

**The Ohio State University
Incident Reporting Form**

Submitted on February 27, 2018 at 12:51:32 pm EST

Nature: **Housing-initiated report (UH)**
Urgency: **Normal**
Incident Date and Time: **2018-02-25 10:45 PM**
Incident Location: **Raney House Room [REDACTED]**

Reported by

Name: [REDACTED]
Title: [REDACTED]
Email: [REDACTED]
Phone: [REDACTED]
Address: **33 W. Lane Avenue**
[Authenticated as [REDACTED]]

Involved Parties

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Victim	Male	Raney House	

Questions

Please provide a detailed description of the incident/concern using specific concise, objective language.

At 10:40 A.M. on Sunday, February 25th, Resident [REDACTED] called Resident Advisor (RA) [REDACTED] notifying that there was something serious that [REDACTED] wanted to discuss with [REDACTED]. [REDACTED] entered [REDACTED]'s room, Room [REDACTED] in Raney House, at around 10:45 A.M. on the same day. [REDACTED] expressed that there was difficulty sleeping, focusing and decline in academic performance due to [REDACTED] pledging an undisclosed IFC Fraternity. [REDACTED] expressed there certain acts including, but not limited to, having exams at late times of night, going to the fraternity's house early in the morning to take order or clean up from a recent party impacted the normal sleep schedule. Additionally, [REDACTED] disclosed that himself and other pledges were blindfolded and taken to separate rooms were they were berated by current fraternal brothers, told to eat things off the ground and other demeaning acts. According to [REDACTED] some current members were against such acts being done but those administering the acts were sometimes inebriated with both drugs and alcohol. [REDACTED] spoke to [REDACTED] about why such acts were illegal and constituted hazing. Additionally, [REDACTED] showed [REDACTED] the grievance form that could be filled out. After speaking through more of the scenario, [REDACTED] and [REDACTED] came up with an action plan that included [REDACTED] "dropping line", speaking to both Devin Walker of Sorority and Fraternity Life and parents regarding the incident(s), and planning how to improve both mental and academic wellness. This conversation ended with [REDACTED] letting [REDACTED] know that a followup conversation will ensue. This incident ended at 12:15 P.M. on Sunday, February 25th.

Which of the following responded?

None

Select the Primary overall category reflected in this incident report: (Required/Select Only One)

None of the Above

Select the Secondary category of this incident report: (Optional/Select Only One/Must Differ from Above)

Is there any additional relevant information to report?

N/A

If you selected a location other than a residence hall OR if you are documenting an issue that is not conduct related

(facilities, mental health), please provide YOUR residence hall so this report is properly forwarded to the correct responding staff member.

Raney House

Pending IR #00022368

Submitted from 128.146.218.45 and routed to Benjamin Longstreth (Hall Director). Processed by routing rule #66.

Copies to: kefalas.1@osu.edu, bellini.5@osu.edu, samad.9@osu.edu, smith.11556@osu.edu, longstreth.27@osu.edu, oreilly.121@osu.edu



March 1, 2018

Phi Kappa Psi

Sent electronically to [REDACTED]

PERSONAL AND CONFIDENTIAL

Regarding Case Number: [REDACTED]

March 1, 2018

Dear [REDACTED]:

After we exchanged emails yesterday, our office received a report describing new allegations of hazing my your chapter this semester. The attached letters were just delivered to a resident in the chapter house. Please take every possible step you can to impress upon your entire membership the risks associated with conduct that could appear to be retaliation. This includes any contact or communication with new members that could discourage their truthful participation in our investigation. Additionally, speculation on or attempts to determine the identity of the individuals who made this report could appear retaliatory and may result in disciplinary action for the chapter or individual members.

Please call 614-292-0748 to schedule the preliminary conference. I strongly encourage you to bring a co-leader and an advisor to that conference.

Sincerely,

Kelly B. Smith, J.D.
Director

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

March 1, 2018

Phi Kappa Psi
124 E. 14th Street
Columbus, OH 43201

PERSONAL AND CONFIDENTIAL

Regarding Case Number: [REDACTED]

To the members of Phi Kappa Psi,

An Ohio State University staff member provided information to our office that describes conduct by Phi Kappa Psi during the current semester (spring 2018) that may violate 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.

