

Attorney Guide to the Student Conduct Process

University of Wisconsin-Eau Claire

Information and Frequently Asked Questions to help you understand our disciplinary process and the role of an attorney

Q: Where can I find a complete copy of the Student Nonacademic Disciplinary Procedures?

The Blugold Code is the official document containing policies and procedures for nonacademic disciplinary procedures. The document can be found on the Dean of Students Office website at www.uwec.edu/dos.

Q: I have been asked to represent a student in the disciplinary process. How do I establish this with the University?

In order to communicate information contained in a student disciplinary record to a third party, the Dean of Students Office, consistent with the Family Educational Rights and Privacy Act, must receive from the student a completed confidentiality waiver form available in our office. It is the practice of our office to correspond at all times directly with the student.

Q: Can the disciplinary process proceed if the student is no longer enrolled at the University?

The Blugold Code, 17.02(14) defines a student as any person who is registered for study for the academic period *in which* the misconduct occurred, or between academic periods, for continuing students. In other words, disciplinary procedures may proceed against a non-enrolled student if the misconduct occurred while the student was enrolled.

Q: Can the University assert jurisdiction over behavior that occurs off-campus?

The University does have the authority, via Blugold code, 17.08, to assert jurisdiction over off-campus behavior.

Q: The student is charged with a crime off-campus. Will the proceedings be delayed until the criminal matter is resolved?

Our disciplinary procedures are intended to further the educational mission at UW-Eau Claire. Therefore, pending criminal proceedings will not ordinarily serve as a basis to postpone the student disciplinary process. Exceptions may be made by the investigating officer assigned to the case, but these exceptions are rare and must be supported by substantial justification. Our process only attempts to determine if a student violated University rules and regulations, not criminal law.

Q: What will happen if the student refuses to participate in the student disciplinary process?

If the student does not respond to the investigating officer or fails to appear for a hearing, the investigating officer or hearing committee may proceed to make a determination on the basis of the available information.

Q: What if the student chooses to participate in the process? Is he or she granted any immunity in the criminal process?

All student disciplinary matters are subject to lawful subpoena. This includes tape recordings, written statements and records, and personal recollections.

Q: What is the standard of proof in the disciplinary process?

A finding of nonacademic misconduct is based on one of the following: (1) *Clear and convincing* evidence, when the sanction to be imposed is suspension or expulsion from the University, or enrollment restrictions are placed on a course or program; (2) A *preponderance* of the evidence, when the sanction is anything other than those listed in (1); and (3) A *preponderance* of the evidence, regardless of the sanction to be imposed, in all cases of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

Q: What protections and rules of evidence apply to the disciplinary process?

Courts have long recognized the differing interests of the University community from that of the criminal justice process. Although there are basic concepts of fairness that apply to student disciplinary proceedings, the student disciplinary process serves administrative and educational functions relating to the mission of the University. Therefore, many of the intricate rules and processes found in a court system, whether criminal or civil procedure, are not applicable to University disciplinary procedures. Any information that has reasonable value in proving the facts may be used in the process.



Q: Are attorneys permitted to attend meetings and hearings as part of the process?

The student has the right to be accompanied to meetings and hearings by an advisor, who may be an attorney.

Investigating Officer Meetings

In meetings with the investigating officer, the attorney may not speak on behalf of the student but may counsel the student.

Hearings

In cases where a hearing is being conducted and the student has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, or where the recommended disciplinary sanction is suspension or expulsion from the University, or enrollment restrictions are placed on a course or program, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the student. In all other cases the advisor may counsel the student, but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the student except at the discretion of the hearing examiner or committee. In accordance with the educational purposes of the hearing, the student is expected to respond on his or her own behalf to questions asked of him or her during the hearing.

Q: Why would the university proceed with a sexual assault case prior to the criminal trial?

The U.S. Department of Education Office of Civil Rights (OCR) guidelines require a “prompt” response to allegations of sexual harassment—including sexual assault. A

university hearing need not be postponed in order to preserve the Fifth Amendment rights of students in subsequent criminal cases—students may exercise their right to remain silent.

Q: Are there resources available to learn more about the law as it relates to campus disciplinary proceedings?

1. The Law of Higher Education (4th ed.) by W. A. Kaplin and B. A. Lee, Jossey-Bass Publications, 2006.
2. The Law of Public Education (6th ed.) by C. J. Russo, Foundation Press, 2006.
3. The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life? by R. D. Bickel and P. F. Lake, Carolina Academic Press, 1999.
4. Higher Education and the Law by J. Areen, Foundation Press, 2008.

A review of the following cases may be useful:

- Dixon v. Alabama, 294 F. 2d 150 (5th Cir. 1961)
- Esteban v. Central Missouri State College, 415 F.2d1077 (8th Cir. 1969)
- Soglin v. Kauffman, 418 F. 2d 163 (7th Cir. 1969)
- Paine v. Board of Regents of the University of Texas System, 474 F. 2d 1397, (5th Cir. 1973)
- Goss v. Lopez, 419 U.S. 565, (1975)
- Krasnow v. Virginia Polytechnic Institute, 551 F.2d 591, (4th Cir. 1977)
- Gabrilowitz v. Newman, 582 F2d 100, (1st Cir. 1978)
- Osteen v. Henley, 13 F3d 221, (7th Cir. 1993)

Portions of this document were modeled on *Disciplinary Guide for Attorneys*, Illinois State University.

Student Conduct Flowchart

This flowchart is a simple snapshot of the conduct process. For the most detailed information regarding the process, please refer to the Blugold Code.

