



MAGNA ONLINE SEMINARS

PowerPoint Handouts

Managing Student Discipline Issues Legally and Effectively

Tuesday, December 6, 2011

Presented by:

Rob Jenkins

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Best known for his popular “Two-Year Track” columns in *The Chronicle of Higher Education*, **Rob Jenkins** has earned a national reputation as an advocate for community colleges and as an authority on two-year college issues. During his 23-year career—all spent at two-year schools—he has served as a part-time faculty member, a full-time faculty member, a department chair, an academic dean, and a program director. He is currently associate professor of English and director of The Writers Institute at Georgia Perimeter College, a large, multi-campus, urban/suburban community college in Atlanta.

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Our presenters



Deborah Gonzalez, Esq.
Founder of Law2sm, LLC, a new legal consulting firm focusing on helping its clients navigate the legal issues relating to the new digital and social media world.



Rob Jenkins
Chronicle of Higher Education columnist, author of *Building a Career in America's Community Colleges*, and Associate Professor of English at Georgia Perimeter College.

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Disclaimer

This presentation is for educational purposes only and does not constitute legal advice. It is recommended that you seek legal counsel for specific matters.

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Overview

- Introduction: Classroom management issues we will cover
- Difference between academic and disciplinary Issues
- Who vs. what of classroom disruptions

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Overview

1. Understanding Student & Faculty Rights
2. The Syllabus
3. The "Talk" Setting Expectations
4. What to Do When it Happens

6

Overview

5. Disciplinary Hearings

6. The Aftermath

Q&A

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Classroom Management Issues We Will Cover

Student conduct in the classroom.

8

Difference Between Academic and Disciplinary

Academic = related to the performance in a class or a particular course of study; "academic standards"

Disciplinary = related to conduct outside of academic performance "behavioral standards"

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Difference Between Academic and Disciplinary

Academic = Courts reluctant to get into this area and so Institutions have more control
Missouri v Horowitz (1977)

Disciplinary = Courts concerned with due process and fairness

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Who vs. What of Classroom Disruption

Who = student/faculty/other

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Who vs. What of Classroom Disruption

What = conduct
Look at Student Code of Conduct

- Plagiarism/cheating
- Disruptive/Violent behavior
- Discriminatory conduct/hate speech
- Criminal conduct – sexual, etc.

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Understanding Student & Faculty Rights

Question:
Do you have a Student
Code of Conduct?

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Understanding Student & Faculty Rights

Question:
Do you have a document that
lists faculty rights and
responsibilities?

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Understanding Student & Faculty Rights

Minimum for faculty:

Insist on order and safety in the
classroom, laboratory, or similar
learning situation (on or off
campus)

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Understanding Student & Faculty Rights

Faculty (cont.)

Evict those who disrupt order in the
classroom

Control access of persons not
registered in the course

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Understanding Student & Faculty Rights

- Students:
- Environment conducive to learning
 - Safety in the classroom, etc.
 - Due process and fairness if accused of inappropriate behavior

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Setting the Tone

- Purpose
- Faculty expectations
- The syllabus
- The first day of class
- Follow-through

18

Purpose

- Anticipate & head off potential problems
- Create positive learning environment
- Avoid liability

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Faculty Expectations

- How do you expect students to behave?
- What will you and won't you tolerate?
- What compromises or "concessions to reality" are you willing to make?

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Faculty Expectations

- Remember: college students are adults
- Be true to yourself

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The Syllabus

- Cover all bases: rules, penalties
- Be realistic
- Be clear and specific

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The Syllabus

- Follow college policy
- Make sure everyone has a syllabus (new additions)
- Signed agreements?

23

The First Day

- Cover syllabus thoroughly
- Clarify and expound
- Be candid

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The First Day

- Use effective tone and body language
- Dress appropriately

25

The First Day

- Remember: It's easier to start out tough and lighten up than vice-versa

26

Follow-through

- Frequent reminders
- Do what you said you would do!
- Follow syllabus to the letter
- Changes require detailed explanation

27

Question: What do you do when things go South?

- a) Run from the room screaming
- b) Sneak a pull from your flask
- c) Write an angry blog post taking students to task
- d) All of the above

28

What to do when the inevitable happens...

- Remain calm.
- Address the immediate issue at hand.
- Address the student privately.

29

What to Do when the Inevitable Happens...

- You can ask the student to leave the classroom.
- If violent or potential of violence, call security.

30

What to Do when the Inevitable Happens...

- Document the incident.
- Speak with your department chair or head.
- If serious, file disciplinary complaint with appropriate campus department.