As a leader of the organization, you must contact Student Conduct by March 8, 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.

I encourage you to share any information or material you have related to this incident. 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.

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, 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 March 8, 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. Monday through Friday. Thank you in advance for your prompt attention to this matter.

Sincerely,

Kelly B. Smith, J.D.
Director

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

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.



March 1, 2018

[REDACTED]

Phi Kappa Psi, Ohio Delta Chapter

Dear [REDACTED]

I have determined that there is reasonable cause to believe that the Ohio Delta Chapter of Phi Kappa Psi'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 *new* hazing allegations for conduct occurring this semester while the chapter was under investigation and a Cease & Desist directive for hazing allegations made during the fall 2017 semester.

Accordingly, I hereby immediately place the Ohio Delta Chapter of Phi Kappa Psi on Interim Suspension and temporarily discontinue the Ohio Delta 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 Ohio Delta 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.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug Koyle", followed by a horizontal line extending to the right.

Doug Koyle
Assistant Vice President
Office of Student Life

Cc: Ryan Lovell – Student Life – Sorority and Fraternity Life
Kelly Smith – Student Life – Student Conduct

April 13, 2018

Phi Kappa Psi
Sent electronically to [REDACTED]

PERSONAL AND CONFIDENTIAL

Regarding Case Number [REDACTED]

Dear [REDACTED]:

I am writing to give you an update on your chapter's conduct case. At this stage of our investigation, there exists reasonable cause to issue one or more charge(s) under the Code of Student Conduct. Charging does not, however, assume that you are responsible for violating any sections of the code; it only causes the second half of our process to begin. [REDACTED] I do not have the investigation packet ready at this time as we are waiting for two witnesses to review their notes. I hope to have the packet ready for you early next week.

I encourage you to consult with an advisor of your choice or with the Student Advocacy Center (<http://advocacy.osu.edu>) 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, 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.

I have attached your Charge and Process form to this email. Please review it carefully, select your resolution option, then sign and date the bottom of the form. Once you have completed the form, you may scan and email it directly to me, fax it to my office at 614-292-2098, or drop it off in person. This form is due by 4:30 p.m. on April 20, 2018. Failure to return this form by the stated deadline will result in an Administrative Hearing.

If you have any questions, please feel free to let me know.

Sincerely,



Kelly B. Smith, J.D.
Director

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

PERSONAL AND CONFIDENTIAL

Regarding Case Number: [REDACTED]

CHARGE & PROCESS FORM

Name: Phi Kappa Psi

Email: [REDACTED]

I. Charge(s): Phi Kappa Psi is alleged to be in violation of the following sections of the 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.

It is alleged that during spring 2018 semester, your chapter violated the Code of Student Conduct in the following manner:

Required or encouraged new members to participate in activities that were unrelated to the new member education process, such as, but not limited to the following examples:

- being present at events scheduled at hours unreasonably late at night and/or unreasonably early in the morning
- performing chores
- participating in activities involving blindfolds, dark rooms, sorting or eating food off the ground
- remaining in a room with a song played at a high volume on repeat for a length of time intended to be unpleasant
- drinking alcohol, whether voluntarily or under pressure, or

Additionally, one new member reported that an active member urinated on or near him during one of the new member experiences described above.

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

_____ I accept responsibility for the violation(s) of the Code of Student Conduct as listed in Section I of this form. **I request an Administrative Decision.**

_____ I do not accept responsibility for one or more of the violations of the Code of Student Conduct as listed in Section I of this form. **I request an Administrative Hearing before a University Hearing Officer.**

_____ I do not accept responsibility for one or more of the violations of the Code of Student Conduct as listed in Section I of this form. **I request 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.

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.

This form is due by 4:30 pm on **April 20, 2018.**

Signature: _____ Date: _____



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: [REDACTED] Student ID#: [REDACTED]

Phone: [REDACTED] Email: [REDACTED]

I am the: X accused ~~student~~ organization 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].

X 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.

See Attached

 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).

See attached.

Note: without a factual basis for the findings against us, we cannot prepare this. We request an opportunity to supplement, if necessary (see attached).

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.



