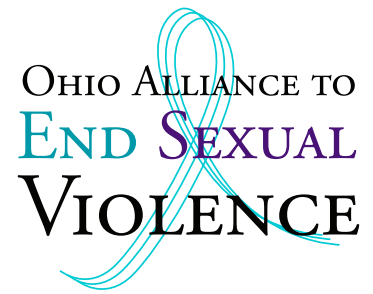


THE CAMPUS DISCIPLINARY PROCESS IS DIFFERENT THAN CRIMINAL JUSTICE PROCEEDINGS:

Using the Correct Terminology Matters



Why is it important to understand the differences?

There is a lot of confusion in the media, by the public, and often within institutions of higher learning (campuses) about the differences between its own conduct disciplinary process and what happens in the court of law. This confusion is evident when you hear someone say, “he was found guilty by the college of sexual assault” or “she was charged with violating the student code of conduct.” Both those statements contain language associated with the criminal justice system; a system whose goals and processes are very distinct from that of a campus.

It is important to understand the differences and use the correct language so that expectations about the campus process and outcomes are accurate. For campuses, this is imperative when communicating with students, parents, faculty, and the extended community about response protocols to acts that compromise the overall campus’ health and well-being.¹ This document was developed to assist Ohio’s campuses in that endeavor. It includes a brief and basic overview of the goals of the campus disciplinary process and a comparison chart with the criminal justice system.

THE CAMPUS PROCESS

Every campus has protocols and policies to help guide student and faculty behavior, often referred to as codes of conduct. The rules serve as standards for the campus to “maintain and strengthen the ethical climate and to promote academic integrity.”² Campus rules of conduct cover all types of behaviors, including alcohol and drug consumption, hazing and bullying, invasion of privacy, cheating and plagiarizing, theft or damaging property, and the commission of gender-based violence.

The mechanisms used to determine if a complaint rises to the level of a violation of the code of conduct and the corresponding terminology, vary widely across Ohio campuses. However, the underlying philosophy supporting the disciplinary process is similar. The goal of campus proceedings is to safeguard the educational environment. This means to maintain a community where everyone has the opportunity to reach their educational goals without undue interference. The disciplinary process also provides a learning opportunity for the individual facing a conduct complaint. Campuses want to help respondents understand the consequences and impact of their behavior and redress any harm caused by the violation to affected individuals and the larger campus community.

Campuses protecting their communities from conduct that runs contrary to their mission is not a new concept. In fact, it has been occurring since the 1800’s.³ Over the years, the process has been refined to guarantee that both complainants and respondents are receiving “due process.”⁴ Due process ensures that proceedings are fair, prompt, and impartial. Specifically, a person must be notified in writing, in advance of any determination or hearing, that a complaint has been filed alleging that s/he has violated the code of conduct. The notice should provide specific information about the allegations and the respondent should be given time to examine the complaint and any supporting information. The respondent must be provided time to respond to the complaint, including an opportunity to explain his/her version of the events to an unbiased decision-maker.⁵ If a respondent is found responsible, sanctions are tailored to the particular respondent based on a variety of factors.

A respondent may also be involved in the criminal justice system if an investigation and prosecution is pursued by local law enforcement.⁶ These processes are not mutually-exclusive⁷ and ideally, one process does not affect the other.⁸

See the other side for Comparison Chart: Campus vs. Criminal Proceedings.

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- 1 Campuses are encouraged to share this information with their response partners so that there is a consistent understanding of the campus response to gender-based violence.
- 2 The Student Conduct Process: A Guide for Parents, Association for Student Judicial Affairs (2006) at http://www.northeastern.edu/osccr/pdfs/Resources/asja_student_conduct.pdf.
- 3 *Id.*
- 4 For more information about due process and creating response protocols to gender-based violence, see Transforming Ohio Campuses: A Toolkit for Implementing the Changing Campus Culture Initiative, Ohio Alliance to End Sexual Violence (2016) at http://www.oaesv.org/wp-content/uploads/2016/07/CampusToolkit_200DPI.pdf.
- 5 It is also crucial that any decision-maker be properly trained on the campuses protocols and gender-based violence. When there is an individual complainant, the person also must be given the chance to participate and present their version of the incident.
- 6 For a variety of reasons, respondents are rarely prosecuted. RAINN estimates 13 of 344 reported rapes will be referred to prosecutors. See, The Criminal Justice System: Statistics, RAINN at <https://www.rainn.org/statistics/criminal-justice-system>. A person could have a civil suit, a criminal charge, and a campus conduct violation stemming from the same incident.
- 7 In Title IX complaints, campuses must complete an independent investigation process and make determinations on a complaint regardless of any criminal justice action
- 8 See, *supra*, note 4.

