



MAGNA ONLINE SEMINARS

Transcript

Managing Student Discipline Issues Legally and Effectively

A Magna Online Seminar presented on December 6, 2011 by **Rob Jenkins, M.A.**, associate professor of English, Georgia Perimeter and **Deborah Gonzalez, Esq.**, founder, Law2sm, LLC

This seminar will help you skirt legal pitfalls associated with student discipline. You'll learn:

- Your personal liability for classroom management
- Faculty and student rights regarding classroom conduct and security
- Steps to safeguard students' rights during disciplinary procedures
- How to avoid being sued for your actions.

Editor's note:

This is a written transcript of an audio recording. Our policy is to edit only the occasional unintelligible phrase. Everything else appears exactly as it was spoken.

© 2011 Magna Publications Inc.

All rights reserved. It is unlawful to duplicate, transfer, or transmit this program in any manner without written consent from Magna Publications.

The information contained in this online seminar is for professional development purposes but does not substitute for legal advice. Specific legal advice should be discussed with a professional attorney.

To make this program available to all your faculty and staff, contact Magna's Customer Service department at 1-800-433-0499 Ext. 2 and ask about our Campus Access License.

Rob Kelly:

Hello, and welcome to Magna's Online Seminar, Managing Student Discipline Issues Legally and Effectively, cosponsored by Magna Publications and the *The Teaching Professor*. I'm Rob Kelly, managing editor of *The Teaching Professor*, and I'll be today's moderator. I'm pleased you could join us.

Before we begin, I'd like to point out a few things about how the seminar works. If you have a question or comment for today's presenters, you can enter it in the chat box at the bottom of your screen, and the presenters will respond throughout the presentation if there's a question that's relevant at that moment. Otherwise, they will have a Q&A session at the end of the seminar. Just keep in mind that you can send those questions in at any time.

The seminar also includes handouts and supplemental materials. If you haven't already printed them, they could be found in the file share box on the left of your screen. Click on either PowerPoint handouts or supplemental materials, and then click on the save to my computer button to download, open, and print. If you experience technical difficulties during the presentation, please call our customer service staff at 800-433-0499, Extension 2.

And now I'm pleased to introduce Rob Jenkins and Deborah Gonzalez. Best known for his popular 2-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, full-time faculty member, department chair, academic dean, and program director. He is currently associate professor of English and director of the Writer's Institute at Georgia Perimeter College, a large multi-campus urban/suburban community college in Atlanta.

Deborah Gonzalez is the founder of Law2sm, LLC, a new legal consulting firm focused on helping its clients navigate the legal issues related to the new digital and social media world. Deborah speaks on legal issues relating to intellectual property, higher education legal issues, and social media trends and practices. Welcome, Rob and Deborah.

Deborah Gonzalez: Thank you.

Rob Jenkins: Thank you very much.

Deborah Gonzalez: Well, welcome to the session. This is Deborah Gonzalez. And before we begin, I'd just like to put out as the lawyer the disclaimer. What we've tried

to do is give you a presentation that's full of great instructional and educational materials, but it is for educational purposes only. And each institution of higher education may have specific matters or specific issues that they have to deal with, and it's recommended that you do seek and speak with your particular institution's legal counsel for those particular matters.

Rob Jenkins:

All right. Thank you, Deborah. This is Rob Jenkins. And before I go on, let me just reiterate what Rob Kelly said a moment ago and that is, if any of you have questions as we're talking, please feel free to enter those questions into the chat box. If we have an opening to stop and answer a question right then and there, we will do so. Otherwise, we'll leave it for the Q&A at the end. But please feel free to ask those questions throughout the presentation. We would like to make this as interactive as possible.

Now I'm just going to give a brief overview to begin with of what we're going to be talking about. Very broadly speaking, we're going to be looking at a number of different classroom management issues. We're going to be talking about the differences between academic and disciplinary issues, and also the who versus the what of what goes on in a classroom. More specifically, we're going to be looking at student and faculty rights because it's important to have a clear understanding of those things as you're putting together a comprehensive approach to student discipline issues.

We're going to talk about the importance of a syllabus in your overall approach to handling student discipline. Also very closely related to the syllabus is the talk, not that talk, this is a different talk, that faculty members typically have with their students early in the semester about what's in the syllabus and setting expectations for the term.

We'll be talking about what to do when something does happen, and by that I mean both literally what to do right then and there in the classroom and immediately following, and also what to do longer term as faculty members consult with administrators and with disciplinary staff and perhaps even legal counsel.

We're going to talk about disciplinary hearings, by which we mean student disciplinary hearings, and some of the legal issues surrounding those and the aftermath, what happens afterwards, what happens to the student, what happens to the faculty. And then we will leave some time at the end for Q&A. As I said, we will take your questions as we can throughout, but we're going to try to save 10 or 15 minutes at the end for some more in-depth Q&A.

Deborah Gonzalez: Well, thanks, Rob. And just one thing to really clarify, when we talk about classroom management issues in this session, we're really looking at student conduct that is disruptive and that's occurring in the classroom. We want to make that distinction very clear, because these are the kind of activities that we can actually have a disciplinary hearing for.

And with that in mind, I also want to distinguish between what we mean by an academic issue and a disciplinary issue. So academic for us is any activity that relates to the performance in the class or a particular course of study. So when we talk about academic standards, so a student can, in fact, violate an academic standard. So, for example, plagiarism. Okay. But our focus here is disciplinary, and this is related to conduct outside of those academic performance. So in other words, the behavioral standards, not related to what the subject matter of the course is.

Rob Jenkins: And that's our specific focus today.

Deborah Gonzalez: Mm-hmm. And so another way of looking at this is also the way that the courts have sort of distinguished between the two and how much they want to get involved with the academic type of procedures. Courts have been very reluctant. They're not professors, they're not in education, and so they've let the institutions have much more control, and this was very evident in the 1977 case of *Missouri v. Horowitz*.

Whereas with disciplinary, when it's talking about the conduct, what the courts are concerned with is was there due process for the student and was it fair, was the proceeding fair. Okay? So again, academically the courts are not going to get as much involved with the plagiarism and those kind of things. They're going to leave that up to the institution. But if it's disciplinary, the courts will get involved if it's an issue of due process or fairness, and we're going to see how this plays out a little later on.

Rob Jenkins: Okay. Thank you. It's also important to understand the distinction between who and what in terms of classroom disruption. The who is the person that is creating the disruption and/or the other people that are affected by the disruption. Specifically, we're talking about disruptions created by students, where the faculty member and perhaps other students in the class, most likely other students in the class, are directly affected by the interruption.

There's also the possibility of others, people outside the class coming in, other students, maybe friends of current students who would come into the classroom and create a disruption and create some sort of dangerous environment. So that is the who of classroom disruption. And the what, of course, as Deborah mentioned is the conduct.

One of the themes that we're going to be touching on frequently in this presentation is the importance for all of you to understand your college's student code of conduct, what your college expects of students, what they can and can't do, what they are being told officially in official college documents that they can and can't do. So when we talk about disruptive behaviors, we're talking primarily about those behaviors that are covered in the student code of conduct, and it's important for you to know that.

And some of these Deborah has already mentioned, plagiarism and cheating, behavior that is openly disruptive of the class that creates noise, that creates a distraction, that interferes with the learning environment and creates a negative situation, including, but not limited to, actual violent behavior where the student has actually become violent or is threatening to become violent or is shouting or screaming or behaving in other extreme ways.

Discriminatory conduct, including hate speech where students are openly discriminating against each other or perhaps against a professor, perhaps students displaying bullying behavior, ganging up on another student, any conduct that is discriminatory and, of course, conduct that is actually criminal in nature, such as sexual assault or things like that that could go on in the classroom.

