

Student Conduct and Community Responsibilities
A Unit of the Dean of Students Office
Illinois State University

FAQs and Resources for Attorneys

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

Students are expected to represent themselves in all student conduct matters with the University. Students have a right to an advisor of their choosing, which may be an attorney. However, no advisors (including attorneys) are permitted to participate on behalf of the student in our process, nor are they to act on behalf of the student. Student Conduct and Community Responsibilities (SCCR) communicates directly with the student, and not through any third party. A third party, such as an attorney, may receive copies of correspondence if the student signs a waiver as much.

Q: My client is charged with a crime off-campus. Can the University proceedings be delayed until the criminal matter is resolved?

The student conduct process at ISU does not attempt to determine if a student has violated the law; the University is trying to determine if a student violated University rules and regulations. As such, the methods and goals of the criminal justice process and the student conduct process are dissimilar.

No delays are given to students to accommodate their interests in the criminal process. Delays may only be granted when it is established to the satisfaction of the Associate Dean in SCCR that such a delay is in the best interest of the University.

Q: Isn't the student conduct process double jeopardy for someone also facing criminal charges?

No. "Double jeopardy" is a concept that applies solely to criminal proceedings. Criminal proceedings do not in any way offer exemptions from civil or administrative proceedings.

Q: Why isn't my client being afforded the same protections they would receive in the criminal process?

The courts have long recognized the differing interests of the University community from those of the criminal justice process. Since 1961, a significant body of case law has been established that outlines basic expectations of fairness in any student disciplinary process (see resources section below). Illinois State University's due process protections meet or exceed those required by the courts.

Q: What will happen if my client refuses to participate in the student conduct process?

The process will continue with or without the student's involvement, and a decision will be reached based on the information that is provided to the hearing panel or administrator. The student may not use their refusal to participate as grounds for appealing a decision.

Q: If my client chooses to participate in the process, are they granted any immunity in the criminal process?

No. All student conduct matters are subject to lawful subpoena. This includes digital recordings, written statements and records, and personal recollections. The University may be required to contact the appropriate law enforcement agency when violations of the law become evident through the student conduct process.

Q: The incident took place off campus. What interest does the University have?

Students at ISU are part of various communities that extend outside the physical limits of campus property. Through the *Code* ISU has established the jurisdiction to address off-campus behaviors. The Vice President for Student Affairs (or a designee) has the final say if something is within the University's jurisdiction.

Q: What is the burden of proof in the student conduct process?

Decisions with respect to student responsibility for alleged actions are made based on a preponderance of the information; that is, the hearing panel or administrator will determine if it is "more likely than not" a violation occurred.

Q: As an attorney, why do I need to comply with the University's rules and procedures?

As an attorney for the student, it is your responsibility to cooperate fully with the student conduct process and to abide by all expectations established by the Illinois State Bar Association with respect to the autonomy of administrative processes. Specifically, the *2010 Illinois Rules of Professional Conduct, Rule 3.9: Advocate in Nonadjudicative Proceedings* states, in part, "A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure." (Rule 3.9, Comment [1], 2010). This indicates that attorneys are to abide by all rules of University student conduct proceedings. Any attorney violating these standards will be reported to the Illinois State Bar Association.

Q: Are there resources available for me to learn more about the law as it relates to campus conduct proceedings?

We recommend the following resources for attorneys:

The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making (6th ed.) by William A. Kaplin, Barbara A. Lee, Neal H. Hutchens, and Jacob H. Rooksby published by Jossey-Bass Publications, (2020).

The Rights and Responsibilities of the Modern University: The Rise of the Facilitator University (2nd ed.) by Peter F. Lake, published by Carolina Academic Press, (2013).

"Navigating Past the 'Spirit of Insubordination': A Twenty-First Century Model Student Conduct Code with A Model Hearing Script," by E. Stoner and J.W. Lowery 31 J. Coll. & Univ. Law (2004).

In addition, a review of the following significant cases may be useful:

- *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961).
- *Esteban v. Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969).

- *Soglin v. Kauffman*, 418 F.2d 163 (7th Cir. 1969).
- *Paine v. Board of Regents of the University of Texas System*, 474 F.2d 1397 (5th Cir. 1973).
- *Goss v. Lopez*, 419 U.S. 565 (1975).
- *Krasnow v. Virginia Polytechnic Institute*, 551 F.2d 591 (4th Cir. 1977).
- *Gabrilowitz v. Newman*, 582 F.2d 100 (1st Cir. 1978).
- *Osteen v. Henley*, 13 F.3d 221 (7th Cir. 1993).

A final note:

The *General Order on Judicial Standards of Procedures and Substance of Student Discipline in Tax Supported Institutions of Education* (44F.R.D. (142) (W.D. Mo.)) states: "...the attempted analogy of student discipline to criminal proceedings against juveniles and adults is not sound. The nature and proceedings of the (campus) disciplinary process ... should not be required to conform to federal processes of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community. By a judicial mandate to impose on the academic community and student discipline the intricate, time-consuming, sophisticated procedures, rules, and safeguards of criminal law would frustrate the teaching process and render the institutional control impotent..."