COMPARISON CHART: Campus vs. Criminal Proceedings

	Campus	Criminal
Why an action is initiated – there is an alleged violation of:	Campus Code of Conduct (behavior may be regulated that is not illegal under the law).	Ohio or Federal Law
Philosophy behind the action.	Educational	Punitive/Rehabilitation
What the document is called that outlines the allegations.	Complaint	Indictment/Complaint/Charge (different names dependent upon whether charged with a misdemeanor or felony).
Who initiates the formal action	Usually anyone can file a complaint – faculty member, another student, etc.	Prosecutor
What the person is called that is facing allegations.	Respondent	Defendant
Protections afforded to the person subject to the action.	Due Process ⁹	Constitutional Rights
Standard of Proof	Preponderance of Evidence (usually defined as enough evidence that what is alleged seems more likely to be true than not).	Beyond a Reasonable Doubt (meaning that a reasonable person would not have reasonable doubt that the person committed the offense for which they face charges).
Legal Representation	There is no right to representation. Campuses decide who can assist respondents. ¹⁰ Usually the respondent has the ability to have an advisor of choice (friend, parent, faculty member, or attorney) accompany them throughout the entire process, including a hearing. However, the respondent must speak for him/herself and the advisor of choice does not actively participate in any proceedings.	There is a constitutional right to be represented by an attorney. One will be appointed for a defendant if that person is unable to afford to hire an attorney.
What the proceedings are called where allegations are heard.	Hearing/Panel Review. Typically, campuses will have a hearing for more serious allegations while minor infractions might have some other type of process for reviewing evidence.	Trial
Procedures applied to proceedings.	Informal. Campuses must meet due process standards of being fair, prompt, and impartial. Campuses have discretion about how to hear and review evidence. Most opt for a supportive and non-adversarial environment.	Formal. There are Rules of Evidence and Rules of Criminal Procedure that both the prosecutor and defendant must comply. The judge is present to ensure that these rules are followed.
Findings/Outcomes	Responsible/Not Responsible	Guilty/Not Guilty
The consequence of founded allegations.	Sanction	Sentence
Types of consequences if the allegations are found to be true.	Suspension, expulsion, warnings, letters of apology, educational seminars, probation, removal from residence halls, loss of privileges, etc. ¹¹	Jail/prison, fines, educational classes, mental health and/or substance abuse treatment, probation/parole, etc.
The time it takes to finish the entire process.	Typically 60 days from filing of the complaint, can be longer depending upon circumstances.	From investigation to the conclusion of a trial can vary from months to years. The legal process (after someone has been charged) typically takes 6 months to a year to conclude given continuances and motion hearings.
Appeal	Some campuses provide the ability to appeal.	There is a right to appeal if proper grounds exist.
Aftermath: record of the proceedings/outcomes.	Confidential, with exceptions being dictated by statutes. ¹² Some campuses do make a general notation on a transcript about a conduct violation.	Public record.
Aftermath; future ramifications.	May have a record of disciplinary action at the campus.	Criminal record. Depending upon seriousness can affect constitutional rights – voting, where someone can live, and registration as a sex offender.

9 If there is an individual complainant, that person must also be afforded the same opportunities during the investigation and hearing process – i.e. if that person wants, to review evidence, present a side of the story, and have an advisor of choice if one is allowed.

10 In campus proceedings, unlike criminal where a warrant would be issued if a defendant did not appear in court, parties are not required to participate. A respondent has the right to avail or not avail him/herself of the supports that the college offers. Respondents are encouraged to participate in all aspects of an investigation and hearing process, but it cannot be forced or the lack of participation used against that person, although not having that person's viewpoint can affect outcomes.

11 Private campuses often have greater latitude in their hearing standards, sanctions issued for violations, and types of conduct they can regulate.

12 See, *supra* note 4 at Section 5, *Unpacking Essential C's: Confidentiality*, for more information about public records and FERPA.