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May 6, 2016

Cassidy Kelly
President
Alpha Phi, Eta Rho Chapter
University of San Diego

Delivered via email: REDACTED

Dear Cassidy:

I received the April 21, 2016, letter submitted by members of the Eta Rho Chapter of Alpha Phi at the University of San Diego ("Alpha Phi") appealing the sanctions issued by the Fraternity and Sorority Life Standards Board ("FSLSB")¹ in connection with its April 12, 2016, hearing. Alpha Phi was notified of the FSLSB Hearing Board's decision in a letter dated April 14, 2016.

Typically, the chapter president is authorized to decide whether a chapter will appeal an FSLSB Hearing Board decision. Even though you did not sign the appeal, I am accepting and considering the appeal in light of the sanctions issued and the number of members who signed the appeal letter. I have carefully reviewed and considered the appeal, and this letter sets forth my decision.

Background

In late February 2016, the Director of Student Leadership and Engagement was notified of incidents involving Alpha Phi that occurred earlier that month. The Alpha Phi president was notified, as was Alpha Phi International. Alpha Phi promptly initiated its own investigation and internal judicial processes, which resulted in the dismissal/resignation of multiple members.

Alpha Phi provided the results of its investigation and internal judicial processes to the university as part of the university's investigation. After the completion of the university's investigation, and consistent with the requirements of the FSLSB procedures, the report and supporting documentation (including a summary of Alpha Phi's internal investigation and findings) were provided to the Interfraternity Council and the Panhellenic Council Vice Presidents of Wellness and Standards ("Vice Presidents"). The Vice Presidents, in consultation with the Director of Student Leadership and Engagement, identified alleged violations of the *Fraternity/Sorority Guidelines* and referred the matter to an FSLSB Hearing Board.

In a letter dated March 28, 2016, Alpha Phi, by and through its president², was notified of the alleged violations and the scheduled hearing. The letter provided written notice of the alleged

¹ Pursuant to the *Fraternity/Sorority Guidelines*, the FSLSB is designated to handle complaints against fraternity and sorority organizations. FSLSB hearings are conducted through Hearing Boards. A Hearing Board consists of six students and one faculty/staff member.

² The *Fraternity/Sorority Guidelines* state that notices for all hearings are to be sent to the chapter president. Chapter presidents - who are elected by the membership - speak and act on behalf of the chapter, and USD

violations in a manner consistent with the *Fraternity/Sorority Guidelines*. Alpha Phi was informed of its option to select an “expedited process” under the FLSB procedures. The FLSB procedures provide, in pertinent part:

In instances where chapters assume responsibility for the alleged violation(s), an expedited process may be used. An expedited process must be agreed to by the chapter, the Director of Student Leadership and Engagement and the Panhellenic Council and Intrafraternity Vice Presidents. This process permits the Hearing Board to meet with the chapter representatives and determine appropriate sanctions.

In an email dated March 29, 2016, Alpha Phi elected an expedited process for the hearing, and the Vice Presidents and the Director of Student Leadership and Engagement agreed to Alpha Phi’s election.

The FLSB hearing took place on April 12, 2016. Because Alpha Phi elected the expedited process, the purpose of the hearing was to determine sanctions. The FLSB Hearing Board did not, nor was it required to, evaluate whether Alpha Phi was responsible for the alleged violations, applying a preponderance of the evidence standard, because Alpha Phi already had assumed responsibility for the alleged violations by choosing the expedited process.

Prior to the hearing, Alpha Phi, through its authorized representative, reviewed all of the written documentation that would be considered by the FLSB Hearing Board to determine sanctions. Alpha Phi’s president and two other members of its executive board attended the hearing. Alpha Phi was given the opportunity to have an alumnae advisor present at the hearing but declined. During the hearing, Alpha Phi responded to questions about the incidents as part of the FLSB Hearing Board’s expedited process to determine sanctions. After meeting with chapter representatives and considering the nature and severity of the incidents, the FLSB Hearing Board unanimously decided on the sanctions that they determined to be appropriate and in the best interest of the fraternity and sorority community at the University of San Diego. In a letter dated April 12, 2016, Alpha Phi was notified of the results of the hearing.

Response to Arguments Made on Appeal

First, the appeal argues that the March 28, 2016, letter was insufficient to put Alpha Phi on notice of the alleged violations. I do not agree. Before the letter was sent, Alpha Phi already had conducted its own investigation of the incidents and internal judicial processes. Alpha Phi was aware of the nature of the alleged violations described in the March 28 letter, as reflected by its March 29 decision to assume responsibility for those violations and elect the expedited process. The March 28, 2016, letter was sufficient notice and consistent with the requirements of the *Fraternity/Sorority Guidelines*.

