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The Undersigned Students

A Resolution Calling for Notre Dame COVID-19 Disciplinary Proceedings to Respect the Principles of Due Process

Whereas, Vice President of Student Affairs Erin Hoffmann Harding and Vice President for Campus Safety and University Operations Mike Seamon [sent an email](#) to students on January 21, 2021;

Whereas, this email, titled “COVID Update: Testing and Campus Compact”, included updates to testing protocols, other disease control measures, and rule enforcement policies;

Whereas, the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#) describes two additional disciplinary outcomes for violations of the COVID Compact, namely COVID Probation and COVID Dismissal.

Whereas, COVID Probation, according to this addendum, “means that the student faces separation from the University if he or she fails to present for another scheduled test, or has another Compact violation, at any time during the remainder of the semester”;

Whereas, COVID Dismissal may occur, according to the addendum, when “[s]ome violations of the Compact [are] so egregious, or represent such a threat to the health and/or safety of members of the University or local community, that the responsible student(s) must be separated from the University. Examples of such violations include, but are not limited to, hosting or participating in gatherings in excess of University-stipulated limits; violations of quarantine or isolation protocols; missing a required test while on COVID Probation; and serious, repeated or flagrant violations of Compact commitments”;

Whereas, according to this addendum, students assigned the disciplinary outcome of COVID Dismissal, “are eligible to apply for readmission for the Fall 2021 semester, provided their application for readmission is filed by May 11, 2021. Readmission will be contingent on the student’s satisfaction of any requirements communicated by OCS in the notice of dismissal”;

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Whereas, recently promulgated University policies establish a “new expedited COVID administrative process administered by the Office of Community Standards” as described in the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#);

Whereas, Section A of the Campus Compact Administrative Process defined in the aforementioned COVID-19 addendum describes the disciplinary process for students who the University alleges to have failed to report for mandatory surveillance testing;

Whereas, the aforementioned Section A describes that upon the first alleged failure to report for a surveillance test, that student will “be referred by the COVID-19 Response Unit (CRU) to OCS. OCS will issue a formal warning to the student that will remain part of the student’s record for the remainder of the semester. This warning will state the consequences for a subsequent failure to present for testing at any time during the remainder of the semester. The warning will be copied to the student’s rector if he or she lives in a campus residence hall”;

Whereas, the aforementioned Section A describes that a student that has already been issued a warning for failing to report for a required surveillance test, and subsequently fails to report for a test, “will be placed on COVID Probation and is required to meet (via Zoom) with a representative of OCS”;

Whereas, the aforementioned Section A describes that students that have been placed on COVID Probation and subsequently fail to report for a required test, “will face COVID Dismissal from the University for the Spring 2021 semester. Students who receive a sanction of COVID Dismissal are subject to the process outlined in Section C” of the aforementioned Campus Compact Administrative Process;

Whereas, the aforementioned Section A does not describe any process by which a student may contest their alleged failure to report for a test, but does state that “there are no appeals except for students assigned COVID Dismissal from the University”;

Whereas, Section B of Campus Compact Administrative Process defined in the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#) describes the administrative process for “[o]ther [c]ompact [v]iolations”;

Whereas, the aforementioned Section B states that, “upon receipt of a report of a Compact violation other than failure to report for surveillance testing, OCS will determine within two business days whether the report should be addressed under this Administrative Process”;

Whereas, if a student is alleged to have committed a violation that is addressed under the Campus Contact Administrative Process, such student will “promptly” receive a communication containing the relevant “information received”, the portion of the Campus Compact that OCS has deemed relevant to the alleged violation, and “the recommended outcome”;

Whereas, if the recommended outcome is not COVID dismissal, the Campus Compact Administrative Process specifies that a student will have twenty-four (24) hours to respond to the allegations contained therein and to provide “relevant information” that responds to the allegation;

Whereas, if the recommended outcome is not COVID dismissal, third parties are prohibited from submitting information directly to the Office of Community Standards;

Whereas, the aforementioned Section B states that, “OCS has full discretion to assign outcomes it deems reasonable in response to violations of the Compact”, and that except when a student faces the potential outcome of COVID Dismissal, “there is no appeal from OCS decisions under this Administrative Process”;

Whereas, Section C of Campus Compact Administrative Process defined in the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#) defines the administrative process for students facing COVID Dismissal;

Whereas, the aforementioned Section C states that “some violations of the Compact may be so egregious, or represent such a threat to the health and/or safety of members of the University or local community, that the responsible student(s) must be separated from the University. Examples of such violations include, but are not limited to, hosting or participating in gatherings in excess of University-stipulated limits; violations of quarantine or isolation protocols; missing a required test while on COVID Probation; and serious, repeated or flagrant violations of Compact commitments. In such circumstances, OCS has full discretion to dismiss the student from the University under this Administrative Process”;

Whereas, students facing the possibility of COVID Dismissal are given forty-eight (48) hours to “submit any relevant information” in response to allegations against them to the Office of Community Standards;

Whereas, if the Office of Community Standards confirms that its own findings are appropriate and that the sanction of COVID Dismissal is warranted, a student has “three calendar days to submit request for a Case Review to the Vice President for Student Affairs”;

Whereas, “[t]he only grounds for a Case Review are (i) a procedural defect in the Administrative Process substantial enough to have changed the decision, with a detailed explanation of that defect; or (ii) discovery of substantive new information unknown or unavailable to the student before submission of the appeal and that would have been substantial enough to have changed the decision”;