6/19/18

Date

For Student Conduct Staff:

Received by:

Time

Date Stamp:

Delivered to Appeal Officer

Date

Appeal of Phi Kappa Psi

Phi Kappa Psi, through [REDACTED], appeal the decision of Student Conduct on June 12 which found our fraternity in violation of hazing and endangering behavior, and suspending the chapter for 4 years.

We appeal on the basis that there was serious procedural error that resulted in significant and material harm to our organization. Specifically, our organization was denied a fair hearing and basic due process by not being afforded the chance to question or confront our accuser and by the hearing officer relying on the hearing packet as evidence in our case when the complainant and other critical witnesses did not make themselves available for the hearing. Further support of this grounds for appeal is attached below.

Additionally, we appeal on the basis that the sanction is grossly disproportionate to the alleged acts.

Finally, we respectfully request that a decision on this appeal **is expedited and decided as quickly as reasonably possible**. As is discussed in part II, below, our chapter is being irreparably harmed by the uncertainty this decision is having on our membership and housing next year. The longer this process drags out, the more harm we suffer – both financially and to our reputation, without any just cause.

I. Lack of Examination of the Witnesses

In a disciplinary hearing, when a major suspension which will affect dozens of students for years is at stake, basic fundamental fairness is not only expected, it is the law. The Constitution demands that these disciplinary hearings follow certain constitutional rules in order to be valid – and first among these is the right to confront adverse witnesses. Failure to follow this basic command has led to successful lawsuits against the University for violation of basic constitutional rights under 42 USC 1983, which allows a person or entity to sue when a governmental agency deprives someone of their Constitutional Rights.

Recently, in *Jane Roe v. Javaune Adams-Gaston*, (Doc#46, Case No. 2:17-cv-945, S. Dist. Ohio, 4/17/2018)(Sargus, J). a Federal Court enjoined the University from suspending a person due to critical failures in the hearing process – specifically for finding a person responsible for violations when the complaining party did not appear at the hearing to give testimony, and for the hearing officer relying on evidence collected during the “investigation” as a substitute for their appearance.

The Court stated that “the right to cross-examine witnesses is a fundamental feature of our legal system.” (Doc 46, PAGEID 1070). These concerns are especially acute when the evidence consists of testimony (and credibility) of individuals “whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy.” *Id.* These critical rights apply just as much at administrative hearings as they do at trial. As the Sixth Circuit has held: “If the credibility of the alleged victim is at issue, the University must provide a way for the adjudicative body to evaluate [that person’s] credibility

and to assess the demeanor.” *Doe v. University of Cincinnati*, 872 F.3d. 393, 401-402 (6th Cir. 2017)(*See also Doe v. Miami Univ.*, 882 F. 3d 579, 600 (6th Cir. 2018).

I invite you to carefully read the cases cited above. They could not be clearer or more applicable to this decision. In our case, we were completely and totally denied the opportunity to examine the witnesses against us.

First, I want to remind the University that we denied these charges, both the fact that they occurred at all and any connection to our organization. The only method we have to try to clear our name is the Student Conduct disciplinary process. However, during that process, we were denied the opportunity to cross examine any witnesses against us. First, the complainant was always anonymized and referred to as “Student 1.” That, combined with the fact that he did not appear to testify at the hearing, left us with literally no ability to contest the allegations against us. The Hearing Officer in this case had no occasion to assess his credibility. We were completely and totally denied our opportunity to present a defense to the charges against us – unconstitutionally.

In addition, there are several other related errors that also strike at the fundamental fairness of the hearing. The RA to whom “Student 1” allegedly confided these acts also did not testify. We were likewise prevented from cross-examining him to attack the credibility and accuracy of the claims made.

Finally, and most significantly, the Hearing Officer relied on evidence in the Hearing Packet that was not presented at the hearing to base her decision to find us responsible for the violations. Evidence collected during the investigation should not be used in lieu of the testimony presented at a hearing. In this case, it is useful to compare this to a criminal trial. In a criminal matter, the police go out and conduct their investigation, interview witnesses, and prepare reports. However, those reports do not form the evidence against the person. Rather, it is the testimony – and testimony alone – that forms the evidence that can be considered. Reports and investigations are designed to help develop the facts of what happened and give the persons attending the hearing an idea of what the evidence will show – not to replace live testimony and the ability to cross-examine. Remember, these hearing packet interviews were done privately, without an ability for us to contest the accuracy of the statements. Relying on those statements in lieu of live testimony is fundamentally unfair and violates the constitution.

