

THE STUDENT CONDUCT PROCESS: A GUIDE FOR PARENTS

A publication of the Association for Student Conduct Administration, 2006

Introduction

The Association for Student Conduct Administration (ASCA) has been in existence since 1986 and is the primary professional association for administrators working with student conduct. The membership comprises 1200 members working at over 750 colleges and universities throughout the United States and Canada.

ASCA is an organization of professional educators who are responsible for administering standards of student conduct within colleges and universities. The membership of ASCA believes that the purposes for the enforcement of such standards are to maintain and strengthen the ethical climate and to promote the academic integrity of our institutions. Clearly articulated and consistently administered standards of conduct form the basis for behavioral expectations within an academic community. The enforcement of such standards should be accomplished in a manner that protects the rights, health, and safety of members of that community so that they may pursue their educational goals without undue interference (Editorial Note: adapted from ASCA Preamble on website).

ASCA created this guide in order to aid you in helping your student navigate the student conduct system at his/her college or university. Student conduct systems in higher education have been in existence for many years, and have evolved over time. Today, the main purpose of most student conduct systems is education. The goal is to have each incident of misconduct create a learning opportunity for the student. In addition, conduct officers strive to repair any harm done to the community. There likewise is a deterrent aspect of the student's participation in the conduct process.

Staff responsible for student discipline at most institutions have very specialized training in student conduct. Most have at least a Master's degree and some have doctoral or law degrees.

This guide will focus on general procedures of most campus discipline processes, with particular emphasis on the difference between the campus process and criminal prosecution; goals of the conduct process; and student records and confidentiality. Additionally, the guide offers a general overview of the various types of misconduct with a focus on alcohol and drug offenses. It also includes some general advice you can use in working with your student who may be involved with the campus conduct system. We hope this guide aids you in understanding what your student may be facing as they begin to navigate their way through the student conduct system.

Before delving into the content of this guide, it is important to understand its limitations. First, as stated above, institutional student conduct processes are as unique as the institutions' themselves. Please contact the student conduct officer on your campus to obtain a copy of the student conduct code. This guide is an attempt to discuss some of the most common practices at institutions across the country.

Another limitation of this publication is that public institutions have very different guidelines that they need to follow than private institutions do. Generally, private institutions have greater flexibility in their hearing standards, consequences for misconduct, and what types of conduct they can regulate. We therefore strongly encourage you to check your institution's own conduct code to find out what types of procedures are used.

Finally, the terminology used at various institutions is very interchangeable. For example, some campuses will call this process the student judicial process; others will call it the student conduct process. Additionally, the administrative unit that handles student conduct matters varies from institution to institution. In fact, the uniqueness begins with what the office that addresses student conduct is called and where it is situated. In general, these offices are called: the Office of Student Conduct, the Office of Student Judicial Affairs, the Office of Student Discipline, the Office of Student Development, or the Office of Citizenship and Community Standards. Many offices are located within the Dean of Students Office, the Office of Residence Life, the Division of Student Affairs, or the Office of Student Life.

This guide serves as a basic introduction to the student conduct system and as a springboard for investigating the procedures specific to your institution. With your support and understanding, you can help your student navigate the student conduct process and encourage the growth, development and accountability that we all want from our students.

General Overview of Student Conduct Procedures

Universities began addressing student misconduct as far back as 1822 when a group of University of Virginia students rioted on the UVA Lawn. In response to this incident Thomas Jefferson wrote:

“The article of discipline is the most difficult in American education. Premature ideas of independence, too little repressed by parents, beget a spirit of insubordination, which is the greatest obstacle to science with us, and a principal cause of its decay since the revolution. I look to it with dismay in our institution, as a breaker ahead, which I am far from being confident we shall be able to weather.”

Student discipline is not therefore a recent invention of contemporary higher education. Discipline as used by Jefferson has however undergone an evolution of sorts over the years. Modern disciplinary practices trace their routes to the 1961 case of *Dixon v Alabama State Board of Education*. In *Dixon*, the students argued that their meeting with the administrator did not meet the standards for due process. As a result of this meeting, the students were expelled from the institution. The Court ruled that students should be given at least notice of the charges and an opportunity to be heard. The court also said that a full criminal hearing is not required.

