

Appendix E & F Adjudication Reference Guide

This document is a resource for staff advising or supporting students through an SVSH student adjudication process. A case will follow either Appendix E or F depending on whether its being investigated under the previously existing process or the new DOE grievance process. OPHD determines which process will be followed when they receive a report and will inform the parties at that time. For more information about the type of behavior that falls under each process, please see [OPHD's website](#). Information about timelines, differences between the two hearing processes, and appeal grounds can be found below. For questions about hearings, contact the Hearing Coordinator, Erin Slater-Wu at hearingcoordinator@berkeley.edu

The Preliminary Determination

Under Appendix E & F, after a preliminary determination is issued by OPHD, parties can meet with the Center for Student Conduct to discuss their options moving forward in the process. If there was a preliminary determination that the Respondent violated a policy, parties can also meet to provide input on sanctioning as well. They have 3 days after the issuance of the preliminary determination to request this meeting. In all cases, unless extensions are requested, a proposed sanction will be issued 15 days after the preliminary determination, and students have 20 days to provide the Center for Student Conduct with their preference regarding the preliminary determination and hearing.

Outlined below are the major differences between Appendix E and Appendix F when it relates to the preliminary determination and the subsequent hearing process.

<u>Appendix E</u>	<u>Appendix F</u>
The only time where a student is presumed to contest the preliminary determination and request a fact finding hearing is when a Respondent is sanctioned to a separation from the university.	All parties are always presumed to contest the preliminary determination and request a fact finding hearing.
Except for the situation outlined above, parties must email the Center for Student Conduct to state that they want to contest the preliminary determination and desire a hearing or there will not be a hearing.	All parties must email the Center for Student Conduct to state they are accepting the preliminary determination and do not desire a hearing or there will be a hearing.

Pre-Hearing Procedures

Pre-Hearing Procedures are virtually the same for both Appendix E & F. An overview of these procedures are included below:

1. At least 5 days before the Pre-Hearing Meeting, each party has the ability to submit disputed issues, evidence, and suggested witnesses to the Hearing Officer.
2. At the Pre-Hearing Meeting, the following will be discussed:
 - a. Disputed issues
 - b. Suggested witnesses
 - c. An overview of the flow of the hearing
 - d. A party’s availability for a hearing
 - e. Any potential measures to protect well-being
 - f. Whether a party will need the University to provide an advisor at the hearing (Appendix F only)
3. No later than 5 days after the last Pre-Hearing Meeting has occurred, the parties will receive the Hearing Officer’s preliminary hearing scope, witness list, and approved documentary evidence.
4. After receiving this preliminary hearing scope, parties have 5 days to submit additional witnesses and evidence for the Hearing Officer’s review.
5. At least 10 days before the hearing date, the parties are notified of the hearing date, time, and location.
6. At least 2 business days before the hearing, the final hearing scope and materials are distributed to the parties.

The Hearing

Outlined below are the major differences between Appendix E and Appendix F hearings. All other hearing procedures are the same.

<u>Appendix E</u>	<u>Appendix F</u>
Hearings will default to being conducted in person, but with the option of requesting they occur partially or fully remotely.	Hearings will default to being conducted remotely, but with the option of requesting they occur partially or fully in person.
Visual separation between the parties can be in place for the duration of the hearing.	Unless the right is waived, parties must be able to see and hear each other during their respective testimony & questioning periods.
Only the Hearing Officer asks questions of the parties and witnesses at the hearing.	The Hearing Officer and party’s advisors ask questions of the other party and witnesses at the hearing.
Parties have the right to an advisor throughout the process, but an advisor is not required to participate in the hearing.	Each party must have an advisor at the hearing to ask questions. If a party does not have someone who can serve in this capacity, the University will provide someone.
Expert witnesses are not specifically mentioned in the policy.	Expert witnesses are specifically permitted to be included in the investigation and adjudication process.

Post-Hearing Procedures

Post-Hearing Procedures are virtually the same for both Appendix E & F. An overview of these procedures are included below:

1. The Hearing Officer's determination is due within 10 days of the hearing.
2. If the Respondent is found responsible, the determination is forwarded to Student Conduct.
3. Student Conduct then has 5 days to propose sanctions.
4. Parties receive the outcome of the hearing within 15 days of the hearing's conclusion.

Appeal Procedures

Appeal Procedures are virtually the same for both Appendix E & F. An overview of these procedures are included below:

1. Within 10 days of receiving the outcome of the hearing, or of the notice that there will not be a hearing, a party can submit a written appeal.
2. The appeal officer will have 10 days to make a decision on the appeal and send that decision to the parties.

Appeal Grounds

Listed below are the appeal grounds available to parties after a hearing has occurred under both Appendix E and F.

<u>Appendix E</u>	<u>Appendix F</u>
There was procedural error in the hearing process that materially affected the outcome	There was procedural error in the hearing process that materially affected the outcome; procedural error refers to alleged deviations from University policy, and not challenges to policies or procedures themselves;
	There is new evidence that was not reasonably available at the time of the hearing and that could have materially affected the outcome;
	The hearing officer had a conflict of interest or bias that affected the outcome;
The determination regarding policy violation was unreasonable based on the evidence before the hearing officer; this ground is available only to a party who participated in the hearing;	The determination regarding policy violation was unreasonable based on the evidence before the hearing officer; this ground is available only to a party who participated in the hearing;
The sanctions were disproportionate to the hearing officer's findings or the preliminary determination.	The sanctions were disproportionate to the hearing officer's findings or the preliminary determination.

More information about SVSH hearings can be found on the [SVSH Hearings Website](#).