Deborah Gonzalez: Now let's just take a moment, and I believe you have a hand icon that you can raise or you can put into the chat, but how many of you in your institutions have a student code of conduct? And, you know, this answer should be 100%, that every institution should have a student code of conduct. But more importantly, how many of you as professors and administrators have actually read the student code of conduct?

Rob Jenkins: That probably won't be 100% ever.

Deborah Gonzalez: Yeah. I'm seeing some people here raising their hands that they've read it. You know, sometimes a lot, one of the things that happens is that faculty will believe, well, that's a student code of conduct. They need to know what it is, they need to read it. But I think it's very important for faculty and administrators as well to read it so that they can understand what we're holding these students, you know, up to, what standards they have to adhere to.

And as a counterpart to this, you can put down your hands now, thank you so much. When it has to do with faculty, do you have a document in that institution that lists some faculty rights and responsibilities? Anybody here? Okay, we have LaRoche College who is saying yeah with their hand up.

This is a really interesting one because usually institutions won't technically have this list of faculty rights, and a lot of times faculty will assume they had some rights, which they may not have, you know, or/ there are some rights that they do have that they don't realize they have, which is very important to this issue about discipline. And I'll give you an example right now.

The minimum for faculty in terms of their rights is the right to have order and safety in their classroom, in their laboratory, or anywhere else that they're teaching, whether it's on or off the campus. They have a right to safety, and they have a right to order with their students in that, you know. There are also in many institutions, faculty will have the right to evict someone from their classroom if they feel that it is just too disruptive and not allowing the rest of the students to actually learn. Our ultimate goal in the classroom is to help students learn. And if this is a disruptive occurrence, then the faculty member has a right to say, you need to leave.

Now how they say it is also very important, and we'll see that. They cannot get as upset or violent as the student may be, because then the question becomes, who becomes more disruptive, right? Is it the faculty member or the student? And the other thing is that faculty usually do have the right to control access of persons who are not registered in their course to come into the classroom.

And I know Rob was mentioning, you know, sometimes there are other people in the classroom beyond just the students and the professor. It could be a visiting professor, it could be, sometimes the admissions will bring in students to sort of look around, see if they want to even come to the college. It could be another faculty member who's evaluating the professor or dean, or even an outstanding community leader who wants to come in and check out.

You have a right to make sure that they adhere to making sure that you have safety and order in your classroom. If they are disruptive, you have the right to ask them to leave. And if they're not registered, you have a right to say that they cannot come in at all if they're students. Okay. You have that right to say that.

Okay. Now as faculties have rights, students have some rights too, and a lot of their rights are going to be focused on being able to learn, which is the reason why they're going to an institute of higher education, or at least we hope so. Right? Be able to learn.

Rob Jenkins:

That's the point. That's right.

Deborah Gonzalez: That's the point. But, number one, to have an environment that's conducive to learning. This deals with the safety in the classroom, for example, make sure, you know, that there's no material or debris around the floor that they're going to trip on. And one of the things that they're looking at now is as their students become much more technologically advanced, are there enough outlets for their laptops to be plugged in, if that's the case that you're allowing them to have that technology in there. Okay.

And they also have the right to due process and fairness if they are accused of inappropriate behavior. Okay. So in other words, that we cannot just accuse them and then not give them an opportunity to speak. That is what we are dealing with when we say due process.

Rob Jenkins: Right. And I think that's an excellent point, Deborah, and that deals specifically with the rights of a student that may be disruptive or that may be misbehaving in some other way. But your earlier points were right on the money because sometimes we focus so much on the rights of the student who is being disruptive that we forget about the rights of all the other students in the class who aren't being disruptive, and those are important to remember as well.

Deborah Gonzalez: Yeah. I think that's an excellent, excellent point. So what we want to do is, you know, sometimes a lot of what happens in the classroom is about how the faculty sets the tone. And so what we're going to do is we're going to look at some elements of setting that tone from the purpose, to faculty expectations, to the syllabus, to the first day of class, and how important and pivotal that first impression is, and then the follow-through.

And we'll begin with the purpose. You know, and the idea of why do we want to make sure we understand about the legal implications of discipline and disruptive students is, number one, we want to try to head off if there are potential problems. Rob is going to go through some warning signs with you, which I think is really important, and he's got some great points to share.

Number two, to create a positive learning environment for all our students and as well for our faculty so that they can enjoy what they're doing. And, third, and this is important from a legal standpoint, to avoid the liability. Okay. It's a bad enough experience for a faculty member and student to go through a disciplinary incident, but then there could be some aftermath where the student feels that they didn't have due process and they sue the faculty member, and it just extends that experience. So it's really important that we're addressing this issue right now.

Rob Jenkins: Absolutely. Well, to Deborah's first point, one of the things that we're really trying to accomplish here with this presentation, and one of the

things that I really focus on as a faculty member, is this whole idea that it's much better not to have any incidents at all. It's important to learn how to deal with those incidents when they arise because, no matter what we do, they are going to arise occasionally.

But one of the things that I've learned in 26 years of teaching is that there are steps that faculty members can take very early on that will just head off a lot of these problems and lead to having fewer problems to begin with.

First of all, it's important for a faculty, as a faculty member for you to ask yourself, how do you expect your students to behave? And Deborah talked about the college's conduct policy. And it's vitally important to understand what your college will and won't allow. But it's also important for you to answer this question for yourself. What is it that you expect students to do in your class? What will you and won't you tolerate?

I think sometimes we're guilty of creating rules because things annoy us and not because they're actually disruptive in the class. Sometimes you have to decide what is your level of tolerance. Are you really going to try to ban smartphones in your classroom? Is that feasible? Perhaps if you're in a small seminar or laboratory type environment where you're constantly interacting with the students and you're mingling with them anyway, maybe it is possible to tell them to put their smartphones up and not have them out.

But if you're in a large lecture hall where some students are literally 75 or 100 feet away from you sitting in the back of a darkened room, how well can you even enforce that? It's important not to have rules that you can't enforce. So ask yourself what you're willing to tolerate, behavior that might not actually be disruptive but that might be annoying to you, and decide what you can tolerate for the sake of having a peaceful and productive classroom.

I mentioned smartphones. Laptops are another issue. These are what I might phrase concessions to reality. Students are going to be using these things. Now using a smartphone to take pictures or to text during a test is something different. That's not what I'm talking about. I'm talking about during your lecture that you spent so much time preparing and it's a wonderful lecture, and there's a student in the back with his head down and you just know that he's updating his Facebook status on his smartphone.

I would say that that is a reality of modern life, and that perhaps, this is something for you to consider at least, perhaps the cost of trying to regulate that behavior might be worse than the behavior itself. I've always

believed, and this is one of the foundations of my teaching philosophy, that college students are adults and that we should treat them like adults. And sometimes that means allowing them to fail. Sometimes that means allowing them to do things.

Yes, so they're texting in your class instead of listening to your lecture. Will they be able to perform as well on your test? Probably not. Whose fault is that? It's the student's fault. And I think there are times we just, we have to allow them to be adults. As long as they're not interfering with the class, disrupting other students, creating a negative environment, I think we have to treat them like adults. At the same time, I think you also, as an instructor, have to be true to yourself. It may well be that I have a higher tolerance for certain things than other professors.

I don't, well, I teach writing. It would be silly of me to ban laptops in my class because my students do a lot of writing, and we're not in a computer laboratory where they each have a computer station. I encourage them to bring their laptops in to do a lot of their writing on their laps because they're going to have to turn in their papers, you know, using a word processing program eventually anyway. And I know in doing that that some of them are going to be back there, you know, checking their e-mail or updating Facebook, but that's something I can tolerate.

Now maybe you're in a different situation. Maybe you teach a different type of class. Maybe you just don't have a personal tolerance for that. So I think there is an element of being true to yourself.