Over the years, *Dixon* has been tested from time to time. The basic decision still prevails. In a more recent case, *Flaim v Medical College of Ohio*. Flaim was expelled from the medical college for a felony drug conviction. In *Flaim*, the court returned once again to the due process standards set forth by *Dixon*. That is, the more serious the repercussions, the more procedure that is due. However, in both cases, the courts have consistently stated that even where a student is facing expulsion from the institution, the process that is due need not be as elaborate as the process that would be due in a criminal hearing. Thus, students facing disciplinary action from their institution generally are not entitled to have an attorney represent them, to cross-examine witnesses or have an appeal unless the institution's conduct code allows for these procedures.

These two cases illustrate why there is so much difference from institution to institution. Because the institutions in *Dixon* and *Flaim* were both public institutions, the entity taking action was the state and therefore the constitution is implicated more strongly because the 14th Amendment of the United States Constitution applies to the states:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.”

However, private colleges and universities are not required to provide the same due process rights because the institutions are not agencies of the government; but are more akin to private corporations. Private institutions, therefore, have much more latitude in determining their conduct procedures than those in the public sector.

Frequently asked questions

How is a conduct complaint filed?

Typically anyone can file a report. Most campuses receive reports from the municipal police department, the campus police department, residence life staff, faculty and other university staff, and students. To file a conduct complaint, your student should contact the office that oversees the campus conduct process to obtain a copy of the institution's disciplinary procedure.

If your student chooses to file a complaint (which is also referred to as an incident report), his/her role becomes one of witness in the case; however, the student may also be required to assume the role of complainant. The submitter of the complaint is usually asked to participate in the adjudication of the case to explain what he/she saw or heard and to answer questions about the incident.

Please note that filing a complaint with the conduct office does **not** constitute filing a criminal charge. The conduct office can assist students in contacting the local police department if they wish to file a police report.

If my student is a victim in a conduct case, what support do they receive?

Again this depends on the institution. Colleges and universities are first and foremost concerned about your student's safety. Many institutions have a victim advocate office that can assist students with safety planning as well as inform them of the various options for resolving their complaint. If a hearing is scheduled, the advocate may be permitted to attend with your student.

How is somebody found responsible of a violation within the conduct process?

On many campuses, in less severe cases, the decision can be made by a member of the conduct program staff, a residence life staff person, or a peer hearing board such as the Student Judicial Board or a Greek Council in the fraternity/sorority system. This is often described as an administrative review. Any cases that are deemed more serious may go to a formal hearing. This usually involves some kind of hearing board made up of faculty, staff and students. Procedures vary from campus to campus as to how these issues are resolved.

Generally, due process provides that a student accused of violating the conduct code will be given written notice of the charges, time to examine the evidence and formulate a response, and an opportunity to explain his/her version of events to an unbiased decision-maker. This decision-maker, whether an administrator or board, will weigh the evidence and the oral arguments on both sides and decide if the student is responsible for violating the conduct code; and if so, will determine the appropriate sanction. The outcome of the adjudication of the complaint will be communicated to the student in writing.

Sanctions can be punitive or educational in nature. Examples of sanctions include:

- Warnings or reprimands
- Probationary status
- Suspension
- Expulsion
- Loss of Privileges
- Research papers
- Community Service
- Letters of Apology
- Reflection Papers
- Educational Seminars
- Psychological Assessments
- Removal from the residence halls

How is the campus process different from a criminal charge?

There are several differences between the systems. First and foremost, rules governing the handling of student conduct matters at institutions of higher education are different from criminal statutes. Criminal prosecutions take place only when violations of law are alleged. On campuses, there are many types of violations that may not be violations of the law, but violate institutional community standards, such as academic dishonesty.

There are other types of violations that mirror criminal statutes such as underage drinking. There are still others that may use similar terminology but are defined differently. Sexual assault and rape are good examples of these.

A second major difference between the campus process and the criminal process is the standard of proof. On most campuses, there must be a preponderance of the evidence, enough evidence to tip the scales (i.e. 51% or "more likely than not"), before a student is found responsible for violating the student conduct code. This is the same standard used in most civil cases. Some institutions use the clear and convincing standard that is around 75% - 80%. In contrast, the standard in a criminal case is beyond a reasonable doubt, which is a 97%. Standards of proof in student conduct processes can vary somewhat from campus to campus.

