

Procedures for Superintendent's Disciplinary Hearing in the Case of Sexual Assault/Harassment

- I. Contents of Written Notice of Disciplinary Hearing to Respondent
 - A. Purpose of hearing, including identification of charges to be considered.
 - B. Date, time, and location of hearing.
 - C. Participants – Superintendent, counsel to the Superintendent (to provide due process guidance), Academy witnesses (if any, identify), Respondent, Respondent's advisor (optional), Respondent's counsel (optional), and Respondent's witnesses (if any).
 - D. Rights of Respondent:
 1. To receive a copy of the investigatory file, subject to Respondent's signature of a Confidentiality/Non-Disclosure Agreement as to the file and its contents, as well as any other documents that will be considered by the Superintendent in making his decision (such as transcript, conduct record, etc.). (With Respondent's consent, Respondent's counsel and/or advisor may receive a copy of the investigatory file, likewise subject to execution of a Confidentiality/Non-Disclosure Agreement.)
 2. To seek advice and assistance of legal counsel in the preparation of his case at his own expense. Respondent's counsel may be present at the hearing to consult and advise him but may not otherwise participate.
 3. To request any Academy faculty or staff member other than a Chaplain, Counsel to the Academy or member of the Commandant's Department to act as an advisor as long as serving in that capacity does not present a conflict with the faculty or staff member's professional responsibilities. In the event that he is unable to obtain an advisor, the Superintendent may appoint one on request.
 4. To be present during the entire hearing, except for the Superintendent's deliberations.
 5. To make opening and closing statements.
 6. To present evidence including but not limited to documentary evidence and the testimony of reasonably available witnesses during each phase of the hearing (determination whether violation occurred and penalty phase, if necessary). Respondent must identify witnesses, and provide written notice to the Deputy Superintendent, not later than 2 days before the hearing. The Academy shall make reasonable efforts to insure the attendance of the witnesses identified by Respondent.

7. To question all witnesses, whether called by the Academy or by Respondent.
 8. To appeal a decision of disenrollment, if applicable. A finding of a violation with respect to one or more of the offenses charged constitutes a basis for disenrollment, although the penalty phase of the hearing may determine that lesser or no penalty may be appropriate notwithstanding a finding of a violation.
- E. Uniform – Seasonal as directed by the Superintendent.
- F. Witnesses to be called by the Academy.
- G. The hearing will be recorded, except for the Superintendent’s deliberations. A copy of the recording will be provided upon Respondent’s request, subject to Respondent’s signature of a Confidentiality/Non-Disclosure Agreement. (With Respondent’s consent, Respondent’s counsel and/or advisor may also receive a copy of the recording, likewise subject to execution of a Confidentiality/Non-Disclosure Agreement.)

NOTE: This Notice should be hand delivered to Respondent by the Deputy Superintendent (or designee) with Respondent’s signature acknowledging receipt and a copy provided to him, as well as a copy of the investigatory file (provided Respondent signs a confidentiality/non-disclosure agreement as to the file and its contents) and any other documents that will be considered by the Superintendent in making his decision (such as transcript, conduct record, etc.).

II. Timing of Hearing

Notice of hearing should be given to the Respondent at least 5 days before the hearing.

III. Hearing Procedures

- A. The Hearing will be conducted in two steps, Phase I and Phase II (if necessary), both of which will be recorded, with the exception of the Superintendent’s deliberations.
1. Phase I will deal exclusively with the determination of the facts pertaining to the case at hand, the objective evaluation of those facts and a determination of whether the charge(s) have been proven by a preponderance of the evidence.
 - (a) The Superintendent can recess the hearing at any time for any reason.
 - (b) The Superintendent can request additional witnesses, documents, or other evidence.

