CONDUCTING STUDENT DISCIPLINARY HEARINGS: PROCEDURAL BEST PRACTICES AND DUE PROCESS REQUIREMENTS

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The views expressed in this presentation do not constitute legal advice and all matters regarding your particular college’s or university’s practice and policy should be reviewed and approved by your college or university’s administration and legal counsel.

LEARNING OBJECTIVES

1. Identify the overarching philosophical issues that will determine your student conduct system.
2. Understand the different options for systems of adjudication of alleged student conduct violations.
3. Understand the essential elements of a basic conduct system.
   - Conducting fact finding inquiries
   - Conducting witness interviews
   - Conducting the charged student interview
   - Engaging in the decision making of finding a student responsible
   - Determining which educational sanctions are most appropriate and effective.
4. Understand and develop best practices for your conduct system within a host of administrative areas.

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AUDIENCE

- Community Colleges
- Historically Black Colleges and Universities (HBCU)
- Private Institutions
- Public Institutions
- Division 1, 2 or 3
- Single Gender Institutions
- Number of students
- Technical and Trade Schools/Institutions
- Traditionally Hispanic/Latino Colleges and Universities
- Tribunal University Colleges

YOUR PRESENTER’S POINT OF VIEW

Attorney
Criminal Prosecutor
Adjunct Law Faculty
Mother of a College Student
Former President of ASCA (ASJA)
Undergrad at Penn State
Law School at NYU
Been Sued as a Conduct Officer

- Why is what we do so important?
- Why must we be professionally trained?
- Why must we continue our training?
- When to know when it is time to move on to a new job.
- Be a conscientious consumer of information!!!

BE A CONSCIENTIOUS CONSUMER OF INFORMATION

- Be thoughtful and critical of new processes and procedures that you learn about from others.
- Be aware of the contextual dynamics of your campus.
- Seek multiple points of view as you learn about new developments in the field.
- Not every new idea, program, or policy is applicable, transferable, or appropriate for your campus.
- Be mindful of the larger culture and climate of your own/home institution.
OVERALL GOALS OF EVERY STUDENT CONDUCT SYSTEM

- All systems are designed to educate students and hold them accountable for their decisions and conduct:
  - What do you want them to learn after going through your process?
  - Don’t forget to focus on the long term goal?

PHILOSOPHICAL CONSIDERATIONS

YOUR COLLEGE OR UNIVERSITY’S PHILOSOPHICAL APPROACH TO STUDENT CONDUCT

- Do you know what your college or university says about how students are treated?
  - If no... (you should)
  - If yes...(where did you get it from?)
YOUR COLLEGE OR UNIVERSITY’S PHILOSOPHICAL APPROACH TO STUDENT CONDUCT

1. What does your conduct office do to promote your institution’s established:
   - Mission
   - Vision
   - Core values

2. What does your conduct office state as its:
   - Mission
   - Vision
   - Core values

3. Does the design and process of your conduct system promote your institution’s and conduct office’s:
   - Mission
   - Vision
   - Core values
ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS

Student Conduct 101
What you must know...

Must distinguish between public or private institution

- Public
  - Agent of the state
  - You are state actors

- Private
  - Contractual relationship between the student and the university
  - You must do what you promise to do!

Due process (at a bare minimum – what does it include?)

- Notice of the charges
  - Notice of the process (standard of proof)

- The student’s right to be heard on the allegations lodged against them
ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS

- Due process - where did it all start?
  - Dixon, et. al. vs. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961)
  - Lead case on due process for students
    - Public college
    - 6 African-American students were dismissed from Alabama State College, Montgomery, Alabama
    - They helped to organize and participated in civil rights demonstrations in Montgomery, Alabama while enrolled as students at Alabama State College

St. John Dixon, the named plaintiff, and eight other students in the seminal case which established that students are entitled to minimal due process before they could be dismissed (suspended or expelled) from school

St. John Dixon
February 2010
ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS

The aftermath of the Dixon case

- What it meant for students?
- What it meant for administrators?
- Where we are today?

Student conduct nomenclature does not and should not reflect the criminal courts system

- “Charged student” NOT defendant
- “Information” NOT evidence
- “Violation” NOT crime
- “Rules and regulations” NOT law
- “Educational sanction” NOT punishment
- “Hearing” NOT trial
- “Judicial Board/Panel” NOT judge or jury
- “Found responsible” NOT guilty
- “Found responsible” NOT convicted
ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS

What is your standard of proof?