Another difference is that the campus process is usually confidential whereas a criminal prosecution creates public records. For more on the limitations on disclosure of student records see the section below on the Family Educational Rights and Privacy Act (FERPA). Many states have laws defining public information and regulating its use.

In addition, a campus's jurisdiction is more limited than the courts. Most institutions of higher education require some connection to the campus in order to address a violation of the code. The connection can be as minimal as the conduct brought negative publicity to the institution or as significant as requiring proof that the conduct had an effect on another student. Still others only address conduct that occurs on campus property.

Yet another difference is that the process on many campuses is an administrative hearing and not a trial, and as such not adversarial in nature. Therefore, the institution's process may not have the same procedures as a criminal trial. On many campuses, students must speak for themselves. They are not permitted to have an attorney, or anyone else, speak on their behalf. This is mainly to preserve the educational nature of university disciplinary hearings. It is important for students to represent themselves and to explain their conduct to others.

Finally, as the student conduct process is considered an educational tool, the sanctions imposed tend to focus on repairing harm to the community, to victims, and to the institution as a whole. They also take into account what the accused student needs to learn from the situation. The process focuses on helping the student understand why his/her behaviors violated community standards and how the person can avoid making the same mistake again. It is also focused on helping the student see how the instances of misconduct affect others. These are generally not addressed in the criminal process. However, where weapons or violence are involved, students may be facing separation from the institution. In these instances, the campus's primary concern is maintaining a safe environment and an educational response would not be appropriate.

Does being convicted of a campus violation give you a criminal record?

A college or university's student conduct process does NOT lead to anyone being "convicted of a crime." It is a process to determine if a student is to be found responsible for violating the Student Conduct Code and other campus regulations. It can only result in a student discipline record that is maintained for a finite time (however, some public institutions are required by state law to hold disciplinary records in perpetuity). Also, no criminal record is automatically generated.

Can criminal charges be filed at the same time as a campus complaint?

Yes: the criminal justice system and the student conduct process are completely independent. Student victims are encouraged to discuss their situation with a police officer to help decide whether or not to file a criminal charge as well. In most cases, it is up to the victim to decide if he or she wishes to file a criminal charge. This is not something a college or university, or any other third party, can do on the victim's behalf.

Why is this not considered double jeopardy?

As stated above the goals of the two systems are not the same. The term *double jeopardy* is generally understood to mean that a person cannot be tried for the same crime twice. The institution is not charging an accused student with a crime, or violation of law. Instead, the student is being accused of violating a code of student conduct with the domain of the campus. Therefore, being found guilty simultaneously of a crime in the court system and in violation of a college or university's student conduct code does not constitute double jeopardy. The two domains are separate.

What are the appeal rights in our system?

This varies greatly depending on the institution. Some campuses only provide appeals in more serious cases. Others allow it in any kind of hearing. Appeals are generally limited to specific conditions. Generally, some reasons of granting an appeal include:

- Procedural error;
- New evidence not available during the original hearing;
- The conclusion reached was not supported by the information provided in the hearing; or
- The sanction imposed is unduly severe compared to the nature of the violation.

In most student conduct processes, a student is not granted an appeal automatically if he or she objects to the outcome of a case – one or more of the above conditions must be substantiated.

Is the case reheard in an appeal?

In making their decision, an appeal body usually limits its review to the record of the case including written statements submitted by the complainant and the accused student. The appeal body will determine if there were serious errors made in the case, if significant new evidence has been revealed, or if the sanctions are appropriate given the nature of the violation. If any of these conditions are proven, the appeal body may alter the decision or, if permitted, modify the sanctions. At some institutions, when appeals are approved cases are reheard in their entirety.

How long does it take to resolve a case?

Cases that are handled informally are often resolved within a couple of weeks. When a formal hearing is required, the process takes longer. All parties have the right to develop their respective arguments. It can take 4 – 6 weeks time to arrange for a day when all the parties and the hearing panel are available.

