

**Student Conduct Code DTF
Meeting Notes
March 3, 2010**

Present: Wendy Endress, April Meyers, Sara Huntington, Britt Hoover, Amanda Steinberg, Bill Gilbreath, Andrea Seabert Olsen

Absent: Ray Campbell, Michael Sledge, Tristan Powell

- Approved Meeting Notes – with addition of Tristan to “present” - of February 24.
- Wendy reported that Talcott Broadhead endorsed our revisions to the Sexual Misconduct standard.
- Wendy shared a copy of the Counter Point Journal article that Tristan mentioned on the 24th.
- Wendy reported that the attorney is generally on track and the DTF will see the Code written in Administrative Code by March 31.
- Wendy reported that the invite to faculty to cover the Code during spring term and information about a blog is pending.
- Reviewed draft text for the FAQs:

April

Why do we use a standard of more likely than not? Why don't we use a higher standard?

There are several standards of proof – both philosophic and legal – as to a person's culpability/responsibility in a matter. To wit:

- (1) non-frivolous, >5%
- (2) reasonable suspicion, >15%
- (3) reasonable basis, >20%
- (4) realistic possibility, >33%
- (5) substantial authority, >40%
- (6) probable cause or more likely than not or preponderance of the evidence, >51%
- (7) clear and convincing evidence
- (8) beyond a reasonable doubt
- (9) beyond the shadow of a doubt
- (10) absolute certainty, 100%

If “absolute certainty” about the exact nature of a student's involvement in any conduct matter was possible, then that is the standard that the Code would require. However, such a thing is, of course, not at all possible. We must move from 100% certainty to a level that is both achievable and useful for the purpose intended. If “beyond the shadow of a doubt” was the standard, then in the great majority of cases, it would be easier to sidestep responsibility by creating said shadow than to step forward and duly assume responsibility. One need not be an expert in game theory to predict what happens when such a situation is set up. Thus, such a standard is not useful in a code that seeks constructive dialogue as a means and an end. The standards of “beyond a reasonable doubt” and “clear and convincing evidence” are similarly problematic in that they motivate the same behavior seen in U.S. criminal courts: an adversarial system that relies on an arguably hostile contest between two unmoving party positions; it does not pay respect to the values and aspirations articulated in the Social Contract. In addition, such a standard is difficult, if not impossible, to achieve without resources that are inordinate, relative to those of The Evergreen State College. Next, we assess “more likely than not.” It is a far cry from absolute certainty but the highest standard that is both useful and achievable. That makes it the best choice of standard for use in the Code.

The above rationale may also be why “more likely than not” is the standard used throughout the United States in higher education.

A comment on the current Code Administrators' experiences with students while using the “more likely than not” standard: In most cases, the standard of proof being used is not at play, nor is culpability as a dichotomous issue. Instead, both student and administrator focus on understanding the larger view of what really happened,

why, and what can be done constructively in response. In this vein, their dialogue explores the student's decisions, actions, and roles on a continuum of responsibility.

Does the Code cover tearing down of posters?

Yes. Such an action is a violation of Section IV, paragraph 2 which reads: "Obstruction or disruption of learning, research, administration, freedom of speech and movement, the adjudicative process, public service functions or College-sponsored activities on or off campus." In much the same way that a heckler's veto treads upon others' rights to free speech, so does the tearing down of others' posters. Tearing down a poster and shouting down a person who's trying to talk are both actions more about quashing a right than exercising it. It is unacceptable behavior at Evergreen.

Britt

Why don't we equate misconduct with specific sanctions?

In an effort to account for individual and extenuating circumstances, the Code of Conduct does not pre-assign specific sanctions to certain acts of misconduct. When designing sanctions and resolutions, the conduct administrator or Student Conduct Appeals Board takes in consideration a number of factors, including the individual's motivation, previous conduct history, willingness to take responsibility, and the impact of the behavior on the community. The intention is to facilitate opportunities appropriate for each individual's personal development and learning.

Why isn't there more student involvement in administering the code?

