

Appendix R

Background of the Campus Judicial Process

How is the campus judicial process different from a criminal charge/court prosecution?

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 judicial 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 are entitled to an advisor, but that advisor may not represent that student. Students are expected to speak for themselves at all times during the process, and any advisor disregarding these rules may be asked to leave any meeting or hearing. 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.

Summary of Differences between Criminal Processes and Campus Disciplinary Processes
Courts have clarified the differences between a criminal proceeding and a campus disciplinary system, as well as setting the minimal procedural safeguards necessary in a campus proceeding. Some of the more significant differences are listed below:

Burden of Proof

Criminal: Beyond a reasonable doubt

Campus: Preponderance of evidence

Evidentiary Standard

Criminal: Strict rules of evidence apply

Campus: Allows all reasonable evidence, including hearsay

Right to Counsel

Criminal: Yes

Campus: Limited to when student is charged concurrently with a crime. Can restrict attorney's role to advisory only.

Basis of Charge Against Student

Criminal: Violation of the law

Campus: Violation of the Student Code of Conduct

Disciplinary Philosophy

Criminal: Penalties are designed to punish.

Campus: Sanctions are designed to both punish and educate.

Outcome of Process

Criminal: Found to be guilty or innocent

Campus: Found to be in violation or not in violation of the student conduct code

Right of Appeal

Criminal: System provides for appeals

Campus: An appeal process is recommended, but is not required

Double Jeopardy

Criminal: Cannot be tried twice criminally for the same offense

Campus: Does not apply since campus judicial processes are administrative, not criminal.