Once a decision is made, the student then has a finite amount of time to file a notice of appeal. Getting materials prepared and the appeal body scheduled to meet typically takes about a month. (As noted above, only the right to appeal is guaranteed. Once an appeal is filed, the review body must determine if the

appeal is granted based on guidelines outlined in the institution's code of student conduct.)

What are the long-term affects of being found responsible for violating the student conduct code?

This really depends on the institution and its record keeping policies, the type of violation and the sanction, and any applicable state law. Generally, minor violations will really have no long-term impact. A more serious violation and sanction can have significant long-term impacts on your student. Graduate schools and some jobs typically look for a pattern of inappropriate behavior. One or two violations, if minor, probably won't have a significant impact. It is generally acknowledged by most colleges and universities that testing limits and making mistakes are part of the "college experience." However, if students aren't able to show how they learned from those incidents and changed their behavior over time, this will more likely impact their being hired or being accepted to graduate or professional school.

Family Educational Rights and Privacy Act (FERPA)

Do Colleges and Universities have any written policy about information from student records that can be shared with parents?

Yes, institutions of higher education are subject to a federal law called Family Educational Rights and Privacy Act (also called "FERPA" or the "Buckley Amendment"). FERPA sets privacy standards for student educational records and requires colleges and universities to publish compliance statements, including all related institutional policies.

Where can I find out more information about FERPA?

FERPA is enforced by the U.S. Department of Education. The Department maintains a FERPA website (with links to FERPA regulations):

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn>

You can also review your institution's student handbook.

What records does FERPA cover?

The privacy protection FERPA gives to students is very broad. With limited exceptions discussed below, part 99.3 of the FERPA regulations gives privacy to all students 'educational records.' Education records are defined as "those records that are directly related to a student and are maintained by an educational agency or Institution or by a party acting for the agency or institution." Examples of student records entitled to FERPA privacy protection are grade reports, transcripts, and most disciplinary files, among others.

What protections does FERPA give to students concerning their records?

- ✓ Right to Inspect and Review Educational Records
- ✓ Right to Request to Amend Educational Records
- ✓ Right to have some control over the Disclosure of Information from educational records ("Personally Identifiable Information" or information that would directly identify the student or make the person's identity easily traceable)

What does FERPA require of colleges and universities?

A public university must notify students annually of their rights (typically via the student handbook), and agree to give students the opportunity to limit the disclosure of personally identifiable information annually (such as information contained in a student directory). Also, public colleges and universities are required to:

- ✓ Protect Students' Rights to Inspect and Review Records
- ✓ Protect Students' Rights to Request to Amend Records
- ✓ Protect Students' Right to Limit Disclosure of Personally Identifiable Information contained in Education Records
- ✓ Ensure that authorized third parties do not redistribute personally identifiable information, except under a few circumstances
- ✓ Maintain records of requests for and disclosures of student education records

What does it mean to say a record is 'protected' by FERPA'?

Unless personally identifiable information from a student's education record falls under a specified exception, the information cannot be released to third parties (including parents) without a signed and dated written release from the student.

There appears to be many exceptions to FERPA release of records, do any apply to parents and guardians?

- ✓ In cases where there is an alleged victim, the final results of a disciplinary hearing regarding an incident alleged to involve acts of violence, or forcible or non-forcible sex offense is disclosed to the victim (disclosure required)
- ✓ To the public, the final results of a disciplinary hearing against an alleged perpetrator of a crime of violence or non-forcible sex offense (disclosure permitted, not required) (Foley Amendment)
- ✓ To parents/legal guardians of students under 21, if students are found to have violated the alcohol or drug policy of the institution (Warner Amendment)
- ✓ Some states have determined conduct records are not educational records and are public information.

Many of these are permissible exceptions and are not required. You will need to check with your institution to find out its policy. Some colleges and universities are not permitted to release this information due to state laws that may affect student records and privacy.

How can I learn how my child is doing'?

The best approach is to ask your son or daughter directly. Communicating with young adults isn't always easy. They are not often as forthcoming as we would like. The college years, however, are a period of remarkable growth and maturation. The ability and willingness of students to share information and insights usually grows, especially as they acquire the confidence that comes with assuming greater responsibility for their own lives.

I had easy access to my student's high school records, why don't I have the same access to records kept by the University?