- Three levels of proof
  - You are required to meet the requisite standard of proof before a student is found responsible for violating the code of conduct

§ Preponderance of the evidence (easiest to prove) (Sexual assault, harassment, and violence – Title IX)

§ Clear and convincing

§ Beyond a reasonable doubt (most difficult to prove - usually reserved for criminal cases)

ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS – What interim action can be taken?

- Interim suspensions
- No contact orders
- Temporary removal from campus or housing
- Temporary prohibition of access to certain facilities, events or programs
- Exercise with caution!
ESSENTIAL ELEMENTS OF STUDENT CONDUCT SYSTEMS

- Conducting fact finding inquiries
- Conducting witness interviews
- Conducting the charged student interview
- Engaging in the decision making of finding a student responsible
- Determining which educational sanctions are most appropriate and effective.

VARIOUS SYSTEMS OF ADJUDICATION

- Selection of the applicable process
  - Does your code dictate which process an incident takes?
  - Do you decide which process an incident takes?
  - Does the student get to decide?
  - Does the factual basis of the incident dictate which process a matter will take?
VARIOUS SYSTEMS OF ADJUDICATION

Critical considerations for all adjudication models
- Do you have a prepared script?
- Are all or some of your meetings, conferences, and hearings recorded?
  - Video
  - Audio
  - Digital
- Do you allow students to record the session?
- Do you have a third person in the room some or all of the time?

VARIOUS SYSTEMS OF ADJUDICATION

Critical considerations for all adjudication models continued
- Can a student bring a lawyer?
  - What is the attorney’s role
- Can a student bring a parent, friend, or support person?
  - What is that person’s role

VARIOUS SYSTEMS OF ADJUDICATION

- Informal Administrative Meetings
- Formal Administrative Hearings
- Formal Board Hearings
- Alternative Forms of Adjudication – others available to review for applicability and compatibility to your system
VARIOUS SYSTEMS OF ADJUDICATION

INFORMAL ADMINISTRATIVE MEETINGS

- Usually designed for situations that do not rise to the level of a code violation, but the conduct may still be inappropriate and require some interaction between the student and a university or college employee
- These are designed for a staff person to have a face to face interaction with the student
- It allows for lots of flexibility and the meeting of various goals and objectives
- It should take on the tone of an "educational conversation" and spark some thinking on behalf of the student

FORMAL ADMINISTRATIVE HEARINGS

Preparing for the Hearing
- Review the complaint
- Review the Code, policy, rule, or regulation and more specifically the language, requirements, and nuances regarding the alleged infractions
- Review any statements or information you have been provided
- Speak with the complainant to clear up any unclear information or to answer any of your questions
- Enumerate specific questions for the student

Preparing for the Hearing
- Witness interviews are essential
- Review any statements or information you have been provided
- Speak with the witnesses to clear up any unclear information or to answer any of your questions
- Enumerate specific questions for the witness
- Initially, let them tell you their story uninterrupted
VARIOUS SYSTEMS OF ADJUDICATION

FORMAL ADMINISTRATIVE HEARINGS

- Initial Hearing Formalities
  - Greet the student, make small talk
  - Introduce yourself and explain your role
  - Tell the student to relax (to most students, you and your role are VERY intimidating)
  - Remain objective and professional at all times
  - Outline the process for the hearing
  - Explain what they can expect from today’s hearing
  - Confirm that the student received all of the written documentation you sent them
  - Ask the student if they have any initial questions, thus far

- The Hearing
  - Let the student know how you became aware of the incident
  - Enumerate and review the alleged charges
  - Explain the factual basis for the alleged charges
  - **Allow the student the opportunity to explain their version of what happened**
    - It is important that you listen carefully
    - Ask follow up questions
    - Clarify any inconsistencies
    - Make sure their story or explanation is clearly understood by you (reiterate what they have said)
    - Review your previously prepared questions to make sure everything is covered

- The Hearing continued
  - Speak candidly with the student about difficulties you are having with their story
  - Allow the student to admit to the charges
  - Allow the student to provide any additional witnesses
  - Allow the student to provide any additional information
VARIOUS SYSTEMS OF ADJUDICATION
FORMAL ADMINISTRATIVE HEARINGS

Closing The Hearing
- Let the student know that you will be rendering a decision
  - Let the student know the approximate timeline for rendering the decision
  - Let the student know how they can expect to hear from you
    - E-mail
    - Hand copy letter
    - Other
  - Answer any follow up questions the student may have
    - Will this go on their transcript?
    - Will their parents be notified?
    - Who else will learn about this incident?
- Thank the student

IN MY OPINION THERE IS NEVER A TIME WHEN YOU CAN BE UNPROFESSIONAL!!!