Students are involved in the administering of the code on a number of levels. In the spirit of Evergreen's Social Contract, members of the Evergreen community share in a mutual responsibility to maintain civility and uphold the values of the college. In this process, students are expected to actively hold each other accountable to shared standards of conduct and respect. Additionally, as part of the revised Code of Conduct, students are expected to address and intervene with a violation by, at a minimum, reporting the action to college officials.

Students are also involved in administering the code formally as appointed members of the Student Conduct Appeals Board. If you are interested in serving as a student representative, please contact the Office of the Vice President of Student Affairs at (360) 867-

Conduct administrators facilitate conduct conferences with individual students to ensure confidentiality, follow due process, and respond promptly and appropriately to behavioral concerns.

Michael

Why does one administrator, specifically the Vice President of Student Affairs, determine if off-campus conduct should be addressed?

Existing text:

The DTF weighed the pros and cons of a committee or an individual having responsibility for determining whether or not alleged misconduct off-campus should be addressed by the Code. The DTF is recommending that this responsibility be held by an individual in order to mitigate concerns regarding consistency, timeliness, accountability, and institutional liability. In addition, the respondent may always appeal this decision to the Appeal Board which is composed of three students, one faculty, and one staff.

New:

The person making a determination about whether or not alleged misconduct that occurs off-campus has to meet a number of special criteria. First, they must have a working knowledge of the Code, and some experience working with codes of conduct. They also must be able to properly apply the criteria for doing so that the Code outlines. Lastly, they must be independent from the Campus Grievance Officer/Senior Student Conduct Code Administrator. The first two criteria can obviously be met by the Campus Grievance Officer, but having the decision to apply the criteria the Code outlines, and the decision on resolving the grievance rest in one person's hands, seems too centralized. Balanced with the need for being consistent, quick, and accountable, there are few senior level positions that meet the criteria.

With edits:

The DTF is recommending that this responsibility be held by an individual in order to mitigate concerns regarding familiarity with the Code, consistency, timeliness, accountability, and institutional liability. In addition, the respondent may always appeal this decision to the Appeal Board which is composed of three students, one faculty, and one staff.

Why does the Vice President of Student Affairs appoint the student representatives on the Appeals Board?

The Vice President of Student Affairs is the senior level professional charged with insuring that the Conduct Code is properly administered. Part of doing so is staffing the appropriate position(s) with people who have the experience and skills to administer. Having one person responsible for appointing the student representatives assures consistency, quickness and accountability for having the board prepared for student appeals, regardless of the timing of such appeals. The Vice President's office is organizationally well-placed to be able to draw from students who have demonstrated some leadership ability, whether that student does so in the GSU, a student group, the residence halls, or a student work experience within the division.

with edits:

The Vice President of Student Affairs is the senior level professional charged with insuring that the Conduct Code is properly administered. Having one person responsible for appointing or confirming the Board members assures quickness and accountability for having members who are trained and prepared for the responsibility. The Vice President's office is equipped to work with the Geoduck Student Union to confirm recommendations for student appointments or to invite all students to pursue the opportunity to serve on the Board.

Amanda

First:

The term "reasonable person" is used as a comparative standard to represent an average member of society who exercises an ordinary degree of reason, prudence, care, foresight and intelligence whose conduct, conclusion or expectation in relation to a particular circumstance or fact is used as an objective standard.

The student conduct code uses this term since it includes people coming from a variety of backgrounds; people who have different political and religious beliefs, differing levels of education and work experience, and different interests and convictions. Since the college has students from all walks of life, the "reasonable person" term is used to encompass all these different aspects of the student body. The use of "competent" to define a person is not used since it has legal connotations and the conduct code is not a legal document.

Second:

The term "reasonable person" is used as a comparative standard to represent an average member of this community. A reasonable person exercises an ordinary degree of reason, prudence, care, foresight and intelligence whose conduct, conclusion or expectation in relation to a particular circumstance or fact is used as an objective standard.

The student conduct code uses this term since it includes people coming from a variety of backgrounds; people who have different political and religious beliefs, differing levels of education and work experience, and different interests and convictions. The use of "competent" to define a person is not used since it has legal connotations and the conduct code administers an educational process.

- Andi shared a map that could be used to demonstrate college boundaries and adjacent property.