

Students' Rights and the Role of an Attorney in the Hearing Process

Southeastern Louisiana University views student discipline as an educational process. Initially, it must be determined through a hearing if a student actually committed a violation of the Southeastern Louisiana University Student Code of Conduct. If/When a student is found in violation of a Southeastern Louisiana University rules, the focus of the process turns to discussion of student development and the formulation of an educational sanction.

Students' Rights According to Articles V, VI, and VII of the Student Code of Conduct

The following rights apply to a student conduct proceeding that might result in expulsion, dismissal or suspension. Accused students subject to less severe sanctions may, at the discretion of the hearing officer, be afforded but are not guaranteed the following rights:

- **Right to be informed in writing of all charges before any hearing may proceed.**
A student will be informed of charges against him/her in the form of a charge letter. This letter outlines the alleged rule violation(s), and it includes the date, time, and location of the hearing.
- **Right to remain silent.**
A student may choose not to answer questions posed by the Student Conduct Hearing Board or by the hearing officer. Remaining silent or refusing to answer questions shall not be construed as an admission of responsibility or used against the student; however, it is important to note that decisions will be made based on information presented during the Student Conduct Hearing.
- **Right to advisor/attorney.**
An advisor/attorney may appear at an administrative hearing with the accused student(s) to provide advice. The advisor/attorney may NOT directly participate in the hearing by representing the accused student or directly questioning or cross-examining witnesses.

Gabrilowitz v. Newman, U.S. Court of Appeals, First Circuit

In 1978, this case held that because of the appellee's pending criminal case, it was his right to due process that made the court believe he should be able to have counsel present during his administrative hearing. Without counsel, his criminal case could have been damaged. By counsel being present, the function of that counsel would be to safeguard the appellee, Gabrilowitz, from self-incrimination and hurting his criminal case. *Gabrilowitz v. Newman* says the "Counsel's principal functions would be to advise appellee whether he should answer questions and what he should not say so as to safeguard appellee from self-incrimination; and to observe the proceeding first-hand so as to be better prepared to deal with attempts to introduce evidence from the hearing at a later criminal proceedings. To fulfill these functions, counsel need speak to no one but appellee."

- **Right to examine evidence.**
All evidence considered in the hearing will be placed in the student's disciplinary file. Each student may examine evidence during the Judicial Affairs office's normal operating hours. If a student wishes to provide access to other parties, he/she must make the request in writing as required by the Family Education Rights to Privacy Act (FERPA).
- **Right to appeal the decision through the appropriate university officials.**
The appropriate appeal channels are available through Article VII of the *Student Code of Conduct*.
- **Right to present witnesses.**
A student may present witnesses of fact to help his/her case. It is the responsibility of the accused student to coordinate scheduling of the hearing with witnesses and to inform Judicial Affairs of all participating witnesses.
- **Right to view witness list.**
Students have the right to view witness lists against him/her at the administrative discipline conference or prior to a hearing in front of a hearing board.

The following information is intended to provide a *general* understanding of the legal foundation for university disciplinary proceedings:

- **Student/Counsel Cross-Examination**

Gorman v. University of Rhode Island, U.S. Court of Appeals, First Circuit

In 1988, this appeals court affirmed the district court on the matter of cross-examination in student discipline hearings. In this case, the judge said "As for the right to cross-examination, suffice it to state that the right to unlimited cross-examination has **not** been deemed an essential requirement of due process in school disciplinary cases."

- **Double Jeopardy**

Paine v. Board of Regents of the University of Texas System, U. S. Court of Appeals, Fifth Circuit.

The Fifth Circuit Court of Appeals held that proceedings following a criminal conviction do not violate the double jeopardy clause. This means schools can conduct a disciplinary hearing for a student even if he/she has already been through the legal court process, or will be going through the process. The constitutional right regarding freedom from double jeopardy protects a person from being tried *criminally* more than once for the same offense. Since a campus judicial process is nothing more than an administrative process, the term "Double Jeopardy" is inappropriate (Carletta 45).