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Disciplinary Hearings

Basic Principle:

- A disciplinary or academic hearing IS NOT A judicial hearing.
- Formal rules of evidence and other court rules DO NOT apply.

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Disciplinary Hearings

Basic Question:

- Do you work at a Public or Private Institution?

33

Disciplinary Hearings: Public

Public Institutions are considered agents of the state government and must adhere to the Fifth and Fourteenth Amendments of the US Constitution.

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Disciplinary Hearings: Public

Fifth Amendment:

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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Disciplinary Hearings: Public

Fourteenth Amendment:

Section 1. ...nor shall any State deprive any person of life, liberty, or property, without due process of law...

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Disciplinary Hearings: Public

Procedural Due Process = rules that govern the proceeding.

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Disciplinary Hearings: Public

Student is guaranteed:

1. Notice
2. A Hearing

Dixon v. Alabama State Board of Education (1961)

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Disciplinary Hearings: Public

Notice:

- The charge or violation
- Text of rules on which charges are based
- Names of Adverse witnesses
- Possible Sanctions

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Disciplinary Hearings: Public

A Hearing:

- The opportunity to present a defense before a disciplinary board or a college administrative official
- The opportunity to produce evidence for his/her defense (supporting oral testimony or written affidavits; witnesses)

40

Disciplinary Hearings: Public

True or False:

You must hold a disciplinary hearing within the same semester that the alleged infraction occurred.

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Disciplinary Hearings: Public

Minimal Standards for Due Process:

- Adherence to Established Procedures

Jones v Board of Governors of the University of North Carolina ET AL (1983)

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Disciplinary Hearings: Public

Minimal Standards for Due Process:

- Nature of the Hearing = Formality depends on sanction
Dixon v Alabama State Board of education (1961)
- Avoid hearings in absentia
Tigrett v Rector & Visitors of the University of Virginia (2002)

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Disciplinary Hearings: Public

Minimal Standards for Due Process:

- Assistance of Student Advocate
Recommended, not required
- Presence of Attorney – if criminal?
Gabrilowitz v Newman (1978)

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Disciplinary Hearings: Public

Substantive Due Process = ensure fairness

- Decisions based on evidence only
- No bias by a serving disciplinary board member

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Disciplinary Hearings: Public

Substantive Due Process (cont.)

- Punishment commensurate with severity of offense
- Institutions need to be consistent with their rules.

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Disciplinary Hearings: Public

Liability for Violating Student's Constitutional Rights:

- Compensatory and punitive damages
 - Attorney's fees
- Injunctive Relief under Title 42 USC

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Disciplinary Hearings: Private

In private institutions, the court has ruled that student rights are determined by contract law.

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Disciplinary Hearings: Private

“Students attending private universities do not possess the same due process rights constitutionally guaranteed to students attending public schools”

Rendell-Baker v Kohn (1982)

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Disciplinary Hearings: Private

“In disciplining students a university should follow its own rules and that a failure to do so may constitute a breach of contract”

Schaer v Brandeis University (Mass., 2000)

50

Disciplinary Hearings: Private

“A private institution is entitled to a very strong but rebuttable presumption that its internal administrative actions are taken in good faith” and “has the power to create, administer, and implement its own rules and procedures concerning...the conduct of its students.”

Ahlum v Administrators of Tulane Educational Fund (1993)

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Disciplinary Hearings: Private

“US District Court for the District of Vermont held that Middlebury College was contractually bound to provide students with the procedural safeguards it promised in its publications.”

Fellheimer v Middlebury College (1994)

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Troubled and Dangerous Students

- The Loughner/Klebold effect
- Recognizing the warning signs

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Recognizing warning signs

- Iona College
(<http://www.iona.edu/studentlife/counsel/guide/troubledStudent.cfm>)
- Direct statement about “intent to harm”

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Slide 49

MSOffice1 I expected this to say, "Students attending private universities do not possess the same due process rights constitutionally guaranteed to students attending public schools."

, 10/6/2011

Warning Signs

- Hints the student intends harm to self or others
- Extreme difficulty adjusting to college life
- Significant changes in appearance, moods, habits, etc.

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Warning Signs

- Statements about access to firearms
- Behaviors that indicate settling of affairs
- Fascination with violence, including video games

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Warning Signs

- Admiring violent role models (e.g., Harris and Klebold)
- Written work that imitates or praises violent works or role models
- Your own "gut feelings"

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What should the faculty member do?

- Take all threats seriously!
- Confront individual directly
- Notify proper authorities

58

What should the institution do?

- Have a policy in place to address extreme situations
- Identify a "point person" for faculty to contact
- Train everyone concerned on proper techniques & legal issues

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Q&A



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Thank you for participating

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