

Disciplinary Process: Frequently Asked Questions from Attorneys

This guide is modeled on Illinois State University's "Disciplinary Guide for Attorneys." Adapted with permission of Illinois State University.

If you have been retained by a Rutgers student to provide assistance in a disciplinary matter, this guide will provide you with important information about the University Code of Student Conduct (UCSC) and your role in the Rutgers disciplinary process. Please keep in mind that the University disciplinary system is very different from the civil or criminal judicial system. The University's process is not adversarial; its purpose is to educate the student and contribute to his or her ethical growth.

The *General Order on Judicial Standards of Procedures and Substance of Student Discipline in Tax Supported Institutions of Education* (44F.R.D. (142) (W.D. Mo.)) states: "...The attempted analogy of student discipline to criminal proceedings against juveniles and adults is not sound. The nature and proceedings of the (campus) disciplinary process ... should not be required to conform to federal processes of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community."

Students are expected to act as their own advocates throughout the disciplinary process. Some students may choose to hire an attorney, but the attorney's role is limited to consultation. He or she may be present during all proceedings as a support person, but cannot address Presiding/Hearing Officers or Hearing Boards, speak in University Hearings or Administrative Conferences, or question witnesses. Students do not have a Constitutional right to active legal representation in university disciplinary cases (see *Hart v. Ferris State* 557 F. Supp. 1379, 1386-88 (W.D. Mich, 1983).

The complaint party and the accused student are both entitled to the assistance of a Campus Advisor. A Campus Advisor is a member of the University community who can help the complainant or respondent prepare his or her case and navigate the disciplinary system. The Office of Community Standards maintains a list of advisors who have been trained in the disciplinary system. Students also have the right to a support person, and attorneys may serve in this role.

Q. I have been asked to represent a student accused of violating the Student Code of Conduct. How do I establish this with the University?

A. The student must notify the Office of Community Standards in writing if they intend to have you attend any meeting in the disciplinary process. This must be submitted no later than five (5) business days before a hearing or two (2) business days before a conference. The student must also provide written authorization for you to have access to information about the case. A release authorization form is available [here](#) (PDF).

The Office of Community Standards will correspond at all times directly with the student, and not through any third party. You may receive copies of correspondence with the student's authorization.

Q: As an attorney, can I serve as the student's Campus Advisor?

A: Members of the University community (defined as students, faculty, and staff) who have been trained by the Office of Community Standards are permitted to serve as Campus Advisors. Campus Advisors may assist students, but may not speak for students during University Hearings or Disciplinary Conferences.

Q: What is my role in your disciplinary process?

A: The Code of Student Conduct permits attorneys to be present at all disciplinary meetings and hearings as a support person. A support person may not address Hearing Officers, hearing boards, speak at an Administrative Conference, or question witnesses. You may advise your client, provided your interaction does not disrupt the process.

Q: What's the difference between an Administrative Conference and a University Hearing?

A: An Administrative Conference is an informal meeting with a Conduct Officer, who will consider information presented by the complaint party and the student to determine whether he or she is responsible for the charges. A University Hearing is a more formal process, in which the complaint party and accused student present their cases to the University Hearing Board (a panel of students, faculty, and staff). The Hearing Board then determines whether the respondent is responsible for the charges.

Q: What is the University's standard of proof?

A: The standard of proof in cases involving academic dishonesty is "by clear and convincing evidence." In all other cases, the standard is "by a preponderance of evidence."

Q: When will I receive discovery?

A: There is no formal discovery under the University Code of Student Conduct. Both complaint parties and accused students are accorded reasonable access to the case file. If you and your client would like to review the case file, the student should call 856-225-6050 to make an appointment.

Both the complainant and the accused student will have the opportunity to add evidence and/or a witness list to the case file. This information must be submitted no later than five (5) working days before a University Hearing or two (2) working days before an Administrative Conference. Both the complaint party and the accused student will be notified if the other party submits evidence or a witness list.

The accused student and the complaint party may also petition the Presiding/Hearing Officer or Conduct Officer in writing to summon additional witnesses or request that information not in the case file be provided.

Q: When will I have the opportunity to depose witnesses?

A: There are no depositions under the University Code of Student Conduct. Neither the complaint party nor the accused student (or their representatives) should approach the other party's witnesses prior to the Disciplinary Conference or hearing. All questioning of witnesses takes place during the proceeding.

Q: Can I get the Hearing or Administrative Conference postponed?