- **Substantial Evidence**

Slaughter v. Brigham Young University, U.S. Court of Appeals, Tenth Circuit

In 1975, the Tenth Circuit Court held that in campus judicial proceedings the charges against a student need only be proven by "substantial evidence." Substantial

evidence is defined as “such evidence that a reasonable mind might accept as adequate to support a conclusion” (Carletta 44). Southeastern Louisiana University uses a preponderance of evidence standard. “Preponderance is defined as more probable than not that the incident occurred as alleged” (Carletta 44). Criminal courts must adhere to a set of formal rules of evidence, which are codified in statute. While the state or federal rules of evidence need not be followed in a campus judicial proceeding, hearsay evidence, which is an out of court statement offered to the court for its truth, should not by itself be sufficient to suspend or expel a student because, among other reasons, it is nearly impossible to mount a cross-examination against it (Carletta 43). This evidence can be introduced in a student conduct hearing. This was held in Esteban v. Central Missouri State College, U.S. Court of Appeals.

- **Criminal Process v. Student Conduct Hearing Process**

Ingraham v. Wright, U.S. Supreme Court, 1977

In this case dealing with High School Students, the courts held that all the procedural requirements of a common law criminal trial should not be placed on educational institutions. It is the goal in all cases, under particular circumstances presented, that the hearing is fair and the essential elements of due process are met. In this case Justice White said, “the Due Process Clause requires, not an ‘elaborate hearing’ before a neutral party, but simply ‘an informal give-and-take between students and disciplinarian’ which gives the student ‘an opportunity to explain his version of the facts’”

- **FERPA**

Family Educational Rights and Privacy Act 1974

FERPA was passed into law for two primary purposes: 1. To provide parents of students under the age of 18 access to student education records and 2. To limit access by others to these education records without the consent of the student and/or parent (Gregory 59). Since these records include disciplinary records, this law is a point of interest for student’s counsel. Counsel may review a student’s discipline file only with a FERPA waiver signed by the student.

References

Carletta, C.F. (1998). "Distinctions Between the Criminal Justice System and the Campus Judicial Process: Implications for Public and Private Institutions." In B. G. Paterson & W.L. Kibler (Eds.), *The Administration of Campus Discipline: Student Organizational and Community Issues* (pp. 43-54). Asheville, NC: College Administration Publications, Inc.

Gabrilowitz v. Newman, No. 77-1565, U.S. Court of Appeals, first circuit, 582 F.2d 100; 1978 U.S. App. Lexis 10570, March 8, 1978, argued, June 21, 1978, decided.

Gorman v. University of Rhode Island, No. 86-2101, U.S. Court of Appeals first circuit, 837 F.2d 7; 1988 U.S. App. Lexis 402, January 19, 1988 decided.

Gregory, D.E. (1998). "Student Judicial Records, Privacy and the Press's Right to Know". B. G. Paterson & W. L. Kibler (Eds), *The Administration of Campus Discipline: Student Organization and Community Issues* (pp. 55-73). Asheville, N.C. College Administration Publication, Inc.

Ingraham v. Wright, No. 75-6527, Supreme Court of U.S., 430 U.S. 651; 97 S. Ct. 1401; 1977 U.S. Lexis 74; 51 L. Ed. 2d 711, argued November 2-3, 1976, April 19, 1977 decided.

Paine v. Board of Regents of the University of Texas System, No. 72-2871, U.S. Court of Appeals fifth circuit, 474 F.2d 1397; 1973 U.S. App. Lexis 11210, March 9, 1973 decided.

Slaughter v. Brigham Young University, No. 74-1208, U.S. Court of Appeals for the tenth circuit, 514 F.2d 622; 1975 U.S. App. Lexis 15178, April 14, 1975, decided.

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More Information

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