As the Court said in *Jane Roe* “a pre-hearing investigation is not an adequate substitute for cross examination.” DOC 46, PAGEID 1080. The Court spends pages detailing why the investigative packet cannot, legally, substitute for live testimony. *See* PAGEID 1080-1084. This holding is clear and unequivocal, and the University erred by not following that law in this case.

Again, I invite you to carefully read the federal cases cited above, as they are binding on the University and clearly apply to the facts at hand. As we all know, the University ignores a Federal Court at its own peril of a lawsuit.

A. The University failed to prove the act occurred

Although the above details the procedural defects in the hearing that should lead to dismissal of the case, I separately want to note that the hearing outcome letter we were provided is deficient and does not state any factual or evidentiary basis to support its conclusion that we violated any code of conduct.

All the letter does is note that “based on the information presented in the hearing” that we were found in violation of 3335-23-04(M) and (B)(1). It then merely specifies the generic code section without the slightest bit of explanation as to what specifically we were alleged to do and how that satisfies the hazing or endangering behavior definition. It does not specify the burden of proof used to find us in violation nor the specific testimony or evidence deemed credible. It is insufficient on its face.

The evidence presented does not identify what act was alleged to occur. Even if you look into the hearing packet to determine what the allegations are (even though that is prohibited by *Jane Roe*, above) you would see that the allegations are bare-bones, at best. They do not identify who allegedly committed the act, or when or where it occurred. There simply is not sufficient evidence in this case to support a violation.

Once again, the evidence provided at the hearing categorically does not constitute an offense under the Code, and the complaint should be dismissed.

B. The University failed to prove that our chapter had any connection or liability with the alleged acts

The complaint also completely fails to prove or provide any support for finding the Chapter responsible for these allegations.

The Chapter has always attempted to cooperate fully with the investigation and demonstrate their lack of involvement. There is no proof that the acts alleged, even if they occurred, were under the control or supervision of the Chapter. Simply put, this is not an organizational issue.

There was no allegation that these acts occurred by active members of the organization. Remember, we provided the University with proof that we had severed our ties with numerous former members of our organization, who were not active, had not paid their dues, and had absolutely no connection with our organization. There is no credible allegation that any active member of the organization was responsible for these alleged acts.

In addition, there is no evidence that any of these acts occurred at premises controlled by our organization. As a part of the remedial actions the University took against all fraternities, we had not yet resumed hosting social events and had not been having any sanctioned events. These allegations, if they occurred at all, seemingly occurred at the homes of former members who had no affiliation to our organization whatsoever.

Finally, and most importantly, we cooperated fully with the investigation and provided all the contact information for those former members who may have been involved in this, if it occurred at all. The University completely failed to investigate those parties and instead focused on our

organization despite the complete lack of evidence tying us to this whatsoever. If any wrongdoing was committed, it falls solely on the students who committed it, and not the Chapter. However, it is **extremely concerning** to us that the University focused on our Chapter's liability and did not investigate or discipline any individual who may have committed these violations.

If the University were serious about protecting its students against hazing, it would have investigated and punished those found responsible, rather than by trying to send a message to an organization that was not involved whatsoever and had no control or supervision over the acts, if they occurred at all.

As stated above, there was no evidence presented in the finding letter that addressed what our connection to the violations were or what factual findings were made that subjected our Chapter to violations.

In light of this, it is absurd and illogical for our organization to be penalized, and the case should be dismissed.

C. 3335-23-18(B) is Likely Unconstitutional

As an additional note, OSU bylaw/regulation 3335-23-18(B) states, its last sentence, that non-attendance by the complainant may not be the sole grounds for appeal. As we discussed above, our appeal is based on due process and the basic and fundamental right to be able to cross examine adverse witnesses and the reliance by the hearing officer on the packet in lieu of live evidence. However, we just wanted to note that, as a Constitutional Matter, non-attendance at the hearing by the complainant is a constitutional violation. Federal Courts have clearly held that the accused must have a right to confront the accuser. Therefore, that provision in the University bylaws is clearly unconstitutional and should have no bearing or force in this case.

