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Legal Foundations of College Judicial Processes

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Valente, Ed.D., Laura, "Legal Foundations of College Judicial Processes" (2019). *Title IX Summit*. 1.
<https://rdw.rowan.edu/titleixsummit/2019/june4/1>

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Legal Foundations for Student Conduct Systems

Title IX Professional Summit
Rowan University
June 4, 2019

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Planning, Policy, Performance

Educational Mission

The central philosophy of student conduct policies is one of **education**.

It should focus on the growth and development of the individual student by

- **encouraging self-discipline** and by
- fostering a **respect for the rights and privileges** of others.

The goal of a student conduct process is to **redirect the behavior of the student** into acceptable patterns and to protect the rights of all members of the college community.

What is “appropriate” conduct in a University environment?

Appropriate conduct is that conduct which promotes the individual’s own academic pursuits and which **contributes to meeting the community’s educational mission.**

An individual’s conduct becomes a concern of the college when it **adversely affects the academic interest of other members** of the college community.

“General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax – Supported Institutions of Higher Education”, 45 R.R.D. 133, 145 (W.D. Mo. 1968)

Excerpts:

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.

It is not a lawful mission, process, or function of[a public] institution to **prohibit the exercise of a right** guaranteed by the Constitution or a law of the United States...

Standards so established may require scholastic attainments higher than the average of the population and *may require superior ethical and moral behavior.*

Sources of Student Rights

- ✓ Contracts
- ✓ U.S. Constitution (Public Schools and Programs)
 - ✓ Statutes
- ✓ Court Precedents

Major SCOTUS Decision on College Contracts

- ▶ Contract law does apply to private institutions. “There is no reason why....the....principle should not apply to a public university or community college.” *Healy v. Larson*, 323 N.Y.S.2d. 625, *affirmed*, 318 N.E.2d 608 (N.Y. 1974)

- ▶ Courts will generally allow an institution much more flexibility in drafting academic contracts than those involving **conduct enforcement**.
- ▶ Courts have given institutions wide latitude to **revise terms** to which students are subjected as **they progress** through the institution. *Reserve this right in your handbook and other publications.*

Contracts - 2 Types

- **Express** contractual relationships such as meal plans and loan agreement.
- **Implied** contractual relationship:
If a student complies with prescribed terms s/he will obtain the degree which he sought.

Exceptions

1. **Unconscionable Contract** - “one which is so harsh and unfair to one of the parties that a reasonable person would not freely and knowingly agree to it.”

These types of contracts are not enforceable in the courts.

2. **Contract of Adhesion** - “is one offered by one party (usually the party in the stronger bargaining position) to the other party on a ‘take-it-or-leave-it’ basis, with no opportunity to negotiate the terms.”

These types will often be construed in favor of the weaker party if there is ambiguity, but these are enforceable if not unconscionable.

Statutes

Both state and federal statutes apply to public colleges (and often private colleges.). Some examples:

Title VI of Civil Rights Act of 1964

“No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity **receiving federal assistance**.

Title IX of the Education Amendments of 1972

Provides for a prohibition against sex discrimination in any program or activity **receiving federal funds** and has been found to prohibit sexual harassment of faculty and staff as well.

Section 504 of the Education Amendments of 1972

Prohibits discrimination against “otherwise qualified handicapped” persons.

ADA: American With Disabilities Act

Title II: State and Local Government Activities

- Requires state and local governments, regardless of the entity's size or receipt of federal funding, to provide an equal opportunity to the disabled to benefit from all of their programs, services, and activities (e.g. public education, recreation, health care, social services).

FERPA - Family Educational Rights and Privacy Act (also known as the Buckley Amendment)

- ▶ No funds shall be made available... to... any institution of higher education... which has a policy of denying, or which effectively prevents the parents of students attending... **the right to inspect and review any and all official records...**”
- ▶ *The right of the parent reverts to the student when the student attains eighteen years of age or enters a post secondary institution unless the student remains financially dependent on the parent for tax purposes.*

Constitutional Protections

- ▶ Applicable to state institutions and programs at private institutions that provide governmental service.

Constitution, continued:

The Amendments/ Provisions
with the most
frequent/important
influence on student conduct
procedures...

First Amendment

“Congress shall make no laws respecting the establishment of **religion** or prohibiting the free exercise thereof: or abridging the freedom of **speech** or of the **press**; or the right of the people peaceably to **assemble**; and to petition the Government for a **redress of grievances.**”

Fourth Amendment

Provides that the “right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no warrant’s shall issue, but upon **probable cause**, **supported by oath or affirmation**, and particularly describing the place to be searched, and the things to be seized.”

Fourteenth Amendment

- ▶ Provides, in part, “**nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**”

Major Implications for Conduct Cases

Due Process

Public institutions may not deprive students of their right to *liberty* or *property* without due process.

Suspension and dismissal are almost always considered to require due process before imposition.

Due Process Includes

1. Following institution's established procedures.

Exceptions -

- a. A student may waive his right to them.
- b. If the failure to follow procedures was minor in nature and doesn't affect fundamental fairness.

2. Notice

- Should contain the conduct alleged and the rule that conduct violates.
- Two - ten days has been held sufficient.

3. Hearing

- Must provide accused students with an opportunity to speak in their own defense
- Open or public hearings not required
- Right to present testimony or statements from witnesses
- Not required: cross - examination, right to a transcript, an appeals process, counsel

4. Impartiality / Fairness

- Person(s) presiding over proceedings and /or making decisions must weigh evidence impartially
- Only consider evidence presented at hearing
- Establish increasingly more comprehensive due process procedures as severity at potential sanctions increase

Constitutional Requirements for Codes

Student Conduct Codes may not:

- Be vague
- Be overbroad
- Be arbitrary in application
- Restrict constitutional liberties

Vagueness

Code must be clear enough for students to understand the standards with which their conduct must comply.

Overbreadth

Code prohibitions may not include constitutionally protected rights along with behavior which can be legitimately restricted.

Even - Handedness

Code cannot arbitrarily discriminate against categories of offenses in terms of penalties or procedural safeguards.

Constitutional Protections

All constitutional protections are in force at public institutions,
(includes free speech, reasonable search and seizure)

When suspension or dismissal are not potential sanctions:

- Include procedural safeguards to insure fairness
- Can be less formal process
- May use informal dispositions such as mediation/negotiation, preliminary conferences, etc.

Standard of Proof

- Preponderance of the Evidence
- More likely than not
- 51 % rule
- 50% and a feather

Sanctions:

Consistent but not concrete

Educational in nature

Can be multi-faceted and creative – but **MUST** communicate the severity of the violation.

Discussion

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