Deborah Gonzalez: And I think one thing that I'd like to bring up on this and, Rob, you and I have spoken about this, this whole idea of multitasking and whether these students are really proficient at multitasking. And, you know, there are different ideas or opinions on whether they're more proficient at multitasking because they've been doing it for years.

There's a documentary out there called *Digital Nation*, which shows a study with college students that says, no, that's actually a myth, that they're not very good at the multitasking. They're just very good at doing many things at the same time, but not necessarily getting the task done that they need to. And so that's an academic debate on the whole issue of multitasking with our students. But I think it's very important to know what you can and cannot tolerate, as you said, and to understand what you can and cannot enforce in your own classroom. Because the goal is to teach them to learn, not necessarily to be the prison warden turning off all those cell phones.

Rob Jenkins: That's exactly right. And there's a difference too between encouraging students to turn off their cell phones, to listen and pay attention. It's no

different from encouraging students to attend class. They're hurting themselves if they don't, and I think we have a responsibility to them to help them understand that maybe they're not as good at multitasking as they think they are, and they probably should put that phone up and listen to us.

But there's a difference between that and you as the professor creating a disturbance in the class to try to prevent a student from doing that who's probably going to do it anyway.

Now as I mentioned earlier, a lot of this comes back to the syllabus. It's incredibly important that whatever rules you do have, rules that are taken from the college catalog or the student code of conduct that you're merely cutting and pasting into your syllabus, such as rules about plagiarism and student conduct and things like, or rules that you personally have about what students can and can't do in class. I think you need to be realistic about the rules that you have.

Deborah and I were talking about this earlier, and I think I mentioned it just a moment ago. But I think it's incredibly important not to have rules that you can't enforce. That just encourages a culture of rule breaking, and I think it undermines your authority as a teacher. And I think you also have to sort of weigh the consequences of your rules and ask yourself if the enforcement of the rule might not be worse than the infraction itself. So I think it's important to be realistic.

But whatever rules you settle on and the penalties that go with those rules, it's important to include those in the syllabus. Be as clear and as specific as you possibly can be about these things. Always make sure that you follow college policy in doing this. Know what your college's policies are and follow them.

The only thing worse than having a rule that is simply overturned by the dean the first time a student complains is having a rule that gets you dragged into court. So you need to know what you can and can't do. Maybe as much as you might like to go around taking away students' expensive iPhones, maybe you can't, you know. You need to understand that.

Make sure that everybody has a syllabus, and this includes, if your college is like mine, you have a two- or three-day drop/add period where students are coming and going, and you hand your syllabus on the first but sometimes those students who add the second or third days don't always get a syllabus. So, you know, be consistent about that. Follow through, make sure that they get a syllabus, and go over it with them if you need to if they weren't there that first day.

I have a lot of colleagues. I don't personally do this. I'm a little ambivalent about it, but a lot of my colleagues include with their syllabus a signed statement or a sheet that says, I have read the syllabus and I understand the rules, yadda, yadda. They have the student sign it and return it to them. So that's something you might consider as well.

Deborah Gonzalez: And one thing I'll just say just as a quick best practice, if your institution has sort of an online classroom management, a course management program like Blackboard or Web . . .

Rob Jenkins: iCollege.

Deborah Gonzalez: . . . or iCollege, make sure your syllabus is there and make sure that students know that that's exactly where they can go and get it. So if they're late into the classroom, they still have access to that syllabus. I think as many ways as you can make that syllabus accessible, it's important.

One other thing I would say is that I know there's a lot of controversy over whether the syllabus is written in stone or whether it's just guidelines so that the professor does have some flexibility, because things may change during the semester. There might be an incident that's just, you know, current events is very important, and the professor may want to have a little freedom to change one of the topics so that he can really discuss with the students that particular issue.

So again, that's something that needs to be discussed in your institution. Is the syllabus going to be sort of like that contract with that signing that you talked about it or is it going to be much more flexible and just guidelines to give the professor a little bit of sort of flexibility to change things or incorporate new material as they come in? And that's also a style question, I think, for professors and the way that they conduct their classes.

Rob Jenkins: No, and that's a great point. I just read an article in *The Chronicle of Higher Education* by a professor at Penn State who teaches *The Kite Runner* on her syllabus, which is a story about a young boy who witnesses a heinous sexual assault. And it just fell in the semester where a couple of days after all of the horrific news at Penn State came to light is when she taught that book. And so, you know, there's a situation like you're talking about.

Deborah Gonzalez: Absolutely.

Rob Jenkins: But I absolutely agree with you. Make the syllabus as accessible as possible. I have my own website that I use specifically for my classes and I post all of my syllabi, all my classes on that website. And I actually refer

to my syllabus frequently throughout the semester. So even the students who come late are seeing it, and it's a real easy URL. It's real easy to access.

Now the other thing that goes along with the syllabus is that critical first day of class. This is when you have an opportunity to go through the syllabus. You know, sometimes no matter how personable you are and how good of a writer you are, when you're writing in that sort of academic/bureaucratic prose that all syllabi are written in, it just comes across as sounding very cold and distant, and this is your opportunity to not only cover things but to help the students understand why you do the things that you do.

Be very candid with them. Be very open with them about what it is you're trying to accomplish, why you have these rules. Share past experiences with them of things that have happened as ways to illustrate why you're doing certain things. I've also found that that goes that a long way, rather than just handing them a syllabus and saying, here, read this. When you're doing so, it's really important to use effective tone and body language to adopt the tone of, you want to be friendly and approachable, and yet at the same time sort of no nonsense.

You know, this is the way it is, and I'm open to ideas and suggestions, but based on my experience these are things that I believe and these are things that we're going to do. You know, dress appropriately on that first day of class. I don't mean you have to wear a coat and tie. Since I gave up being an administrator, I haven't worn a tie once, and I'm very happy about that. But I think it is important to look like a professor, to look a little bit like an authority figure that first day, as you're being an authority figure.

Deborah Gonzalez: And I think that is so important, especially as we see more and more institutions are starting to adopt dress codes for their own students and, you know, putting the violations of a dress code as a disciplinary issue. The issue of, you know, whether pants need to be up or whether they can be a little lower or not, whether girls can wear the spaghetti strings or come in with pajamas. And a lot of that is whether that's conducive to learning or not is where these dress codes are coming in. But if your institution does have a dress code, it will not be able to enforce it if these faculty are not dressed appropriately, and that is so important.

You know, every institution has its own culture. Some institutions, it's suit and tie. I'm sorry, Rob. Other institutions out by the beach, they're okay with flip-flops and shorts. It really is about the culture of that institution. But if you are expecting your students to model a certain behavior and conduct in terms of their dress, your faculty has to model it as well or you will not be able to enforce that.

Rob Jenkins: Right. You know, on a wet, rainy day later in the semester, I might wear jeans and a flannel shirt. But that first day of class I'm not because I'm getting up there and I am behaving like an authority figure and I'm saying, this is what you can do and this is what you can't do. And I think you need to look the part.

You know, one thing I learned from my wife, who is a middle school teacher, and I've got to tell this story very quickly. I'm fairly large, and my wife is very petite. When she interviewed for her first teaching job, she did very well in the interview. But at the very end the principal looked at her and said, well, you know, I don't mean to get too personal, but some of these eighth graders are pretty good size and you're very small. Do you think you'll have any issues with discipline? And she looked at him and said, well, my husband is 6'4" and I don't have any problems out of him.

And she taught me that it's a lot easier, and she's a very nice, sweet-natured person, but she learned and she taught me that it's easier to be tough at the beginning and then lighten up than it is to come in and be a soft touch early on and decide that's not working and now you're going to tighten up. That absolutely does not work. It doesn't work with middle school students and it doesn't work with college students.