After The Conference/Hearing
- Review the file
  - Review your notes from the meeting
  - Conduct any further investigation
  - Review your code, policy, rule or regulation
  - Review your code’s burden of proof
  - Analyze whether the burden of proof been met based upon the offenses charged and the factual scenario?
    - If yes, find the student responsible
    - If no, dismiss the charges
  - Review any aggravating or mitigating factors
  - Communicate your decision to the student and the process of filing an appeal

HEARING BOARDS
VARIOUS SYSTEMS OF ADJUDICATION
FORMAL BOARD HEARINGS

- Remember, usually the stakes are very high for the student
  - May be asked to leave school
  - May have a notation on their transcript
- Follow your process!!
- The potential for litigation is great
- Be professional, in these situations you are the face of your office, the system, and the university or college

VARIOUS SYSTEMS OF ADJUDICATION
FORMAL BOARD HEARINGS

- Make up of boards
  - Faculty
  - Staff
  - Students
  - Other
- Training of boards
  - Who does it?
  - How often?

VARIOUS SYSTEMS OF ADJUDICATION
FORMAL BOARD HEARINGS

- How are members selected?
  - Appointed
  - Selected
  - Self-selected
- Length of tenure?
  - Term limits?
- How is the chair selected?
  - Who are they?
  - Any special qualifications?
VARIOUS SYSTEMS OF ADJUDICATION
FORMAL BOARD HEARINGS

- How are hearing panels selected from the board?
  - Appointed
  - Selected
  - Self-selected

- How many are selected?
  - Odd number to avoid a tie

- Do you have a process to address conflicts of interests?

Do you have any pre-hearing meetings?
- Is it automatic in each hearing?
  - Who can request it?
  - When is it utilized?
- What is covered?
  - Pre-hearing motions
  - Issues that arise after information exchanged to both parties
  - Special medical testimony
  - Special expert testimony
  - Admissions by the charged student
  - Witness order
  - Approximate length of time of each witness
  - Who is present?
  - Is it recorded?

Who is in the hearing?
- Conduct officer
- Advisor
- Attorney for the college or university/board
- Attorney for the accused
- Parents
- Others

What role does each person play?
VARIOUS SYSTEMS OF ADJUDICATION
FORMAL BOARD HEARINGS

What if a student does not show for the hearing?
– Can you proceed?
What if the student shows up to the hearing, but the lawyer advises them to take the 5th and not to speak?
– Can you proceed?
– What if there are criminal charges simultaneously pending?
  • Do the same rules apply?
  • Are exceptions made?

Do you record the hearings?
– All of it
– Part of it
– None of it
What type of recording is taken?
– Audio only
– Digital
– Video
Who is responsible for maintaining the recording?
Who has access to the recording?
– Listen or view it only
– Provided a copy

Deliberations
– Who may be present?
– Are they recorded?
– Would you ever disclose them to the parties or other people?

How many votes are needed to find a student responsible?
– Simple majority
– Super majority
– Unanimous
SANCTIONING

SOME BASIC CONSIDERATIONS

Remember – what is the goal of your student conduct process?
– Deter future misconduct?
– Punishment for poor decisions?
– Remove “bad person from the campus community”
– Appease faculty, staff, or other students that you did something?
– Repayment for loss of property?
– Repayment for loss to the community?

EDUCATION!!!!

SANCTIONING

SOME BASIC CONSIDERATIONS

Do we tailor sanctions based upon the following factors:
– Ability/disability
– Student athlete
– Student leader
– Religious beliefs
– Parental influence
– Socio-economical status
– Language issues
– International student status (visa issues)
– Cultural background
– Race
– Gender
There are various types of sanctions

- Status or administrative
- Substance misuse/abuse or addictions
- Fines / Restitution
- Repair for the harm suffered by the victim/community
- Educational

These sanctions involve a change in the student’s status at the college or university

- Warning
- Probation
- Suspension
- Expulsion

Alcohol and drug assessments

- Alcohol and drug on-line tutorials
- Alcohol and drug screens
- Anonymous groups
  - Alcohol
  - Drugs
  - Gamblers
  - Sex
SANCTIONING
FINES / RESTITUTION

- Monetary fines
- Financial restitution
- Property restitution

SANCTIONING
REPAIR THE HARM SUFFERED BY
THE VICTIM/COMMUNITY

- Letter of apology
- Face to face meeting between the perpetrator and victim
- Institutional service / community service

SANCTIONING
EDUCATIONAL ACTIVITIES

- Reflective papers
- Research papers
- Meetings with administrators
- Classes/workshops
- Visit to a particular type of facility (i.e. burn unit)
- Student health assessment
- Counseling
- Restorative Justice
- Others???
Q & A and 
THANK YOU

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