



**Office of the Dean of Students
Kutztown University of Pennsylvania**

Student Conduct Guide for Attorneys

(Adapted from Illinois State University's Disciplinary Guide for Attorneys)

Q: I have been asked to represent a student facing student conduct violation. How do I establish this with the University?

Students are expected to represent themselves in all student conduct matters, whether or not the student is also facing concurrent criminal charges for the same set of circumstances. Students may have an advisor who may be an attorney, present during all student conduct proceedings, but the role of an attorney is advisory in nature and the attorney may not directly participate in the proceedings. In addition, the Dean of Students Office will correspond at all times directly with the student, and not through any third party. A third party, such as an attorney, may receive copies of correspondence if the student signs a waiver to this affect. The only consideration for exception will be made when a student accepts responsibility for misconduct and a concurrent criminal case is in process.

Q: My client is charged with a crime off-campus. Can I get the proceedings delayed until the criminal matter is resolved?

The student conduct process is educational in nature and not attempting to determine whether or not a student has violated the law; the University is trying to determine whether or not a student violated University rules and regulations. As such, the goals and the means of the criminal justice process and the student conduct process are dissimilar. No delays are given to students to accommodate their interests in the criminal process. Delays may only be granted when it is established to the satisfaction of Dean's Office that such a delay is in the interest of the University.

Q: Isn't the student conduct process double-jeopardy for someone also facing criminal charges?

No. "Double jeopardy" is a concept that applies solely to criminal proceedings. Criminal proceedings do not in any way offer exemptions from civil or administrative proceedings. The university does apply the concept of "dual jurisdiction" which allows student misconduct to be addressed based upon the relationship established between the student and the university.

Q: Why isn't my client being afforded the same protection that he or she would receive in the criminal process?

The courts have long recognized the differing interests of the University community from that of the criminal justice process. Since 1961, a significant body of case law has been established that outlines basic expectations of fairness in any student disciplinary process. Kutztown University of Pennsylvania provides due process protections that are outlined in the student handbook.

Q: What happens if my client refused to participate in the student conduct process?

The process will continue with or without the student's involvement and a decision will be reached based on the information that is provided to the designated hearing authority. The student may not use his or his refusal to participate as a later ground for appealing a decision.

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

No. All student conduct matters are subject to lawful subpoena. This includes audio recordings, written statements and records, and personal recollections. The University may contact the appropriate law enforcement agency anytime violations of law become evident through the student conduct process.

Q: The incident took place off campus. What interest does the University have?

Kutztown University of Pennsylvania reserves the right to discipline students for acts that take place off campus as outlined in Article III (Jurisdiction) of the *Student Code of Conduct* as published in the student handbook. The University will determine on a case by case basis whether or not an individual's alleged conduct is of substantial interest to the University community; arrests, including summary citations, qualify as having a substantial university interest.

Q: What is the "burden of proof" in the student conduct process?

Decisions with respect to student responsibility for alleged actions are made based on a preponderance of the evidence; that is, the hearing authority will determine what is "more likely than not" to have taken place.

"...The attempted analogy of student discipline to criminal proceedings against juveniles and adults is not sound. The nature and proceedings of the (campus) disciplinary process...should not be required to conform to federal processes of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community. By a judicial mandate to impose on the academic community and student discipline the intricate, time-consuming, sophisticated procedures, rules, and safeguards of criminal law would frustrate the teaching process and render the institutional control impotent..."

44 F.R.D. (142) (W.D. Mo.) General Order on Judicial Standards of Procedures and Substance of Student Discipline in Tax-Supported Institutions of Education