- (c) If the Superintendent requests additional witnesses, documents, or other evidence, Respondent will be given the same opportunity to review and prepare as provided in the Notice of hearing for a period of 5 days after notice of the identities of additional witnesses or availability of documentary evidence for review.
 2. Phase II, if necessary, will deal exclusively with the decision as to the appropriate penalty.
 3. If Respondent elects to admit violation of the Midshipman Regulations as specified in the charge(s), Phase I may be bypassed, provided:
 - (a) Respondent is advised of the consequences of admitting to the violation(s), including that his admission(s) may be used in proceedings outside the jurisdiction of the Academy, that his Academy personnel jacket will reflect the admission and the penalty imposed and, that if the penalty imposed is disenrollment, his transcript will reflect a "non-academic disenrollment," he will not be eligible for readmission, he will not be eligible for a letter of good standing for other institutions of higher education, and he may be financially responsible for the cost of his education.
 - (b) Respondent submits a signed statement which indicates formal admission of violation of the charges as specified and that the admission is given freely, without coercion and with the full knowledge of his counsel and/or advisor.
- B. The procedures for Phase I will be as follows:
 1. Introductory statement by the Superintendent, including acknowledgment of receipt of the charges and the investigatory file.
 2. Opening statement by Respondent and his advisor.
 3. Questioning of witnesses identified by the Academy (if any), followed by questioning of Respondent's Witnesses (if any) and presentation of documentary evidence by Respondent (if any).
 - (a) It is preferred that witnesses appear in person. However, given the nature of the allegations of misconduct, the Superintendent may direct that the testimony to be provided by one or more witnesses by alternative means, such as remotely via VTC, behind a screen or through written questions.
 - (b) All witnesses will be sworn in by the Superintendent: "Please raise your right hand and answer the following: Do you swear or affirm that the evidence you will give in the case now in hearing will be the truth,

the whole truth, and nothing but the truth." If a witness is recalled, the Superintendent will remind him that he/she is still under oath.

- (c) The Superintendent may question any and all witnesses at the hearing, including but not limited to Respondent.
4. Closing statement by Respondent and/or the advisor, upon Respondent's request.
 5. Respondent will be present during the presentation of all evidence and will be permitted to question any witnesses.
 6. The Superintendent will evaluate the facts and determine whether the charge(s) as set forth in the Notice are sustained. This deliberation will take place outside the presence of Respondent, his counsel/advisor and any witnesses. The Superintendent will consider all the data available pertaining to the offense(s) in order to arrive at an objective determination as to whether Respondent committed the violations as charged.
 - (a) During deliberations, the Superintendent may consult only with counsel and only with regard to procedural questions.
 - (b) If, during deliberations, the Superintendent determines he needs additional documentary or testimonial evidence, he may determine to reconvene the hearing at a later time, subject to providing Respondent the same opportunity to review and prepare as provided in the Notice of hearing for a period of 5 days after notice of the identities of additional witnesses or availability of documentary evidence for review.
 7. The Superintendent will reconvene the hearing to issue his decision. If Respondent is found to be in violation of the Midshipman Regulations, Phase II will commence. Phase II may commence immediately following the Superintendent's deliberations after Phase I or may commence at a later time and/or date as determined by the Superintendent.
- C. The procedures for Phase II will be as follow:
1. Respondent may present evidence, including written statements from witnesses, and call witnesses to demonstrate exceptional potential for development and present extenuating and/or mitigating evidence and arguments for retention at the Academy or for minimum or no disciplinary action. The burden for demonstrating sufficient cause for retention is on Respondent.
 2. The Superintendent will evaluate and determine the appropriate penalty outside the presence of Respondent, his counsel/advisor and any witnesses. In making his determination, the Superintendent may examine the record pertaining to the charge(s) Respondent was found

to have violated, any statements or evidence provided by the Respondent, and Respondent's entire Academy record (academic, regimental, sea year, and extra-curricular). During deliberations, the Superintendent may consult only with counsel and only with regard to procedural questions.

3. The Superintendent will reconvene the hearing to issue his determination on penalty and will provide a memorandum at that time to Respondent setting forth his decision, including the penalty imposed, if any. The Superintendent will also remind Respondent of his appeal rights to the Maritime Administrator if the penalty imposed is disenrollment; the procedure for doing so shall be set forth in the memorandum.

IV. Appeal Procedures

- A. If Respondent wishes to appeal his disenrollment, he must notify the Superintendent, in writing, within 24 hours after receiving the memorandum of decision of his *intent to appeal* to the Maritime Administrator.
- B. The appeal must be submitted in writing to the Superintendent, via the Commandant, no later than 7 days after receipt of the memorandum of decision.
- C. The Superintendent will forward the appeal to the Maritime Administrator, with his recommendation. A copy of the Superintendent's recommendation will be provided to Respondent.
- D. Respondent is entitled to continue at the Academy pending consideration of his appeal, including, as appropriate, in a deferred graduate status.
- E. If the Maritime Administrator upholds the decision of the Superintendent, Respondent will be disenrolled immediately upon receipt of the Maritime Administrator's written decision. If the Maritime Administrator finds merit in the appeal, his written decision should include either a statement of exoneration or the penalty/sanctions determined appropriate.