Now you've laid it all out in a syllabus. You've gone over it thoroughly. Now what do you do? Well, frequent reminders about things that you want them to do, things that you allow, things that you don't allow. It's incredibly important that you do what you say you're going to do and that you follow the syllabus to the letter, with the exception that Deborah mentioned earlier, that there may be times when change is needed.

Now I think you're on shaky ground if you try to change your rules in midstream. But if you change your daily schedule, first of all, I always try to build a little flexibility into my daily schedule so I can change if needed.

Deborah Gonzalez: And that's the difference between the subject matter, that academic component, versus the discipline matter of the conduct in the rule. Right. We're not talking about changing the rules. If you set a rule, you want to keep that rule. But if we change a little bit of the subject matter because of things that are happening around and that makes it more relevant for the student to learn, I think that's an important distinction.

Rob Jenkins: Right. And I think if you decide halfway through the term that all these students with their smartphones are bothering you, I think it's very difficult at that point to just come in and say, okay, new rule, no more smartphones. Maybe that's the sort of thing you have to file away. And if

you decide next semester you want to have a rule about that, put it in your syllabus, introduce it day one. It's very difficult to change those kinds of things.

If you do have to make a change, I would say two things. First of all, don't make any sort of change that is going to create more hardship for the students. Don't add a test to your syllabus. If you're running out of time and you have to eliminate a paper in order to cover all the material, very few students are going to object to that. But don't add a paper or add a test. Don't throw anything in there. Don't make any changes that's going to create more work, more hassle for them. You might as well just lead them down to the dean's office and have them form a line, because that's where they're headed after class anyway.

When you do make a change, explain to them what you're doing. Give them a detailed explanation so they'll understand. And in my experience, they very rarely have real problems with it when it's explained that way.

So what happens when things do go south in your classroom? What should you do? A, run from the room screaming. B, sneak a pull from your flask. C, write an angry blog post taking students to task, and I might add there, by name. D, all of the above. Well, these are all behaviors. You know, obviously the answer is none of the above. But these are all behaviors that I have witnessed either as a colleague or, in some cases, as the department chair or dean of people who were doing these things, and it's never a good situation.

It always just creates more problems. I know that I said treat students like adults. I understand that our college students in many cases literally are adults. And in some cases not just legally, but especially in community colleges, many of them are in their 20's or 30's. They have jobs, they have kids, they are adults. But there is a sense in which you as the professor are, quote, unquote, the adult, and you've got to remember that.

One of your students might run from the room screaming, but you can't. You know, students might write angry blog posts about each other, but you can't do that.

Deborah Gonzalez: And each of these actually have a legal component to them. If you run from the room screaming and, you know, some concerns about your competency will come out. If you're sneaking a pull from your flask, all of a sudden we're going to have, you know, accusations of alcoholism. And again, your competency will come up. The writing the angry post can lead to claims of defamation, of ruining somebody's reputation because of this.

So again, there are so many ramifications and consequences to your conduct and how you relate, how you respond.

Rob Jenkins:

I did have a professor though as an undergraduate who used to sneak a pull from his flask. So what do you do actually? Well, first of all, remain calm. Address the immediate issue. If there is an issue of student safety or something that's causing an immediate disruption, deal with that right on the spot. And later, as much as possible, address the student privately. To the extent that you have to confront the student in class, perhaps to ask the student to leave, then you need to do that. But to the extent that you can handle the situation, move on with the class and then later speak to the student privately rather than in front of other students, that's much preferable, and I think legally is probably preferable as well.

Deborah Gonzalez:

And that remain calm is so important. I usually tell faculty, take a breath, you know, just breathe for minute, because what you do in the next 30 seconds will determine what's going to happen in the rest of your semester. Because if you panic and get upset, it's not just about that one student, it's all the other students. Right? Because now you've disrupted all the other students' learning. So it is so important that you remain calm, because it also shows that you're in control.

Rob Jenkins:

Yes. Absolutely. Remember what Deborah talked about earlier, the rights that faculty members have. At most institutions and in most states, and you might want to check this out, check out your own policy, talk to your own administrators, but faculty members do have a right to an environment that's conducive to learning. The other students in the class have a right to an environment that's conducive to learning, and sometimes that means asking people to leave.

So in most cases, if the situation is bad, you can ask a student to leave. I have a good friend who just this semester had a situation like this, where a student was saying things to him in class, had sent him a couple of kind of nasty e-mails, and then spoke up in class and was sort of cryptic and vaguely threatening and created a scene. And my friend, my colleague, just asked him to leave the room and dealt with it later.

If there's violence or if you think that there's a potential of violence, if you think at all, if you have any inkling that there might be the potential of violence, call security. It's much better, and I know, nobody likes to be Chicken Little or the boy who cried wolf or whatever metaphor you want to throw in there, but it's much better to do that than actually have a violent incident occur and you're sitting there thinking, you know, I saw this coming, I should have done something. And you can be legally liable for that too, if it can be shown that you should have anticipated it.

Deborah Gonzalez: Yeah, that foreseeability in terms of the legal sense. If you have any inkling, any intuition, gut feeling, you'd rather be safe than sorry. I know that some institutions actually have panic buttons in professors' desks in case of anything. You don't want to just hit it just to see the security guard come in, but you do want to have those kind of tools available to sort of prevent these kinds of things.

And, you know, faculty members are sort of being held to a higher standard since we've had the incidents in Columbine and Virginia Tech now, because there were signs that were put out and faculty members either did not say anything or report anything, or, when they did report it, they weren't listened to. It wasn't taken seriously enough, and we had two tragedies because of that.

Rob Jenkins: And I know the college where I work has telephones. We don't have panic buttons, but there's a telephone in each classroom. And it's preprogrammed, so there's a button you can push for security, there's a button you can push for tech support, there's a button you can push for Larry's Pizza. You didn't know that, did you?

Deborah Gonzalez: I did not.

Rob Jenkins: Also important is once the incident has past, you've dealt with the immediate threat or the immediate situation, it's important to document that. And one really good way to document it is with an e-mail to your department chair or your dean or whoever you report to. It's also important to speak with that person. Even if you send them an e-mail, speak with them in person and explain what happened from your point of view.

If it's a serious situation, file a disciplinary complaint with the appropriate campus department, with the student dean, with public safety, whatever that might entail. So these are the things to remember when something actually happens in your class. It's best, if you can, to set up your class to head these things off, try to anticipate problems and address them in your syllabus, address them on the first day so that they don't happen. But even if you do all that, if you teach for 25 or 30 years, probably something is going to happen at some point.

Deborah Gonzalez: Okay. So the inevitable happens. We have a really bad incident, and the faculty member decides that he wants to write the student up in violation of the student code, and we're going to have what's called a disciplinary hearing. And one thing that I want to make very clear is that this disciplinary hearing is not a judicial hearing. It doesn't happen in the court, it does not have the legal rules.

The formal rules of evidence and other court rules, they do not apply to this. But there will be specific rules that do apply, rules that the institution has actually put in place, and most of them are procedural rules. In other words, how this disciplinary hearing should happen.

The first question that you ask yourself is, do you work at a public or private institution? Because that's going to determine some of the legalities dealing with the disciplinary hearing. So public institutions are considered agents of the state government. And because of that, they have to adhere to the Fifth and Fourteenth Amendments of the U.S. Constitution. And our Fifth Amendment actually talks about that nobody 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.

Okay. So this is the due process clause that we have in our Fifth Amendment. And then the Fourteenth Amendment talks about that no state should deprive any person of life, liberty, or property without the due process of law. And those are the two levels. Right? The first one, the Fifth ones, deals with our federal government and taking away property. But the second level, the Fourteenth, is about state, and usually our institutions are going to fall within that Fourteenth Amendment if they're a public institution. So you want to check that out.

Rob Jenkins: Now when you talk about property, Deborah, could that cover taking up a student's cell phone in class?

