



# ADVISOR GUIDE TO THE STUDENT CONDUCT PROCESS



The student conduct process is designed to address the student's relationship to the institution and its behavioral standards and policies. The student conduct process focuses on assessing the impacts of an individual's behavior on the learning environment of others and facilitating student growth, learning, and development.

**Q: Where can I find a complete copy of the Student Nonacademic Disciplinary Procedures?**

A: A completed copy of student Nonacademic Disciplinary Procedures can be found in the Student Handbook and in Wisconsin Legislature.

**Q: I have been asked to represent a student in the disciplinary process. How do I establish this with the University?**

A: In order to communicate information contained in a student disciplinary record to a third party, the Student Life Office, consistent with the Family Education Rights and Privacy Act, must receive from the student a completed confidentiality waiver form available in our office. It is the practice of our office to correspond at all times directly with the student. It is the responsibility of the student to relay all information to their advisor.

**Q: Are attorneys permitted to attend meetings and hearings as part of the process?**

A: The student has the right to be accompanied to meetings and hearings by an advisor, who may be an attorney.

**Q: What is the role of an advisor the conduct process?**

**A: Investigating Officer Meetings**

In meetings with the investigating officer, the advisor may not speak on behalf of the student but may counsel the student.

**Hearings**

In most cases, the advisor may counsel the respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the respondent except at the discretion of the hearing examiner or committee.

In cases where a student is facing suspension or expulsion, or where the respondent has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the respondent.

In accordance with the educational purposes of the hearing, the respondent is expected to respond on his/her/their own behalf to questions asked of him/her/them during the hearing.

Advisors may not: delay, disrupt, or interfere with proceedings; present information not relevant to the issues being discussed at the hearing; disrespect others in the hearing by badgering or harassing the other student(s).

**Q: Can the disciplinary process proceed if the student is no longer enrolled at the University?**

A: UWS Ch. 17.02(14) defines a student as any person who is registered for study for the academic period *in which* the misconduct occurred, or between academic periods, for continuing students. In other words, disciplinary procedures may proceed against a non-enrolled student if the misconduct occurred while the student was enrolled.

**Q: Can the University assert jurisdiction over behavior that occurs off-campus?**

A: The University does have the authority according to UWS Ch. 17.08, to assert jurisdiction over off-campus behavior.

**Q: Does the Office of Student Conduct address all off-campus violations?**

A: No, the Office of Student Conduct only handles off-campus violations that interfere with the mission of the university by impacting the health and safety of students and the surrounding community.

**Q: The student is charged with a crime off-campus. Will the proceedings be delayed until the criminal matter is resolved?**

A: Our disciplinary procedures are intended to further the educational mission at UW La Crosse. Therefore, pending criminal proceedings will not ordinarily serve as a basis to postpone the student disciplinary process. Our process only attempts to determine if a student violated University rules and regulations, not criminal law.

**Q: Doesn't addressing off-campus violations involve double jeopardy?**

A: Some violations of the UWS are also violations of federal, state, or local law. Students may face both criminal charges and University disciplinary action. This does not constitute double jeopardy. Double jeopardy is defined as a person being tried again for the same offense after being acquitted.

(<http://definitions.uslegal.com/d/double-jeopardy/>).

The Fifth Amendment double jeopardy clause in the constitution applies only to successive criminal prosecutions for the same offense.

UWL's disciplinary process is not a criminal process. In other words, its process is separate from, and does not involve, legal proceedings. Consequently, holding students accountable for off-campus violations of the Student Handbook is not considered double jeopardy.

**Q: What if the student chooses to participate in the process? Is he/she/they granted any immunity in the criminal process?**

A: All student disciplinary matters are subject to lawful subpoena. This includes tape recordings, written statements and records, and personal recollections.

**Q: What happens if the student refuses to participate in the student disciplinary process?**

A: If the student does not respond to the investigating officer or fails to appear for a hearing, the investigating officer or hearing committee may proceed to make a determination on the basis of the available information.

**Q: What is the standard of proof in the disciplinary process?**

A: A finding of nonacademic misconduct is based on one of the following: (1) *Clear and convincing evidence*, when the sanction to be imposed is suspension or expulsion from the University, or enrollment restrictions are placed on a course or program; (2) a *preponderance* of the evidence, when the sanction is anything other than those listed in (1); and (3) a *preponderance* of the evidence, regardless of the sanction to be imposed, in all cases of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

**Q: What protections and rules of evidence apply to the disciplinary process?**

A: Courts have long recognized the differing interests of the University community from that of the criminal justice process. Although there are basic concepts of fairness that apply to student disciplinary proceedings,

the student disciplinary process serves administrative and educational functions relating to the mission of the University. Therefore, many of the intricate rules and processes found in a court system, whether criminal or civil procedure, are not applicable to University disciplinary procedures. Any information that has reasonable value in providing the facts may be used in the process.

**Q: Why would the university proceed with a sexual assault case prior to the criminal trial?**

A: The U.S. Department of Education Office of Civil Rights (OCR) guidelines require a "prompt" response to allegations of sexual harassment—including sexual assault. A university hearing need not be postponed in order to observe the Fifth Amendment rights of the student in subsequent criminal cases—students may exercise their right to remain silent.

**Q: What resources are available to learn more about the law as it relates to campus disciplinary proceedings?**

A: Bickel, R. & Lake, P. (1999). *The rights and responsibilities of the modern university: Who assumes the risks of college life?* Durham, NC: Carolina Academic Press.

Kaplin, W., & Lee, B. (2007). *The law of higher education: Student version* (5<sup>th</sup> ed.). San Francisco, CA: Jossey-Bass.

Russo, C., & Reutter, E. (2012). *Reutter's The law of public education* (8<sup>th</sup> ed., University casebook series). New York, NY: Foundation Press/Thomson/West.

A review of the following cases may be useful:

Dixon v. Alabama State Board of Education (1961, 5th Circuit)

Esteban v. Central Missouri State College (1969, 8th Circuit)

Gabrilowitz v. Newman (1978, 5th Circuit)

Goss v. Lopez (1975, U.S. Supreme Court)

Krasnow v. Virginia Polytechnic Institute (1977, 4th Circuit)

Osteen v. Henley (1993, 7th Circuit)

Soglin v. Kauffman (1969, 7th Circuit) Paine v. Board of Regents of the University of Texas System (1973, 5th Circuit)