Second, the appeal argues that Alpha Phi was denied the opportunity to “examine all evidence at the time of the hearing and hear all testimony presented” and, as a result, the chapter could not “present any evidence in its defense of the allegations.” Because Alpha Phi assumed responsibility for the alleged violations and chose an expedited process under the FLSB procedures, the FLSB hearing was limited to the issue of deciding sanctions. Prior to the hearing, Alpha Phi’s

communicates with chapters by and through their presidents. The president also is considered by Alpha Phi International to be the chapter’s official spokesperson.

representative reviewed all of the information made available to the FLSLB Hearing Board, and representatives from Alpha Phi attended the hearing. I do not find that a procedural violation occurred.

Third, the appeal argues that the March 28, 2016, letter was insufficient to put the chapter's executive board members on notice of their right to be present at the FLSLB hearing. Pursuant to the *Fraternity/Sorority Guidelines*, notices of hearings are to be sent to the chapter's president. The notice to the chapter president placed the chapter on notice, and the *Fraternity/Sorority Guidelines* do not require the FLSLB to provide individual notices to each executive board member of a chapter. In any event, Alpha Phi's president and two executive board members attended the hearing, and at no time was an executive board member excluded from participation by the FLSLB Hearing Board. I do not find that a procedural violation occurred.

Fourth, the appeal argues that Alpha Phi was denied its right to respond to the complaint. Alpha Phi was given the opportunity to, and did in fact; respond to the complaint through its authorized representative. As discussed above, by the time the chapter received the March 28, 2016, letter, Alpha Phi already had investigated the incidents and conducted its own internal judicial processes. When it received the March 28, 2016, letter identifying the alleged violations, the chapter, acting through its authorized representative, was aware of the allegations made against it and was given the opportunity to respond. On March 29, 2016, Alpha Phi chose to assume responsibility for the alleged violations by electing the expedited process. During the FLSLB hearing, the chapter responded to questions about the violations as part of the FLSLB's hearing to determine sanctions. I do not find that a procedural violation occurred.

Fifth, the appeal argues that the FLSLB Hearing Board did not make a decision based on a preponderance of the evidence standard. As discussed above, the FLSLB Hearing Board did not evaluate whether the chapter was responsible applying a preponderance of the evidence standard because Alpha Phi assumed responsibility for the alleged violations before the hearing occurred. The FLSLB hearing was limited to the issue of determining sanctions. For the same reason, I do not agree with the sixth argument made on the appeal and conclude that the April 14, 2016, letter provided the chapter with timely, written notification of the sanctions decision made by the FLSLB Hearing Board. I do not find that a procedural violation occurred.

The seventh argument made on the appeal is that Alpha Phi has been denied its right to an appellate review. The FLSLB procedures describe the appeal process, and those procedures have been followed.

The appeal argues that Alpha Phi is not able to participate in the appeal process because the FLSLB Hearing Board failed to take appropriate minutes at the hearing and provide them to Alpha Phi. Because it was an expedited process, the FLSLB hearing did not include witness testimony. The FLSLB records include the other information about the hearing that is to be collected and retained under the *Fraternity/Sorority Guidelines*. Alpha Phi's authorized representative reviewed the documents, and the appeal procedures do not require the FLSLB records to be provided to the entire chapter membership. I do not find that a procedural violation occurred.

The appeal generally states that chapter members would testify in response to the allegations, and that this unspecified "new evidence" should be considered. Because Alpha Phi already assumed responsibility for the violations, any "new" testimony offered to respond to the allegations does not

warrant granting the appeal because the expedited process did not include witness testimony and instead was limited to determining sanctions.

Finally, the appeal argues that the sanctions determined by the FLSLB Hearing Board were not appropriate. The *Fraternity/Sorority Guidelines* authorize the FLSLB Hearing Board to determine appropriate sanctions. Alpha Phi assumed responsibility for the alleged violations. After reviewing information relating to those incidents and meeting with chapter representatives during the hearing, the FLSLB Hearing Board unanimously decided on the sanctions imposed. While those sanctions are severe, the FLSLB Hearing Board was within its authority to arrive at a decision that it concluded was appropriate, particularly given the nature of the violations.

I do not find sufficient grounds to overturn or amend the sanctions decision made by the FLSLB Hearing Board. For these reasons, I am denying the appeal.

Sincerely,



Cynthia M. Avery, Ed.D.
Assistant Vice President, Student Affairs

Cc: Sara Smith, Chapter Advisor
J.D. Louk, Director of Operations, Alpha Phi
Mandy Womack, Director, Student Leadership and Engagement
Katelin Rae, Assistant Director, Fraternity and Sorority Life
Rachel Stein, Panhellenic Vice President of Wellness and Standards
Ian Minzer, Interfraternity Council Vice President of Wellness and Standards
Forest Lieberman, Interfraternity Council President
Darian Deimeke, Panhellenic President
Alpha Phi Conduct File