Deborah Gonzalez: It could. It could cover taking a scholarship away, because that could be one of the consequences of a disciplinary hearing. And that's why this due process is so important in the public institutions, because you're taking something away, right? You're either taking away their right to continue their education at the institution, and usually when that happens, they will not get a refund for the tuition. Okay. So there is a financial loss there, and it might not even be theirs. It might be their parent's financial loss, and it's very important that we also understand that this disciplinary hearing is of the student, not the parent.

There is no requirement. And in fact, there's more prohibition against the parent being in the disciplinary hearing, because they are not the one that's actually being called up.

Rob Jenkins: Right. Does, do the FERPA, does the FERPA law apply here?

Deborah Gonzalez: The privacy, it can and it may not. It's just usually, you know, when you look at an institution of higher education, the student is the student. It's not

the parent. Even if the parent is paying, they don't have the rights that the student does. Okay. And this is really about the student rights.

Now there are two kinds of due process. One is procedural, which rules that govern the proceeding, how it actually happens. And the other is substantive, and we're going to see that in a minute. But first let's go to the procedural. With public institutions, a student is guaranteed two things. He is guaranteed a notice that he's going to be brought into a disciplinary hearing, and he's guaranteed that hearing. Okay. And this is by *Dixon v. Alabama State Board of Education*, 1961.

Now as we look at what does the notice have to contain, okay, because that's also very important. It's not just telling the student, you have a disciplinary hearing next week.

Rob Jenkins: See you at 3:00 on Tuesday.

Deborah Gonzalez: See you 3:00 on Tuesday. Okay. We have to put in what they're being charged with or what was the violation, what did they do wrong. We have to let them know that. Okay. We also have to point to where is that rule. Okay. If it's in the student code of conduct, we need to say, student code of conduct, paragraph one, Section two, Subsection ABC. We have to be very specific so that they know what they're being charged with.

They have a right to know who the adverse witness is. In other words, who's the one who said they were in violation? Whether it's a faculty member, another student, an administrator, they have the right to know who it is who's bringing this charge against them.

Rob Jenkins: You can't just bring charges anonymously?

Deborah Gonzalez: No, you can't.

Rob Jenkins: Okay.

Deborah Gonzalez: And they also have the right to know what the possible sanctions are, not what the final sanction would be but what are the options that are out there. Could they lose the scholarship? Could they be expelled? Could they be suspended for a semester? They need to know what those options are. Okay.

Now the hearing itself is an opportunity for the student to present a defense. Okay. And they're going to present this defense to a disciplinary board or a college administrative official. Now this all, if you go back to your student code of conduct, it's going to lay out how your institution holds these hearings, whether there's a board, a panel, just one particular

person, who is going to be conducting this hearing, who is the student then presenting a defense to. Okay.

He's also, the student, given the opportunity to produce evidence, right, in his or her defense. Now remember, this isn't a court of law so we don't have the formal rules of evidence, but they can bring witnesses, they can bring, you know, written statements to prove, try to prove why they shouldn't be held in violation of this.

Rob Jenkins: Now do students have a right to counsel or representation, or does that vary from institution to institution?

Deborah Gonzalez: Well, we're going to see that in a minute because, again, just to bring it up quickly, it's not a court of law.

Rob Jenkins: Right. Okay. Good point.

Deborah Gonzalez: And attorneys are officials of the court.

Rob Jenkins: Right. Okay.

Deborah Gonzalez: Okay? So true or false? You must hold a disciplinary hearing within the same semester that the alleged infraction occurred. What do you think? It happened. Do you need to do that hearing within the semester it happened? Raise your hand if you think that is true. One thing that you should know is that it's not true. It doesn't happen, have to happen within the same semester. It just needs to happen within a reasonable time period.

Now the problem is we have cases that say a reasonable time period was nine months. We have another case that said three months was too long. So it really depends on your jurisdiction. Now COMP-Northwest gives us this question of what are recommendations for proper documentations for student incidents? Again, you're going to go back to your student code of conduct because there should be, each institution should have it written what the faculty needs to do to document an incident. And usually if they call in security, security has a report that they have to file. And so they're going to have that laid out as to what information is actually required.

Rob Jenkins: In the case that I mentioned earlier involving my colleague just recently, he asked the student to leave the class. But later that day, someone from public safety came to see him and filled out a report, or took a statement from him and filled out a report. So absolutely, some of these things are, and certainly should be, spelled out by the institution.

I would say as a faculty member, if you have any doubts, it's important to sit down while it's still fresh in your memory and write out a narrative of

everything that happened. I think it's probably a good idea to send that narrative to your department chair. Now if your emotions are running high, then you need to be really careful. You need to limit yourself to the facts and not include your emotional response to that.

You don't want to fire off an angry e-mail to your department chair about this terrible student and what he or she did. You want to be very clinical and factual about it, but make sure you get the facts down. So you might need to write a couple drafts, the angry one and then the more measured and factual one.

Deborah Gonzalez: And the facts are important, the date, the time, the class, how many people were in there, you know. So in other words, how many were witnesses. So if that class that you're teaching has three sessions, which section was it that it occurred. And get the student's name correct. You know, you want to make sure that the facts . . .

Rob Jenkins: And maybe even include the student's, the student number along with his internal . . .

Deborah Gonzalez: If there's an ID and identification way of getting to it. Okay. Now basically what we have is that in the *Jones v. Board of Governors*, a 1983 case, they say that the minimal standard for due process is that you have to adhere to established procedures. And this is why it's so important and why I keep pointing you back to that student code of conduct to where we have it written down what this procedure is. If the institute does not follow the procedure, they will be held that they did not give that student due process.

Rob Jenkins: So you have to have a procedure to begin with. That needs to be laid out. Then you have to follow it consistently. You can't just do it ad hoc with each new case that comes along.

Deborah Gonzalez: Yes. Absolutely. The other thing that they say is the nature of the hearing equals the formality. Okay. And that depends on what the sanction is. So, for example, if it's getting a paper, eliminating one paper because they did something, they copied from somebody else and the faculty member says, okay, the only sanction is going to be I'm eliminating the paper, that's going to have a different formality level than if we had a student who was being expelled from the college itself. Okay.

So it all depends on the severity of what can actually happen to the student how formal that hearing needs to be and who it needs to be in front of. But I will say, and I caution you, do not have a hearing where the student is not present. Okay. The whole reason for the hearing is to give the student an opportunity to give a defense.

So to have a hearing in absentia is actually going against that, and we have the 2002 case of *Tigrett v. Rector and Visitors of the University of Virginia* that said, you know, if they're not there to defend themselves, then the hearing was really not a hearing.

Rob Jenkins: Can students then just avoid discipline by not showing up for their hearing?

Deborah Gonzalez: Well, it all depends on the way the procedure was written and also what the exact sanction is. And we know that if the sanction is pretty serious, the student is going to show up. Right? They're going to try to defend themselves because these disciplinary hearings stay on their record and can affect them. If they're trying to get into graduate school or law school or medical school and they have a disciplinary hearing against them, those schools are not going to . . . automatic admission. They're going to investigate as to why there was that disciplinary hearing in that student record.

So some of the other things that are available to some students depending on what the institution says, it could be the assistance of a student advocate, and you're going to see this is recommended but not required. This is sort of like, it could be another student or a faculty member that could have helped the student in their defense. They don't act as an attorney representing the student. Right? The student has to speak for themselves, but they may help in getting whatever evidence that they're going to present together.

The presence of the attorney. Now because this isn't a court of law, the presence of the attorney is not required. And most of the time, they're not wanted in those particular procedures. But we do have a case in 1978 that says, an attorney should be required if the issue can go criminal. Okay. In other words, if there's a criminal sanction, the student can actually go to jail for something that they did, this case seems to say that they should have an attorney there.