D. The appropriate remedy is dismissal of the case

3335-23-18(E)(2) authorizes the appeal officer to dismiss the case and vacate any discipline previously imposed. That would be appropriate in this case as there simply isn't any evidence from the hearing that would support finding a violation.

It would be fair and equitable to dismiss the case because the complainant and the RA made a purposeful choice not to attend the disciplinary hearing. That was their opportunity to appear and make their case. By choosing not to attend, basic fairness dictates that they knowingly waived their right to attend. If we had chosen not to attend or present evidence, we were told that the investigation would still proceed and that a hearing and sanctions would occur without our input. It therefore only makes sense that the exact same principle would apply to this case. By choosing not to attend, they knowingly took the risk that the alleged violation would not be proven, and the case dismissed.

In addition, it cannot be claimed that the right to cross-examine adverse witnesses is a new right not known to the university at the time of the hearing. Federal Courts had been explicitly commanding that as early as Jan. 2017. However, it was made crystal clear as applied to Ohio State in Judge Sargus's order on April 17, 2018 specifically directed at the University. Even if

there was any ambiguity prior to that order, as of April 17 the university was put on notice that they must provide for cross examination of adverse witnesses against a party and that they cannot rely on statements in the hearing packet in lieu of live testimony. Our hearing was not held until May 3, 2018. Student Conduct cannot plead ignorance of their obligations when they were specifically informed of their obligations by a Federal Court weeks prior to the hearing.

Therefore, when the hearing went forward and the complainant and other critical witnesses made the purposeful choice not to attend, and when Student Conduct was aware of their obligation to provide an opportunity for effective cross examination prior to finding a violation proven, the only appropriate remedy is to find that the allegations were not proven and dismiss the case.

In addition, it would be an undue hardship and burden on Phi Kappa Psi to continue dragging this case out throughout the summer. Due to the suspension (erroneously) imposed in this case and the uncertainty surrounding the future, we are placed in limbo relative to our housing situation and being in a position to actively plan for next year. This harm would be magnified if this process extends any longer than necessary. Therefore, we respectfully request that this appeal be expedited and decided as quickly as reasonable under the circumstances, and that the case against us be dismissed.

II. The proposed sanction is grossly disproportionate to the alleged violation.

Finally, our Chapter wants to preserve its appeal on the issue of the sanction being grossly disproportionate to the violation found. We want to emphasize, however, that we continue to dispute the factual allegations against us and believe that the case ought to be dismissed for lack of evidence as described above.

However, we are unable to adequately prepare detailed support for this grounds for appeal because we do not know exactly what it is that we have been found in violation of. Without a detailed finding against us informing us of what factual allegations the hearing officer found proven, we cannot hope to demonstrate the disproportionality of this harsh sanction against us.

Therefore, we expressly wish to preserve our ability to appeal on this basis. However, without the ability to factually address it at this time, we would respectfully request the opportunity to supplement our argument relative to this grounds for appeal if it becomes necessary.

However, we would also note that there is very strong mitigation in this case.

First, our Chapter condemns, in the strongest possible terms, the type of actions that are alleged to have occurred in this case. When made aware of these allegations, we immediately fully cooperated with the university and provided as much information as we could, including contact information for some of the former members who might have been involved in the issue.

We then invited our national organization to conduct a thorough investigation to determine if our Chapter had any connection whatsoever with these alleged acts – an investigation that was expressly approved and welcomed by the University. We coordinated the investigation and were relieved to find that there was absolutely no evidence that these acts occurred or, if they did, they were in any way connected to our Chapter.

Finally, we would like to note the ongoing irreparable harm being inflicted on us as part of this process. It was discussed above, but to reiterate:

We are receiving serious financial damages as a result of the flawed suspension against us. This primarily includes the displacing of 40 to 50 students who suddenly need to find housing this late in time, as well as hundreds of thousands of dollars of lost revenue. It includes lost membership dues, alumni contributions, and scholarships.

And, most importantly, it is a constant injury to our reputation, both as active members and alumni.

Therefore, we respectfully request that our appeal be granted, the findings and sanctions against us vacated, and our ability to return as responsible members of the University community be accomplished as expeditiously as possible.

