



## Guide for Attorneys: Questions and Answers

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 Hearing Officers or Hearing Boards, speak in University Hearings or Disciplinary 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 person making the complaint and the accused student are both entitled to the assistance of a Campus Adviser, a member of the University community who can help the complainant or respondent prepare his or case and navigate the disciplinary system. The Office of Student Conduct maintains a list of advisers who have been trained in the disciplinary system.

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### **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 Student Conduct in writing if he or she intends to have you attend a University Hearing or Disciplinary Conference. 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 standard release form can be found at <http://studentconduct.rutgers.edu>.

The Office of Student Conduct 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: If I am an attorney, can I serve as the student's Campus Adviser?**

**A.** Members of the University community who hold law degrees are permitted to serve as Campus Advisers. Campus Advisers may assist students, but may not speak for students during University Hearings or Disciplinary Conferences.

**Q: What's the difference between a Disciplinary Conference and a University Hearing?**

**A:** A Disciplinary Conference is an informal meeting with a Conduct Officer, who will consider information presented by the complainant and respondent and determine whether the respondent is responsible for the charges. A University Hearing is a more formal process, in which the complainant and respondent present their cases to the University Hearing Board (a panel of students and faculty). The Hearing Board then determines whether the respondent is responsible for the charges.

**Q: What is the standard of proof in the University's disciplinary process?**

**A.** The standard of proof for contested charges is "by a preponderance of information."

**Q: What is my role at your hearing?**

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 a Disciplinary Conference, or question witnesses. You may advise your client, provided your interaction does not disrupt the process.

**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 the student would like to review the case file, the student should call 732-932-9414 to make an appointment.

Both the complainant and respondent 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 a Disciplinary Conference. Both the complainant and the respondent will be notified if the other party submits evidence or a witness list.

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

**Q: Can I get the hearing or Disciplinary Conference postponed?**

**A.** The student may submit a written request for postponement to the Office of Student Conduct.

**Q: Can the student be charged with a violation of the UCSC 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 (UCSC, Parts 6, 15, and 33).

A University Hearing or Disciplinary 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 (“Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties”) require a “prompt” response to 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 page 5 of this guide 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 Disciplinary Conference after proper notice will be deemed to have pled “no contest” to the pending charges. The student may not use his or her refusal to participate as grounds for appeal.

**Q: Is the hearing or Disciplinary Conference recorded? Can I get a transcript?**

**A.** Each University Hearing and Disciplinary Conference is digitally recorded. The student can request a copy of the recording, but the Office of Student Conduct does not provide transcripts.

**Q: What are the rights of appeal?**

**A.** Appeal statements must be submitted in writing to the Director of Student Conduct, who will transmit the statement to the appropriate appellate body.

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 to a properly diligent respondent prior to the original proceeding

- the commission of specified procedural errors or errors in interpretation of University regulations so substantial as to effectively deny the respondent a fair hearing or Disciplinary Conference
- 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)

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