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Office of General Counsel

Managing Classroom Conflict

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OVERVIEW

Classroom management issues may raise legal concerns such as:

- Due Process (Academic Evaluation; Student Conduct)
- Educational Malpractice and Avoiding Contract Claims
- Student Speech, Social Media and the First Amendment
- FERPA
- Student Disability Accommodations
- Student Religious Issues

Basic tools and approaches to help avoid complications.

DEALING WITH DISRUPTION

- Classroom disruption: continuum of behavior that persistently or grossly interferes with or obstructs the c/u educational mission, e.g.:
 - Excessive talking or use of personal electronic devices;
 - Late arrival/early departure without consent;
 - Challenging instructor's authority in class;
 - Disrespectful or uncivil responses to others in class;
 - Threats of physical harm.

CLASSROOM DISRUPTION

- Primary responsibility for managing the classroom lies with the faculty
- Faculty may direct students to leave the class or activity for the remainder of the period
- Longer suspensions from a class or activity, or dismissal on disciplinary grounds, require a referral to the administrator (Conduct Process)
- Rules apply regardless of forum (brick and mortar; on-line)

DEALING WITH DISRUPTION: PREVENTION

- Establish clear, reasonable standards of conduct
 - Consistent with board/system/campus policies and procedures;
 - Appropriate flexibility
 - Don't try to list every possible infraction
- Communicate standards
 - Syllabus
 - Discuss at beginning of term, aiming at achieving buy-in
- Model appropriate conduct

ANTICIPATE AND PLAN FOR MANAGING CONFLICT

- Conflict sometimes happens in the “marketplace of ideas”
 - Controversial topics; strongly held positions
- Board Policy 3.1 Part 2. Freedom of Expression. Individual students and student organizations shall be free to examine and to discuss all questions of interest to them and to express opinions publicly and privately. They shall be free to support causes by orderly means that do not *substantially disrupt* the regular and essential operation of the institution. Students shall be free to take *reasoned exception* to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.
- Faculty may appropriately manage discussion with rules
 - Reasonably related to pedagogical concerns
 - Related to teaching/learning and not pretext for viewpoint discrimination

ENFORCE REASONABLE STANDARDS

- Hold students responsible for actions
 - Fair, consistent enforcement
 - Model respectful treatment, opportunity to respond
- If disruptive behavior occurs: respond – don't let it progress
 - Progressive approach may be appropriate:
 - General reminders
 - Private conversation after class
 - Academic consequences
 - Removal from class for day
 - Notify dean, meet with student

MEETING WITH STUDENT

- May include staff to take notes, defuse situation
 - Try to meet ASAP
 - Explain why conduct is inappropriate
 - Give student opportunity to respond
 - Explain potential consequences of continued disruption
 - Provide information about resources, as appropriate, e.g.:
 - Counseling office
 - Disability services
- Don't condition continued participation on attendance.
Don't take on unassigned roles or promise absolute confidentiality.

SHARING INFORMATION

- FERPA/MGDPA permit disclosure of information from education records to “school officials” where there is a “legitimate educational interest;”
- Disclosure to any appropriate party if needed to address “articulable and significant threat” to health or safety of student or others
 - Must create and maintain records of disclosures
- Observations/information not in education record not controlled by FERPA/MGDPA.

SERIOUS DISRUPTION

- If safety is concern, contact campus security or 9-1-1
- Report potential health/safety concerns to appropriate administrator
 - Summary suspension?
- Refer other Code of Conduct violations as appropriate
 - Important to use established procedures



ADDITIONAL MEASURES

- Behavioral intervention teams
 - Goal of sharing information within campus community
 - Getting information to professionals who can appropriately use
- Emergency response plans

DUE PROCESS

- “No State shall deprive any person of life, liberty, or property without due process of law.” U.S. Constitution, Amend. 14.
- *Goss v. Lopez*, 95 S.Ct. 729 (1975) (once student is admitted, student has a protected liberty or property interest in continuing in attendance at a public college/university).



BASIC DUE PROCESS

- Government may not deprive a person of life, liberty, or property without due process of law
 - Notice
 - Opportunity to be Heard
 - Flexible Concept – Balance seriousness of the deprivation with the cost/benefit of particular processes

DUE PROCESS: BALANCING INTERESTS

- College's interests
 - Maintain order and a safe learning environment
 - Uphold High Academic Standards
 - Efficiency
- Student's interests
 - Be excluded only when truly deserved
 - Avoiding unfairness and mistakes

DUE PROCESS

Behavioral -- Student Code of Conduct

Academic – Grade Appeal Policy

Academic Integrity Policy

Course and Program Rules

Satisfactory Academic Progress Policy



HOW MUCH PROCESS IS DUE?