Because whatever happens in that disciplinary hearing can then be used as evidence in the criminal case. So that's the distinction. Right? And again, that talks about, goes back to what is the actual sanction for the behavior.

So before we go into the substantive due process, I just want to take a moment here. Are there any questions on the procedural due process? Okay. So let's keep going. The substantive due process is talking about the content and the fairness of the disciplinary hearing. So to make sure, for example, that whosoever on the panel, whosoever on that disciplinary board makes a decision based on only what they're told at the hearing. Okay. Not

things or rumors that they hear from the outside, but really only what's presented to them at that hearing itself.

Rob Jenkins: And not prior knowledge of the individuals involved or anything like that.

Deborah Gonzalez: Exactly. They have to be very objective and sort of just focus on what they're told at that hearing. Okay. It's to make sure also that there's not any bias by a serving disciplinary board member. So if a board member, for example, had a prior incident with the student, they need to recuse themselves out of that. And there have been lawsuits won by students who said, you know, that disciplinary board member had it out for me and had a bias, and here's the evidence. And therefore, this disciplinary hearing result should be thrown out. And they've won because of that. So you want to be careful of those things.

You have to make sure that the punishment equals the severity of the offense. Okay. If the student stole a pen, it's not the same as the student stealing a car, or more likely today as a student stealing an iPad. Okay. So you have to make sure that it matches. And again, institutions need to be consistent with their rules. If they have a rule, if they have a procedure, they need to follow it. If they don't want to follow it, they need to change it.

Rob Jenkins: Good point.

Deborah Gonzalez: Now what can happen if a student believes, because something in due process didn't happen, that it was a violation of their constitutional rights. Just remember, these come in under the Fifth and Fourteenth Amendment of the Constitution. Well, they can ask for compensatory and punitive damages, compensatory meaning, you know, damages to make up for what they lost. But punitive damages deal with penalty or punishment, to sort of punish the institution. And those can be at factor of five times or ten times whatever the compensatory damages were. Okay.

They'd also be able to recoup attorney's fees. So whatever they paid for their attorney, if the institution is found liable, the institution would have to pay for that student's attorney's fees. And then injunctive relief. Now injunctive relief is not a financial compensation, but it means that something will stop or something will happen. So for example, they could ask for injunctive relief of suspension. Okay. So in other words, they won't get suspended. It will be stopped.

Rob Jenkins: They're let back into school.

-
- Deborah Gonzalez:* They're let back into school. Okay. And that's usually one of the first things that they try to do is to get an injunctive relief so that they continue in school while this case is still going on.
- Rob Jenkins:* So a disciplinary hearing is not a legal proceeding, but everyone involved in the hearing, the faculty members, the administrators, have to bear in mind that it could lead to a legal case if they're not very careful. If they don't follow the procedures and follow all these recommendations and guidelines that you've given here, it could end up in court, and these are some of the things that could happen if it does.
- Deborah Gonzalez:* Yeah. And more importantly, not following my guidelines but following the guidelines that their own institution has laid out for them. And again, that's why it's so important to actually read on what that is. Now so far, everything we've talked about has been the public institutions, okay, and the way that the court really focuses in on that due process.
- But what about private institutions? Well, what we found is that the court will look at what's going on and basically state that it's based on contract law, not constitutional law but contract law. In other words, there's a contract between the institution and the student. And where do we find that contract? We find it in the student handbook. Okay.
- So we know that in this case in 1982, *Rendell v. Kohn*, they basically said, students attending private universities do not possess the same due process rights constitutionally guaranteed to students attending public schools. That means that private schools have a lot more leeway as to how they're going to conduct their hearings and what they will and will not accept.
- Rob Jenkins:* And you often see this with religious institutions, for example, with some of the rules that they have that might not fly at a state institution.
- Deborah Gonzalez:* Exactly. And so what they're saying is that if the university doesn't follow its own rules, then that's the breach of contract, okay, and that's what the student can sue on. Very different from in the public scenario where the student is suing because their constitutional rights have been violated. Here their contract rights have been violated, which always then means money.
- Rob Jenkins:* Right. But the bottom line is the same. It's having a consistent policy and following it consistently.
- Deborah Gonzalez:* Yeah. And that leads to the next quote, which is very important if you're in a private institution, and that the presumption is for the institution, as long as they're following their own rules. Okay? So that's really important to keep in mind. And the last one is, and this just brings again, this case just

brings again to that issue, follow your rules. U.S. District Court in Vermont held that this college was contractually bound to provide students with the procedural safeguards it promised in its publications.

And in that case, it wasn't just the student code of conduct. Okay. It was the information that they had their website, the information that they put out through student services. So these institutions are going to be held to what they say.

Rob Jenkins: So part of what we're seeing here is that an institution needs to have a comprehensive student conduct policy that, first of all, permeates all of their publications and is consistent across those publications. Secondly, that everyone at the institution, administrators, faculty members, students, understand what those things are, and then they follow them. And then that's generally true at both public and private institutions.

Deborah Gonzalez: Yes.

Rob Jenkins: Okay. All right, good. Well, I'd like to talk a little bit about something that we mentioned earlier just briefly in the presentation, and that is what happens when things, when you see things going on in your class or potentially going on in your class that you think could really be bad. Not just students being disruptive, not just texting in class, maybe even worse than students losing their temper and getting up and making a scene.

But, you know, I think a lot of you listening were probably much like me after the Jared Loughner case. I remember thinking to myself, that student could have been sitting in my class. That student sat in community college classes for several semesters, and that could be one of my students. And that was an incredibly sobering thought. Now I don't know what he might have done or might not have done.

I'm certainly not saying that my colleagues should have picked up on anything. What I'm saying is that this is the reality of the world that we live on. Deborah and I were talking earlier about the Columbine case, and realizing that it's been going on 15 years since Columbine, which makes it ancient history for many of our students, but we still remember it.

And I've had incidents or situations. I remember several years ago I was a department chair. One of my faculty members came to see me. She had a student in her composition class who had been quoting from Dylan Klebold's manifesto in his papers, you know, the blood will run in the streets and things like that. And she was very concerned about it. And she was right to be concerned about it. And we were able to meet with that student and get that student some help.

But it's important for us as faculty members to be able to recognize these warning signs. Now there's an excellent website, I'm not going to go to it, but you have the URL there. And I looked at several online, but I really liked Iona College's website dealing with recognizing the warnings signs. And I've gone through and listed some of the warning signs that they include on that site.

One of them is when students make, you know, this one should be a no-brainer, I suppose, but when students make direct statements indicating an intent to harm. But sometimes as faculty members, I think, we don't take those things seriously or we say, surely, you know, he didn't really mean that or nothing is going to come of this. But that is one of the warning signs that something bad might be about to happen when students are actually threatening that bad things are going to happen.

If a student hints or if there are hints or indications that the student might intend to harm self or others, extreme difficulty adjusting to college life. Now all students have some difficulty adjusting to college life. But when people are, when they seem like extreme loners or they seem not to get along with other students in the class, and I mean in extreme ways, that could be a potential warning sign.

If you notice over the term, over the course of the term significant changes in appearance, mood, habits, these are things that indicate that the student could be going through something and that there could be some danger lurking on the horizon.

Students who brag about having guns or having access to firearms or talk or write about this sort of thing often, that's an indication that they might be living out violent fantasies, and those violent fantasies are often the precursor to actual violence. Anything that indicates that the student might be settling affairs. You know, that's one of the signs if someone is contemplating suicide.

But when you have one of these extreme events, you know, what Klebold and Harris did was suicide. They took a lot of others with them before they killed themselves. But if a student is contemplating something like that, very often that student will attempt to sort of wrap up his or her affairs. And sometimes with you as the teacher to, I mean, it seems odd if they're going to do something really violent, why would they worry if they turned their last paper in? But these people aren't thinking rationally.