June 12, 2018

Phi Kappa Psi
Sent electronically to [REDACTED]

PERSONAL AND CONFIDENTIAL

Regarding Case Number: [REDACTED]

Dear [REDACTED] and Members of Phi Kappa Psi:

I am writing to notify you of the outcome of the Ohio Delta chapter of Phi Kappa Psi's Administrative Hearing which took place on May 3, 2018. Based on the information presented in the hearing, I have found Phi Kappa Psi **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.

I considered the following factors in determining appropriate sanctions:

- Phi Kappa Psi's recent conduct history
- The totality and severity of the violations when considered on a continuum
- The partnership and response of [REDACTED] and members throughout the conduct process

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, the IFC, or The Ohio State University.

Disciplinary Sanction

I am suspending the Ohio Delta chapter of Phi Kappa Psi effective **June 12, 2018 through August 7, 2022**. Your chapter is no longer recognized as a student organization at Ohio State and no longer has the rights or privileges afforded to a recognized student organization.

During this time please be advised that 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, not as an organization, in the Student

Conduct process.

Educational Sanctions

I invite your organization to discuss reestablishing a chapter at the university at the end of the suspension period. **Your organization must begin communication at least one year prior to reestablishing, but no sooner than January 1, 2021.**

In discussing its return to our community, Phi Kappa Psi'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.

Sorority and Fraternity Life and Student Conduct will take into consideration the organization's efforts to remedy or eliminate underground activity during the suspension period. We encourage Phi Kappa Psi representatives to provide Student Conduct with any documentation related to these efforts.

I invite the organization to submit a memorandum identifying actions it might take with new recruits and a new chapter after the suspension period ends. 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 31, 2018.

Requests for Extensions and Modifications

Any request for an extension or a modification of any required sanction must come from the chapter president to reeb.47@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.

Appeal

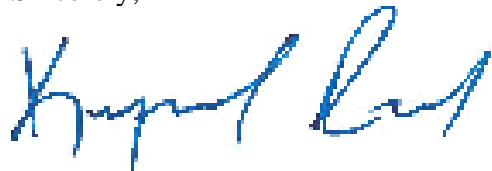
A student or student organization found to have violated the Code of Student Conduct has the right to appeal. To do so, you must submit your appeal in writing, directed to the Senior Vice President for Student Life, **no later than 4:00 p.m. on June 19, 2018.** Use the online appeal

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, 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,



Krystal Reeb
Associate Director

CC: Director of Sorority and Fraternity Life - Kim Monteaux De Freitas
Ryan Lovell - Senior Director of Parent and Family Relations and Greek Life
Kyle Andrews Phi Kappa Psi Representative

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.

Signature

Date

For Student Conduct Staff:

Received by:

Time

Date Stamp:

Delivered to Appeal Officer

Date

September 7, 2018

██████████ Phi Kappa Psi
Sent electronically to ██████████

PERSONAL AND CONFIDENTIAL

Regarding Case Number: ██████████

September 7, 2018

Dear ██████████:

I have received your appeal of the sanctions that resulted from the disciplinary case for your student organization, Phi Kappa Psi. 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 violations committed. Specifically, you claim that you were denied a fair hearing because you were not permitted to question your accuser and other witnesses who did not participate in the hearing.

Based on my review of the record and supporting documents, I have given your appeal careful consideration. I do not find that a procedural error resulted in material harm to your organization, nor do I find that the sanction imposed is grossly disproportionate to the violations committed in this case.

In addition, you submitted a supplemental appeal document asserting that new evidence should result in the dismissal of this matter. Please be aware that this document was not submitted within the appeal deadline and thus, does not constitute a properly-submitted appeal. However, I have carefully reviewed the document you submitted, the information that you assert to be new evidence, and the circumstances surrounding the submission of this information in light of all of the other information in this case and the standards provided by the Code of Student Conduct. Based on this review, I do not find sufficient cause to dismiss or remand this case or otherwise disturb the original finding in this matter.

For all of the reasons stated above, I have decided to support the decision that resulted from this process. If you have questions regarding your case, please contact Student Conduct at (614)292-0748.

Sincerely,



Matt Couch, PhD
Associate Dean of Students

CC: Director of Sorority and Fraternity Life - Kim Monteaux De Freitas
Ryan Lovell - Senior Director of Parent and Family Relations and Greek Life
Director of Student Conduct - Kelly Smith, J.D.
Associate Director Student Conduct - Krystal Reeb
Leslie Albeit