Under FERPA, the access rights that parents and legal guardians had in the elementary and secondary school setting are transferred to students, once a student has turned eighteen, or is attending any postsecondary educational institution.

Why do I have limited access to my child's college records when I'm paying the college expenses?

Student records are confidential. As a parent or legal guardian you *must have a signed release from your student* to access your student's college records. FERPA does not require colleges and universities to grant such parental access.

My child is a dependent. I should be able to see his/her records at will!

FERPA allows universities and colleges to decide individually if they will release or share information concerning students under the age of 18 (minors). Many colleges and universities do not differentiate between under and over 18 years of age in regards to protecting student records but you will need to check with your institution to find out its policy.

Will I be notified if my child is hurt or in danger?

FERPA does allow for an exception in emergency situations. There are also exceptions if your student is a threat or danger to others.

How will I know if my child is subject to University disciplinary action?

Student disciplinary records are protected under FERPA. The best practice is for your student to inform you about any disciplinary charges directly. Students can also authorize release of all the information in their disciplinary files. A copy of the file can then be sent to a parent or legal guardian upon request (please note: to protect others who may be involved, the file will be adjusted to protect personally identifiable information of other involved students). Most colleges and universities routinely advise students verbally and in writing to notify parents about any pending disciplinary charges.

I've heard about changes in FERPA allowing notice to the public if a student commits a crime of violence. What policies have colleges and universities adopted regarding this new provision?

This recent change in FERPA permits-but does not require-release of final results of campus disciplinary proceedings (reached on or after October 7, 1998) regarding specified crimes of violence or non-forcible sex offenses, as provided in part 99.31 (a) (14) {i} of the FERPA regulations. Consistent with other FERPA requirements, the college or university MAY make public, upon request, the identity of individuals suspended or expelled for any crime of violence or non-forcible sex offences specified in the law. This is again something that you will need to check with your institution.

I've also seen press reports about a new FERPA provision allowing notice to parents when a student violates drug or alcohol laws. What positions have colleges and university taken on this new rule?

Part 99,31 (8) (15) (I) of the FERPA regulations authorizes-but does not require-disclosure to parents of "the student's violation of any Federal, State, or local law, or any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance. This is another policy that is made by each institution and in some cases is shaped by state law. Below is an example of such a policy on the World Wide Web.

◇ **University of Michigan Policy on Student Rights and Student Records**

<https://ro.umich.edu/records-registration/student-rights-records>

What to Do When Your Child Is Involved In the Campus Conduct Process

Sending your child to an institution of higher education is as much of a transition for parents as it is for students. The relationship you have with your son or daughter will undoubtedly change. Students are expected to make decisions on their own, to learn to resolve conflict independently, and to take responsibility for their actions. At the same time they covet your love, respect your opinion, and generally operate on the values you instilled in them. So what should you do when your student becomes involved in the campus conduct system?

The following section provides some recommendations for parents when they discover that their student is involved in the campus conduct process.

1. While colleges and universities recognize that your goal is to provide support for your student, conduct officers ask that you provide this support unconditionally, but not blindly. Understand that there is a process in place to hear all information regarding the incident in question and encourage your student to prepare him or herself for the process.

2. When your son or daughter receives paperwork regarding conduct procedures and has questions, direct him or her to contact a staff member in the conduct office for information. Staff members are not permitted to give specifics to parents and will most likely recommend that the student call anyway. This also empowers the student to solve his or her own issues and concerns.
3. The Family Educational Rights and Privacy Act of 1974 precludes the college or university from discussing your child's academic and disciplinary record without his/her written permission.
4. Educate yourself on the institution's student conduct process by going to the department's web site or by requesting a copy of the conduct code. Many of your questions may be easily addressed through this medium and many colleges and universities are putting information on the World Wide Web to assist parents in understanding the student conduct process.
5. Practice the "24 Hour Rule." You may receive a phone call or email message from your student because he or she is upset about facing conduct charges. You may be tempted to try to immediately fix the problem for them. This intervention invariably fails. Try to allow 24 hours to inform, guide, teach, observe, and chastise (if necessary). Lessons learned through participation in a student conduct process must be experienced to have the desired effect. After all, gaining a higher education degree is about learning.