A fascination with violence including violent videogames. And I know a lot of people do that, a lot of kids nowadays who aren't violent in nature are playing these violent videogames. But when there's an extreme fascination, when students are talking about this sort of thing all the time,

especially when it dominates their writing, when it dominates their conversations with other students, that's something to be aware of.

I mentioned the student that we had who was quoting from Dylan Klebold's manifesto in his paper. When you see that sort of hero worship of these violent figures and role models, that's a bad sign. And, you know, as Deborah mentioned earlier, trust your gut feelings on these things. Yes, you might be wrong, but it's much better to go with your gut feeling than to find out later that you should have gone with your gut feeling. If you think something might not be right, then you need to take some steps to deal with that.

So what steps should you take? What should you do? First of all, take all threats seriously. Don't say, well, the student doesn't mean that, or he would never do that, or I can't imagine anyone doing that. Take threats seriously. To the extent possible, address the situation with the individual directly. I notice on my slide here I have the word confront, and I realize now that, you know, confronting the student in a potentially dangerous situation, the word confront here has sort of an in-your-face connotation, and that's not exactly what I mean.

I mean here address it with that individual. Pull that individual aside. If you're a writing instructor who has conferences and your student, you have a student who's been writing about violent fantasies, bring that up in the conference, ask that person about it. Ask to talk with the student after class. And certainly, notify the proper authorities. The faculty member of my department was absolutely right to come to me with her concerns about that student.

To this day, we don't know if that student would have done anything or not. What we do know is that that student didn't do anything, and that student got some psychiatric help, and we didn't have a violent incident on our campus. And I'm happy with that outcome.

On the institutional side, and we've been saying this over and over again, it's extremely important to have a policy in place that addresses these kinds of extreme situations. It's also a good idea to have a specific point person, somebody that the faculty can go to. I know that on various occasions throughout my career, I've tried to contact the person at the college who deals with X, fill in the blank, whatever X is. And sometimes you go through five or six phone calls and you're directed from office to office.

Well, that's okay if you're trying to order printer cartridges maybe. But if it's a potentially violent situation, it's important that there's one person that the faculty members know they can go straight to this person and they can

get some immediate response. And it's important for the institution, meaning the administration, the department chairs, the deans, to train faculty on proper techniques of dealing with these kinds of incidents, and also the legal issues that Deborah has been talking about.

So those are the primary points that we wanted to cover. We have just about hit it perfectly. We said we'd try to leave about 15 minutes at the end. We actually have about 18 minutes, so we will open it up now for Q&A.

Deborah Gonzalez: I'd just like to address the question that Grayson County College put out. They say, it's not uncommon for students not to show up to the hearing, especially when it will likely result in suspension. Question, if a student is notified by certified mail and does not request a better time to meet, can we go forth with the hearing even though the student has avoided attending the hearing? Well . . .

Rob Jenkins: That's the same question I had initially. Yes.

Deborah Gonzalez: Yes. And one of the things that I'll say is, are you a public or a private institution, first of all.

Rob Jenkins: That's the first question.

Deborah Gonzalez: If you're a private institution and have in your rules that, you know, if they are not there you'll still go forward, you adhere to that rule, you're going to be fine. In a public institution though, we have that case that talks about doing a hearing with a student not there and how, you know, it was overturned. But a couple of things.

You say here, has avoided attending the hearing. How do we know they actually avoided it? How do we know? Even though it's certified mail, who was it signed by? Was it signed by the student? These are all issues that can be then brought up into a legal case that says that they did not have their due process for this.

Now that doesn't mean to say that you can send out three certified mail letters and then after the third one, if they still don't show up, then you do the hearing. Okay. Because now you've at least shown a court that you've tried everything you could to get that student there.

Rob Jenkins: Can you say in the letter that we are considering such and such a sanction against you and that if you don't show up, we'll follow through with that sanction? Could you say that in the letter, and would that cover you if you then did follow through with that sanction, expulsion or suspension or failing a class or whatever it might be?

Deborah Gonzalez: I think if it's private and it's in your procedure, you can.

Rob Jenkins: Definitely could.

Deborah Gonzalez: I think if you're public, you're going to run into some issues.

Rob Jenkins: Okay. So and you and I were talking about this a little bit before the session began today. Sometimes you have to do kind of a cost-benefit analysis. Yes, it's important to maintain decorum. Yes, it's important to discourage plagiarism and to sanction students when they're involved in plagiarism. But at the same time, it's probably even more important not to get your institution dragged into court.

So if you can't sanction a student because that student never showed up, that might make you want to grind your teeth because that student didn't get his or her just desserts for cheating or for whatever. But if the alternative to that is leaving yourself wide open to a lawsuit, that's where the cost-benefit analysis has to come in. Am I correct about that, Deborah?

Deborah Gonzalez: Yeah. I think you're right, but I also think you have to look at it from the point of view that, you know, if all you want to do is send out a notice and have the hearing and have it over with. Because what the courts are concerned about is due process. Did that student get due process? Did they get, you know, a legitimate hearing to present a defense? But if you send out those notices two, three times in different ways, I think you're much more likely to have a court say, yes, it was okay that the student was not there. And for those same reasons of, you know, resources are limited.

Rob Jenkins: Right. Yeah. Absolutely.

Deborah Gonzalez: Now it doesn't mean that you can do everything right and the student will still not sue.

Rob Jenkins: Yes. Well, you stand a much better chance of winning.

Deborah Gonzalez: Exactly. Exactly. Michelle has, can you address how to deal with students posting disparaging remarks on Facebook about teachers or other classmates and how/when disciplinary actions can be taken given right to free speech in a state university? Shall I take that?

Rob Jenkins: Yeah, please do.

Deborah Gonzalez: One of the things, again I'm going to pull you back to what's the policy that your institution has in regards to social media activity by students. A

disparaging remark is not necessarily one where there's a cause of action to sue. If it's a defamatory remark . . .

Rob Jenkins: Which has a very specific legal definition.

Deborah Gonzalez: That's right. A defamatory remark says that it's a false statement that causes harm to an individual. Okay? And that harm has to be in terms of their reputation, in terms of some financial compensation. It just can't be that you hurt their feelings.

Rob Jenkins: Right.

Deborah Gonzalez: Okay. Now there is a distinction with cyber bullying, cyber stalking, cyber harassment. If those remarks can reach any of those levels, then again we can have a legal case. We can ask Facebook to actually suspend the account, terminate the account, but we have to adhere to Facebook policies of why and how they will terminate. Okay. There's specific things that they look for before they terminate that. Okay?

The other thing is as a professor, you cannot defend the rights of the student in a scenario like this. So if one student says a remark about another student, you as the professor cannot get involved. It is the other student, the one who suffered the harm, who has to take action against that student.

Rob Jenkins: Now let me make a little plug here. You and I actually did a seminar about this a couple of months ago on this very thing, Michelle, and I'm sure that that is still available on DVD through Magna. So it's a seminar that Deborah and I did on legal issues in social media, and it dealt with exactly this kind of thing.

One of the other issues has to do with the amount of control that the professor and the college has over that site. There, you know, there are different kinds of Facebook pages. There's the student's own Facebook page, and then there's a class Facebook page that the professor sets up, and then there's a Facebook page that other class members set up so they can share homework tips and things like that.

And there are varying levels of control that determine whether, you know, can the professor just go in and take this statement down. Well, it depends on what kind of site it is, and those are all things that we talk about in that webinar.

Deborah Gonzalez: Yeah. I think one last thing I'd just like to address, Michelle, is this idea of the right to free speech in a state university. All rights are conditional. Right? At the moment that it causes harm to another, it sort of comes out

of that free speech zone. And we are learning now with social media whether the whole issue of public forum and how far that free speech can actually go.

