

#### 3359-41-04 Student procedural rights.

- (A) Educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of conduct for the students who attend them and through the regulations of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, the case shall be heard by the associate vice president and dean of students/student life or his/her agent, university hearing board, or ~~other recognized university judicial body such as the student bar association honor code court~~university appeals board. In every instance, proper procedural safeguards shall be observed to protect the student from the unfair imposition of serious ~~penalties~~sanctions.
- (B) The following procedural rights shall ~~obtain in~~pertain to all cases for which the ~~penalty~~sanction of formal disciplinary probation, suspension, or dismissal may be prescribed.
- (1) Proceedings are instituted only for violation of university rules and regulations established under rule 3359-41-02 of the Administrative Code and published in a means accessible to students. Penalties imposed for a violation must bear reasonable relationship to the violation. ~~Penalties imposed for a violation must bear reasonable relation to the violation.~~
- (2) Investigation of alleged student misconduct is conducted as described under rule 3359-41-03 of the Administrative Code.
- (3) Sanctions imposed for a violation must bear a reasonable relationship to the violation. Possible sanctions include, but are not limited to, required attendance at workshops, educational sanctions, loss of computer privileges, failing grades for academic dishonesty, disciplinary probation, removal from the residence halls, strict disciplinary probation, suspension, dismissal and other sanctions appropriate to the particular case. Any violation motivated by the consideration of race, ethnicity, sex, color, religion, ancestry, national origin, age, disability, veteran status, or sexual orientation may subject the student to the imposition of a sanction more severe than would be imposed in the absence of such motivation.
- ~~(2)~~(4) University officials have the right to enter property owned, leased, or operated by the university or housing occupied or used by recognized university groups for purposes of inspecting for cleanliness, orderliness, safety, and maintenance. However, in cases involving suspicion of misconduct as defined in rule 3359-41-02 of the Administrative Code, except under extreme emergency circumstances, student premises and possessions shall not be searched unless appropriate authorization has been secured and probable cause shown to the designated university authority. For premises such as residence halls controlled by the

university, application shall be made to a designated university authority before a search can be made. The application shall specify the reasons for the search and the objects or information being sought. The student should be present, if possible, during the search.

~~(3)~~(5) University officials detecting or arresting students in the course of violation of university rules or regulations or public laws shall inform such students of their rights. In conducting investigations, university officials shall respect the right of the individual to refuse to testify against himself/herself.

~~(4)~~(6) Pending action on the charges, the status of the student shall not be altered or his/her right to be present on campus and to attend classes suspended except for reasons relating to his/her physical or emotional safety and well-being or except that the president may suspend immediately:

~~(i)~~(a) When the offense is one or more of the following:

~~(a)~~(i) Detaining, holding, intimidating, injuring, or threatening to injure or coerce by bodily harm any person lawfully upon property owned, leased or operated by the university;

~~(b)~~(ii) Felonies or misdemeanors under the Revised Code of the state of Ohio and ordinances of the city of Akron;

~~(c)~~(iii) Unauthorized entry into or use of university facilities;

~~(d)~~(iv) Active or passive, willful or deliberate obstruction, or occupation of building entrances, walkways, stairways, passageways, approaches, classrooms, offices, parking areas, auxiliary rooms (power, telephone) or any other space that impedes implementation of authorized programs and functions of the university;

~~(e)~~(v) Failure to comply with directions of university administrative officers, faculty directors and university police or any other governmental law enforcement officers acting in the performance of their duties.

~~(ii)~~(b) When in the judgment of the president the safety and well-being of students, faculty, or staff or university property is endangered, ~~it shall then be the duty of the vice-president for student affairs of the university to immediately convene the hearing board or provide the suspended student with a hearing as soon as practicable.~~

- ~~(5)~~(7) Prior to the hearing, the associate vice president and dean of students or his/her representative agent shall inform the student in writing of the reasons for the proposed disciplinary action, with specific information and in sufficient time to ensure the student of opportunity to prepare for the hearing.
- ~~(6)~~(8) The student ~~appearing before the university hearing board~~ shall have the right to have an advisor, of his/her choice, present during the hearing, under the following guidelines:

#### **HEARING BOARD GUIDELINES FOR ADVISORS**

An advisor may be present to protect the rights of the student charged with misconduct, in anticipation of a criminal trial. Such presence shall not be for the purpose of gathering information for use before or during a criminal trial.

An advisor may be present with the charged student in the hearing room. However, the student shall speak and act on his—~~or~~—/her own behalf. Questions asked or testimony given by the charged student shall be limited to elements directly related to the alleged violations.