College and university conduct officers take their responsibilities as educators very seriously and do their best to provide a fair and unbiased system for all students. While these professionals understand that involvement in the conduct process may be difficult for students, they do their best to provide them support to effectively handle the situations in which they find themselves.

Talking with your college student about alcohol

Parents need to recognize that college students, especially first-year students, are at a significantly higher risk for alcohol-related problems than almost any other population.

AVAILABILITY OF ALCOHOL + ABSENCE OF PARENTS/GUARDIANS + DESIRE TO FIT IN = POTENTIALLY RISKY DRINKING DECISIONS

The first few weeks while at college, students' primary concerns are about seeking acceptance and making social connections. Many will find very healthy ways to do this such as joining student organizations. Others will resort to alcohol to break down some of their inhibitions. While students are informed of some of the physical risks associated with alcohol, very few are aware of the legal, academic, and social consequences of high risk drinking. Making poor choices regarding alcohol and drug use can negatively impact your student's success in higher education.

Here are some suggestions for beginning a discussion about alcohol with your student:

- 1. Set clear and realistic expectations regarding academic performance and the use of alcohol.**
- 2. Make sure your student knows the legal penalties for underage drinking, using a fake ID, public intoxication, and DUI. In addition, make sure your student understands the academic consequences of underage drinking and alcohol use on campus.**
- 3. Stress to your student that drinking alcohol to the point of impairment or intoxication is dangerous.**

Low Risk Drinking is:

- Thinking about whether you will drink, what you will drink before the party
- Being 21 or older
- Eating a meal before drinking
- Abstaining
- Drinking no more than one drink per hour; maximum 1 for women, 2 for men
- Always knowing what you are drinking, who you are drinking with
- Alternating alcohol-free drinks throughout the evening
- Knowing how you will get home safely before you go out

High Risk Drinking is:

- Chugging, drinking games, shots (drinking anything out a of punch bowl, trough, hose or funnel)
- Drinking to get drunk (intoxicated)
- Driving after drinking or riding with someone under the influence
- Drinking too much, too fast
- Going to parties where people drink too much
- Not knowing what is in your glass or leaving it unattended
- Not knowing with whom you are drinking
- Mixing alcohol with medications or illegal drugs
- Underage drinking

4. **Examine your own values and behavior and the messages you send regarding alcohol and other drugs. Refrain from “glorifying” alcohol related stories from your college days.**
5. **Encourage them to stand up for their right to a safe academic environment.**
6. **Encourage them to intervene when classmates or roommates are in trouble with alcohol.**
7. **Stay in touch.**
8. **Know where to go for help. If you suspect that your student is having problems, please encourage them to seek help at the following on-campus locations:**

Counseling Center

Health Center/Services

Alcohol Education/Health Promotions Office

Housing Office/Hall Director’s Office

Your student may also talk to his or her academic advisor for assistance

Helpful Resources

- ◇ **The Higher Education Center for Alcohol and Other Drug Prevention.**
Information available at <http://www.edc.org/hec>.
- ◇ **National Institute on Alcohol Abuse & Alcoholism. *College Drinking: Changing the Culture.*** Available at <http://www.collegedrinkingprevention.gov/>
- ◇ O'Connell, Kathy (2004). **Talking to your student about alcohol.**
Bloomington, IL: Chestnut Health Systems.
- ◇ SAMHSA's Center for Substance Abuse Prevention.
Available at: <https://www.samhsa.gov/about-us/who-we-are/offices-centers/csap>
- ◇ Truman State University. Most Dogs Don't.
Available at: <http://mostdogs.truman.edu/parents.htm>
- ◇ Northeastern University Talking to College Students about Alcohol
Available at: <https://studentlife.northeastern.edu/open/wp-content/uploads/sites/11/2018/10/A-Parent-Handbook-For-Talking-With-College-Students-About-Alcohol.pdf>
- ◇ College Years and Alcohol... What Every Parent Should Know
Available at: <https://www.collegedrinkingprevention.gov/parentsandstudents/parents/default.aspx>

Conclusion

We hope this guide has been a useful tool to begin to orient you to the student conduct process. We encourage you to contact your institution's disciplinary officer with questions regarding the handling of student misconduct allegations.

If you have any suggestions on how the guide can be improved, please contact the ASCA Central Office at:

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