- Academic
 - Substantially Less Process = Deference to Academic Decisions
- Behavioral
 - More Process = Conduct Code
 - Investigation and informal meeting
 - J-Board
 - Appeal
 - Chapter 14

ACADEMIC DUE PROCESS

- Notice
- Reasonable academic decision (non-arbitrary, non-capricious)
- Courts defer to academic judgment
- Less formal appeal



PROFESSIONAL AND TECHNICAL PROGRAMS

- Academic or Behavioral?
 - Characteristics
 - Curriculum includes professional norms, standards, ethics
 - Clinicals, internships
- Courts generally treat the practical aspects of professional and technical education as academic
- But: must be able to articulate a non-arbitrary, non-capricious, reasonable academic decision

SUMMARY SUSPENSIONS

- Summary = Interim
- Temporary removal pending full conduct process
- Threat to safety and well-being; see System Procedure 3.6.1 Part 5
 - To greatest extent possible must provide advance notice and opportunity to respond
- Hearing within 9 days
- Move forward with conduct due process

TOOLS AVAILABLE THROUGH THE OFFICE OF GENERAL COUNSEL

- Sample Student Conduct Code
- Sample Academic Integrity Policy
- OGC Memorandum: Off-Campus Jurisdiction
- OGC Webinar: Student Conduct Primer
- OGC Webinar: Avoiding Student Legal Claims
- Sample “Classroom Management” policy language
- Sample Suspension Letter
- Sample “No Trespass” Letter

<http://www.ogc.mnscu.edu/studentaffairs/index.html>

WITHDRAWAL POLICIES

Leave policies may be additional tools to deal with students who could benefit

- Board Policy 5.12 gives president discretion to waive tuition for “significant personal circumstances” and medical reasons
- Involuntary leave policies are potentially available but must be carefully drafted to be compliant with ADAA “direct threat” standard
 - Consult with OGC or AGO

EDUCATIONAL MALPRACTICE

- Legal challenge to general quality of an education
- Not generally recognized. *Alsides v. Brown Institute*, 592 N.W.2d 468 (Minn. Ct. App. 1999) (rejecting claims that involve an inquiry into the “nuances of educational processes and theories”)
- Judicial deference given to academic decisions

EDUCATIONAL MALPRACTICE

- But: Courts have found university materials to contain promises to students or to constitute part of a contract with students.
 - Promotional Materials
 - Admission Materials
 - Catalogs
 - Web pages
 - Handbooks
 - Syllabi

AVOIDING LITIGATION

- Accuracy in Written Materials
- Listen to student complaints and solve problems as they arise
- Disclaimers (“These materials are subject to change at any time”)
- Place particular focus on the start-up of new programs



SOCIAL MEDIA AND THE FIRST AMENDMENT

- Interaction between the free speech rights of students and the reasonable program rules of the institution
- Scope/Jurisdiction of the rules
- KEY – Start with content, not format
 - What is the policy violation
 - Jurisdiction
- System Procedure 5.22.1 Acceptable Use of Computers and Information Technology Resources

SOCIAL MEDIA AND THE FIRST AMENDMENT

- *Tatro v. University of Minnesota*, 816 N.W.2d 509 (Minn. 2012)
- *Yoder v. University of Louisville*, 2013 WL 1976515 (6th Cir. May 15, 2013), cert denied, 134 S. Ct. 790 (2013)



TATRO, HOLDING

- “[W]e hold that a university does not violate the free speech rights of a student enrolled in a professional program when the university imposes sanctions for Facebook posts that violate academic program rules that are narrowly tailored and directly related to established professional conduct standards.”

SERVING STUDENTS WITH DISABILITIES

- No different treatment – all students subject to same reasonable conduct requirements
- Access through Reasonable Accommodation



“KNOWN, QUALIFIED, DISABLED”

- Disability
 - Physical or Mental Impairment
 - Substantially or Materially Limits
 - Major Life Activity
- Qualified
 - With or Without Accommodation can meet the Essential Requirements (No Fundamental Alteration)
 - Not a Threat to Self or others
- Known
 - Adequate Substantiation of Disability

REASONABLE ACCOMMODATIONS

- If known, qualified, disabled
- Interactive process to determine reasonable accommodation
 - Campus Disabilities Services Office generally involved
- Behavioral Standards Apply to All Students
 - Disability is not an excuse to violate the conduct code



RELIGION ON CAMPUS: STUDENT ISSUES

- The First Amendment of the United States Constitution provides that Congress shall make no law respecting an establishment of religion; or prohibiting the free exercise thereof.
- Titles VI and IX of the Civil Rights Act prohibit discrimination based on national origin and sex
- Minnesota Human Rights Act
 - Creed and religion are protected classes
- Board Policy 1B.1
 - Creed and religion are protected classes

RELIGIOUS ACCOMMODATIONS FOR STUDENTS

- Laws are not the same for students as for employees (employees have more specific protection under federal law)
- No reported cases interpreting the religion clause in the Minnesota Human Rights Act
- Not clear degree to which courts would require college/university to provide religious accommodation to students under the MHRA

RELIGIOUS ACCOMMODATIONS FOR STUDENTS

When should they be provided by college/university?

- College/university may choose to make adjustments for student religious observance in recognition of student relations, sense of fairness, accommodating diversity, limiting potential liability if the accommodation does not violate the Establishment Clause.
 - Does student have bona fide belief that conflicts with an educational policy or requirements?
 - Will student suffer some adverse action for failing to comply with the conflicting policy or requirement?

RELIGIOUS ACCOMMODATIONS FOR STUDENTS

- Would an accommodation be an undue hardship for the college/university; or
- Would an accommodation materially alter the academic requirements of the educational program?
- Are other students allowed to bypass the policy or requirement for nonreligious reasons? (E.g., missing class because of death in the family)



ABSENCE FROM CLASS FOR PRAYER

- Review college/university/policies and class syllabus on excused absences
- Same standards should be applied to requests for absence for prayer as for other absences
- Different standards than accommodation for disability; right to be excused for religious purposes may be limited depending on policies, class demands, etc.

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