Rob Jenkins: Right. And that's the issue exactly. Are we dealing with public forums or are we dealing with private forums or government forums? Because there are three main types, and they all have different standards.

Deborah Gonzalez: Right. I thought I saw another college typing something in. Okay. When addressing acts of violence, can a state college temporarily suspend a student from attending classes until the hearing, which would be held within two weeks? Depending on the outcome of the hearing, the student would be allowed to make up the missed day if found not at fault or in violation of student code of conduct. I would say absolutely.

Rob Jenkins: Yeah, I would say absolutely.

Deborah Gonzalez: I think if there is an immediate sense that something bad is going to happen, the institution's first priority is safety of all students. And so they have the duty, not just the right to, but the duty, the obligation to keep the rest of the students safe and to isolate this individual. And I think it's very fair the idea that they're saying they can make up the days, that the hearing is going to happen within a relatively short period of time, two weeks, and that, you know, it said, if found not at fault, then they can make it up without a problem.

But again, I'm going to point you back to that student code of conduct. Is it written in that student code of conduct that this can happen? It cannot be sort of made up at that moment. We have this incident and this is what we're going to do. It has to be in that code.

Rob Jenkins: Right. That sounds like a very reasonable policy to me, and one that I think would be upheld, but Deborah's point is very well taken. And part of our purpose in offering this seminar is to help participants anticipate some of the things that might come up. And if you haven't already addressed these kinds of things in your policies, you may need to go back and address some of them.

You know, we don't like to sit around and think up worst case scenarios and think, okay, what's the worst thing that could happen and what would we do if it did? But sometimes, especially as administrators and even as faculty members, we have to engage in that. And so that's what we wanted to do was to present you all with some scenarios, things that you needed to consider and to address in your policy, so that when something like this comes up, absolutely, I think that would be upheld. I think it would be just

fine if it's in your policy. But if you're making it up as you go, it could present some problems.

Deborah Gonzalez: And you have to be able to prove the act of violence.

Rob Jenkins: Right, in order to sanction them further. What they're saying is while they're waiting. And I think Deborah is absolutely right. You know, if you're just talking . . .

Rob Jenkins: Yeah, a couple of weeks, and if you're just sort of doing this cost-benefit analysis that we talked about, you're weighing the possibility of being, potentially being sued by 1 student against the possibility of being sued by 25 students in that class who are being exposed to this violent person. And I don't want to boil it all down to that. You're also looking at the possibility of somebody actually being hurt physically, perhaps, in that class.

Deborah Gonzalez: What are the rights of the faculty if there's concern for a violence of student in a private institution? Is it possible to get a restraining order against the student without legal implications to the institution? Okay.

Rob Jenkins: For who to get a restraining order?

Deborah Gonzalez: Is it the, I'm going to assume that the faculty member is trying to get the restraining order. The individual faculty member.

Rob Jenkins: Right. Okay.

Deborah Gonzalez: Okay. Well, again, in a private institution, you have the right by contract that the institution gives you. Okay. So that private institution will have some sort of document or should have a document that says what your rights are as a faculty member. But as for the restraining order against the student, if that individual faculty member feels that there's a safety issue and they get a restraining order, they must then inform their department head, who will inform the dean, so that the institution is now put under notice not to have that student anywhere near that professor. Okay.

It doesn't necessarily mean that they have to discipline the student if the student didn't do a violation of the code, but yet the professor feels that their safety is of issue. Okay. Because we have to also find out what, why does the faculty member not feel safe?

Rob Jenkins: And most campuses either have their own police force or they contract with a local municipality to provide services. And obviously the campus police, in whatever form that takes, they would need to be notified because

they're the ones who are going to have to actually enforce the restraining order.

Deborah Gonzalez: Right. But it's so important, that notification. Because if the faculty member does not tell their department head there's an issue here, I don't feel safe, okay, then the department head and the institution has no way of knowing that there is a problem, okay, because the faculty member did not inform them. Now once the faculty member reports it, the institution is put on notice.

Rob Jenkins: We had a situation a few years ago where a student, and, of course, I work in a state institution, but a student had a restraining order against an ex-husband who had become threatening and physically violent and so forth. And he came around to her class and threatened her, and it caused a big scene. She, you know, we talked about it with her after the fact that she had this restraining order.

It would have been a great thing if she had notified us beforehand. She's attending our campus. She has a restraining order. Then we could have dealt with it beforehand and maybe prevented this scene from ever taking place.

Deborah Gonzalez: Yeah. And I think that's a great example of what happens when somebody from outside, right?

Rob Jenkins: Absolutely.

Deborah Gonzalez: Because that was her husband. It wasn't a student.

Rob Jenkins: It wasn't even a student.

Deborah Gonzalez: It wasn't a faculty. It was a third party from the outside who is actually affecting. And it is important. Now sometimes students don't want to tell that there's a restraining order, you know.

Rob Jenkins: Right. It's embarrassing.

Deborah Gonzalez: Because it's embarrassing, exactly. But, you know, we need to have that information in order to protect them, in order to keep them safe.

Rob Jenkins: So I would say the answer to your question, COMP-Northwest, is that it's, first of all, it's the faculty member's responsibility to notify the institution, at which point the institution has some responsibility to help enforce that restraining order. But I don't know if there are any direct legal implications for the institution as long as they're performing their duty, their legal duty in enforcing.

Because a restraining order is a legal document, and every campus has sworn officers. And it becomes the sworn officers' duty to uphold that legal document. Whether they work for the college or not is sort of beside the point.

Deborah Gonzalez: Yeah. If they're security, they have to keep everybody safe.

Rob Jenkins: Exactly.

Deborah Gonzalez: And that's the issue. You know, when we talk about liability for institutions, it's always, it always focuses on safety. Right. Did the institution do enough to keep that individual safe, to kept that individual from harm?

Rob Jenkins: Right. And that's, at any of our colleges and universities the police department is called public safety, department of public safety, reflecting that very idea. That's an excellent question. Thank you. Do we have any other questions? We have just a couple of minutes here.

Rob Kelly: I think there was a question, I don't know if you addressed it. Slide 51, someone wanted some more elaboration on that.

Deborah Gonzalez: What was Slide 51?

Rob Kelly: It was the Tulane case.

Deborah Gonzalez: Let me find it here. Okay, yes. 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. And basically what this is saying is that, you know, when the court is faced with this case by a student, it's going to presume that the institution has done what it's supposed to do if it adhered to its rules.

Rob Jenkins: Right. It's not absolute, it's rebuttable.

Deborah Gonzalez: Yes. It's not absolute.

Rob Jenkins: But they begin with that presumption.

Deborah Gonzalez: Right. They begin with that presumption, which is almost sometimes in the public sphere because, you know, the constitutional rights are so important, the presumption is almost the opposite. Right? The student is innocent until proven guilty. Therefore, his constitutional rights were

violated until you prove to me that you did due diligence and due process. Okay.

In a private institution, the idea is if you have your rules and you went through your rules, we're going to presume that the institution is correct. Okay. But it's not absolute. None of these are absolutes, okay, and they're subject to a change. If another judge decides something differently in a higher jurisdiction, this could change. But as you see, most of these cases are from the '80s, '90s, even the early 2000s. They're pretty much established.

I think what we're going to see is not the decision reasoning change, but I think what we may see is some of the subject matter. Right? More technology.

Rob Jenkins: Right. Absolutely.

Rob Kelly: Okay. Thank you, Rob and Deborah, and thank you, participants, for joining us. Your campus has received an e-mail evaluation form from us. Please fill it out and tell us what you think of today's program and what programs you'd like to see in the future. Complete information about upcoming seminars and *The Teaching Professor* is available at www.magnapubs.com. Thanks again for joining us, and have a great day.