Should the advisor desire to object to the proceedings or any other issue relevant thereto, the advisor may raise a continuing objection once that will be noted by the presiding member.

The charged student, during the course of the hearing, may request a recess. Such requests may be granted by the presiding member if, in his/her opinion, good cause exists therefor. The presiding member of the hearing board will assure an orderly hearing process in order to observe fairness and due process. The presiding member is authorized to exclude persons from the hearing ~~board~~ who are disruptive, or the presiding member may postpone the hearing due to such disruption.

The presiding member and, in the case of a hearing board, ~~other~~ members of the hearing board may request advice from a university attorney when necessary; ~~or, upon request of the presiding member.~~ A university attorney, if reasonably available, may be present during the hearing ~~to advise the hearing board.~~ However, the role of such university attorney shall be limited as provided for herein regarding the advisor of an accused.

- (9) The hearing will follow the procedures described under rule 3359-41-05 of the Administrative Code.
- ~~(7)~~ (a) ~~The dean of students or his/her agent shall provide for a hearing before a university hearing board consisting of two faculty~~

~~members and two students, with a like number of alternates therefor, unless the student, if an adult, or the student, if a minor, and his/her parents or guardian, file a written request for a hearing by the dean of students or his/her agent. A hearing by the dean of students or his/her agent may be granted only:~~

- ~~(i) — When the student has pleaded guilty to the charges, and~~
- ~~(ii) — When based on the evidence presented, a university rule or regulation was violated.~~
- ~~(b) — The dean of students or his/her agent shall conduct the hearing as a counseling-type interview in which time the immediate welfare of the accused and the welfare of the university are preeminent and the rehabilitation of the accused is also of vital concern. The dean of students or his/her agent shall then implement the disciplinary action that is appropriate to the circumstances. If the accused student refuses to go before the university hearing board, or the dean of students or his/her agent, his/her may be tried in absentia and penalty imposed in accordance with the findings.~~
- ~~(8) — A student appearing before the university hearing board may plead guilty. The student also has the right to have his/her innocence or guilt determined by the university hearing board. In the latter case, the burden of proof rests on the university. To provide for a fair and impartial hearing, the following elements shall pertain.~~
  - ~~(a) — No member of the university hearing board shall be a party to prior investigation of the case against the student, nor should he/she be placed in a position of developing or presenting the case. If any member is unavoidably involved, he/she must be disqualified.~~
  - ~~(b) — The presiding member of the board shall conduct the hearings, and shall be responsible for providing a tape recording of the hearing and supervising preparation of a summary.~~
  - ~~(c) — The presiding member of the board shall advise the student of the charge by reading the notice of hearing to his/her, after which he/she shall inform the student that he/she may deny or admit, totally or in part, the charges levied against his/her.~~

~~A complete admission of guilt would require no further proceedings, except that any student should be offered the opportunity to present evidence of character, scholarship, or previous record of good conduct bearing only upon the extent of the penalty to be assessed by the university hearing board.~~

- ~~(d) — A denial or partial denial of the charges by the accused student shall require the presentation of evidence supporting the charges. This presentation of the evidence shall be made by the person designated by the vice president for student affairs to present evidence and information. Such evidence may consist of oral testimony made under oath and the introduction of any physical exhibits necessary to support the charge. The student shall be given an opportunity to hear and question adverse witnesses as well as present evidence in his/her own defense. The person designated by the president to represent the university's position shall have the right to question all witnesses for the defense, and members of the hearing board shall have the right to ask questions of all witnesses. The presiding member of the board shall exercise normal discretionary controls, prevent abusiveness, require relevance and ensure the expeditious pursuit of information. A standard of substantial evidence shall apply to all hearings. ("Substantial evidence" is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred.)~~
- ~~(e) — The report of the university hearing board shall consist of a simple statement covering the chronological sequence of the hearing procedure, together with a summary of evidence presented to the university hearing board, and the conclusions reached by it on the basis of such evidence, and finally, its recommendation as to the finding of guilt or innocence, penalty or disposition of the case. The report shall be signed by all members of the university hearing board, and any member may append to the report his/her dissent or nonconcurrence with the majority. The presiding member shall transmit the findings and recommendations of the university hearing board to the dean of students or his/her agent. The dean of students or his/her agent shall review the report, make a recommendation as to the disposition of the matter and forward a recommendation to the vice president for student affairs. The vice president shall review the matter and make a recommendation as to disposition to the president. After receipt of the report and recommendations as to disposition of the matter, the president shall review the report and recommendations and make a determination as to the disposition of the matter. The president shall transmit his/her decision to the dean of students, who shall then notify the student of the decision.~~
- ~~(f) — The decision of the president shall be final.~~