A: The *student* may submit a written request for postponement no later than five (5) days prior to a University Hearing or two (2) days prior to an Administrative Conference. The Conduct Officer or Presiding/Hearing Officer conducting the proceeding will determine whether the request will be granted.

The availability of a support person or a specific Campus Advisor is not sufficient grounds to postpone a hearing or conference.

Q: Can the student be charged with a violation of the Code of Student Conduct for behavior that occurs off-campus?

A: The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community, including taking disciplinary action against students whose behavior off campus indicates they pose a substantial danger to others in the University community.

A 1989 opinion of the Maryland Attorney General ("Authority to Discipline Off-Campus Misconduct," No. 89-002) addressed pertinent constitutional issues at public institutions (private schools have more latitude to define standards of student conduct, as part of the contract of enrollment). Furthermore, the *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education*, 45 F.R.D. 133, 145 (W.D. Mo.1968) states, "In the field of discipline, scholastic and behavioral, an institution may establish any standards reasonably relevant to the lawful missions, processes, and functions of the institution ... Standards so established may apply to student behavior on and off campus when relevant to any lawful mission, process, or function of the institution. By such standards of student conduct the institution may prohibit any action or omission which impairs, interferes with, or obstructs the missions, processes and functions of the institution."

Q: My client is charged with a crime off-campus. Can I get the proceedings delayed until the criminal matter is resolved?

A: The *student* may request a postponement, but pending criminal proceedings will not ordinarily serve as a basis to postpone a student disciplinary proceeding. The purpose of the University's process is not to determine whether a student has violated the law; it is to determine whether a student violated the Code of Student Conduct.

A University Hearing or Administrative Conference need not be postponed in order to preserve a student's Fifth Amendment rights in a subsequent criminal case—the student may exercise his or her right to remain silent.

Q: Why would the university act on allegations of sexual assault prior to the criminal proceeding?

A: The U.S. Department of Education Office of Civil Rights guidelines require a "prompt and equitable resolution" ([2017 Q&A](#)) of allegations of sexual harassment—including sexual assault.

Q: Why isn't the student afforded the same due process protections that would be provided in a criminal proceeding?

A: The courts have long recognized that the interests of the University community differ from those of the criminal justice process. A significant body of case law has been established that outlines basic expectations of fairness in any student disciplinary process. See below for a list of relevant publications and case law.

Q: What will happen if my client refuses to participate in the University's disciplinary process?

A: The process will continue with or without the student's involvement. Respondents who fail to appear at a Hearing or Administrative Conference after proper notice will be deemed to have answered "not responsible" to the pending charges. The student may not use their refusal to participate as grounds for appeal.

Q: Is the Hearing or Administrative Conference recorded? Can I get a transcript?

A: An audio recording is made of each University Hearing and Administrative Conference. The student can request a copy of the recording, but the Office of Community Standards does not provide transcripts.

Q: What are the student's rights of appeal?

A: The student (and the complaint party, in certain cases) can appeal the finding and/or the sanction to the Campus Appeals Committee. Appeals are decided on the basis of the record and

written submissions. An appeal does not entail a new hearing or conference or the taking of additional testimony. Appeals are considered only on the following grounds:

- a sanction grossly disproportional to the offense
- the discovery of new and significant evidence unavailable at the original proceeding
- the commission of procedural errors so substantial as to effectively deny the accused student a fair disciplinary process
- a finding of responsibility unsupported by evidence.

Publications

The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life? by Robert Bickel and Peter Lake, published by Carolina Academic Press (1999)

The Law of Higher Education (3rd edition) by William Kaplin and Barbara Lee, Jossey-Bass Publications

Year 2000 Cumulative Supplement to the Law of Higher Education (3rd Edition) by William Kaplin and Barbara Lee, published by the National Association of College and University Attorneys (NACUA) (2000)

Case Law

Dixon v. Alabama State Board of Education (1961, 5th Circuit)

Esteban v. Central Missouri State College (1969, 8th Circuit)

Ewing v. Regents of University of Michigan (1985, 6th Circuit)

Goss v. Lopez (1975, U.S. Supreme Court)

Hart v. Ferris State 557 F. Supp. 1379, 1386-88 (W.D. Mich, 1983)

Krasnow v. Virginia Polytechnic Institute (1977, 4th Circuit)

Osteen v. Henley (1993, 7th Circuit)

Paine v. Board of Regents of the University of Texas System (1973, 5th Circuit)

Soglin v. Kauffman (1969, 7th Circuit)