Whereas, as Judge Philip P. Simon of the United States District Court for the Northern District of Indiana [stated in 2017](#), “[b]eing thrown out of school, not being permitted to graduate and forfeiting a semester’s worth of tuition is ‘punishment’ in any reasonable sense of that term”;

Whereas, this disciplinary process, writ large, provides the Student Body with significant procedural and substantive concerns regarding the fundamental right to be judged only under due process;

Whereas, respect for due process would not only protect the rights of the accused to be fairly heard before a final judgement is rendered upon them, but also would help to ensure the trustworthiness and reliability of decisions rendered by the administrative process;

Whereas, under Section A the recently promulgated administrative process, students are not guaranteed any right whatsoever to contest the truthfulness of findings by the Office of Community Standards, even erroneous findings;

Whereas, under the recently promulgated administrative process, “[t]here is no right to a formal hearing at any stage of the Administrative Process.” As such, students are not guaranteed the right to call witnesses to answer questions or directly provide relevant testimony to a panel, nor cross-examine any witnesses who allege a violation occurred;

Whereas, under the recently promulgated administrative process, the respect for due process is largely absent, and principles of fundamental justice, namely *audi alteram partem*, are violated;

Whereas, the Office of Community Standards, for [alleged violations of policies not related to COVID-19](#), grants students facing the possible outcome of dismissal the right to a hearing;

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Whereas, the Office of Community Standards, for alleged violations of policies not related to COVID-19, generally provides students with seven (7) days notice prior to any hearing;

Whereas, the Office of Community Standards, for alleged violations of policies not related to COVID-19, guarantees students the “opportunity to have a meeting in person or by telephone with a representative from the Office of Community Standards before the scheduled [h]earing to learn about the Hearing process and ask procedural questions;”

Whereas, the Office of Community Standards, for alleged violations of policies not relating to COVID-19, allows students to call witnesses to alleged incidents to provide testimony in their defense;

Whereas, the Office of Community Standards, for alleged violations of policies not relating to COVID-19, allows students to ask questions of witnesses through the hearing panel;

Whereas, the Office of Community Standards, for alleged violations of policies not relating to COVID-19, guarantees that the accused “student will have the opportunity to hear and respond to all information presented” when in a hearing setting;

Whereas, the Office of Community Standards, for alleged violations of policies not relating to COVID-19, allows students to be “accompanied, but not represented, by a University Support Person” during hearings and conferences;

Whereas, the University of Notre Dame has been the subject of previous legal action regarding the arbitrary and capricious enforcement of disciplinary rules, after [giving a student](#) “two-and-a-half” days to review material to be used at a hearing against him;

Whereas, it is the position of the Student Body that due process must be respected in University disciplinary processes, both for students accused of violations of policies pertaining to COVID-19 just as it is for students accused of violations of policies not pertaining to COVID-19;

Whereas, it is the position of the Student Body that the policies of the Campus Compact Administrative Process defined in the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#) significantly increases the likelihood of arbitrary and capricious disciplinary actions against students, even students that are the subject of false allegations and pose no danger to the community; *therefore, be it*

RESOLVED, by the Student Senate of the University of Notre Dame du Lac, that the University of Notre Dame du Lac should swiftly revise and reissue the current portions of the [COVID-19 Addendum](#) to [du lac: A Guide to Student Life](#) that define and rely upon the expedited administrative process, such that:

1. Students are given a right to elect a hearing setting in front of a panel whenever COVID Dismissal or COVID Probation is a possible administrative outcome, such that:
 - a. Students accused of violating Notre Dame's COVID-19 policies are given seven (7) calendar days notice to review any and all materials to be used as evidence prior to such a hearing;
 - b. Students accused of violating Notre Dame's COVID-19 policies are given the opportunity to call witnesses to testify on their behalf;
 - c. Students accused of violating Notre Dame's COVID-19 policies are given the opportunity to bring a University Support person to such a hearing;
 - d. Students accused of violating Notre Dame's COVID-19 policies are given the opportunity to hear and respond to all information presented in such a hearing;
 - e. The individual(s) rendering the final decision be different from those who made the initial recommendation of probation or dismissal;
 - f. Students found responsible for violating Notre Dame's COVID-19 policies by a hearing panel be given seven (7) calendar days to submit a case review;
2. Students that do not wish to participate in a hearing setting, but who face COVID Probation or COVID Dismissal, be provided with an administrative setting where:
 - a. Students accused of violating Notre Dame's COVID-19 policies are given seven (7) calendar days notice to review any and all materials to be used as evidence and respond to them;
 - b. Students accused of violating Notre Dame's COVID-19 policies are given seven (7) calendar days notice to review any and all materials to be used as evidence prior to submitting a response to the Office of Community Standards;
 - c. The individual(s) rendering the final decision regarding a disciplinary outcome be different from those who made the initial recommendation of probation or dismissal;
 - d. Students found responsible for violating Notre Dame's COVID-19 policies by be given seven (7) calendar days to submit a case review;

3. **Students be given the opportunity to contest allegations of missing a mandatory COVID-19 test or other violations of Notre Dame's COVID-19 policies in all other cases, including the opportunity to present evidence, to provide testimony on their own behalf, and to inspect and respond to all evidence within seven (7) calendar days of receiving a notice of allegations against them.**

Rachel Ingal
Student Body President