions regarding your case, please contact the Student Conduct office at (614) 292-0748.

Sincerely,



Matt Couch, PhD  
Associate Dean of Students

CC: Associate Director and Deputy Title IX Coordinator - Nadia Haque