

WORKING WITH THE STUDENT CONDUCT PROCESS AT NORTH DAKOTA STATE UNIVERSITY

A GUIDE FOR ATTORNEYS - Frequently Asked Questions

Q: My client is charged with a crime off-campus. Can I get the proceedings delayed until the criminal matter is resolved/How do I request a stay, delay, or postponement?

The student conduct process at North Dakota State University is not attempting to determine whether or not a student has violated the law; the University is trying to determine whether or not a student violated University policy. As such, the goals and the means of the criminal justice process and the student conduct process are dissimilar. No delays are given to students to accommodate their interests in the criminal process.

The University will work with parties, within reason, to accommodate schedules and conflicts, but will also establish parameters and deadlines that must be observed. Students have the right to counsel, but not a specific counsel.

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

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

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

North Dakota State University reserves the right to address incidents that take place off campus and routinely addresses alleged violations that are reported off of campus property.

NDSU focuses on the relationship with the student, not the geography associated with an alleged incident.

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

The process will continue with or without the student's involvement, and a decision will be reached based on the information that is provided during the investigation and/or the hearing. The student may not use his or her refusal to participate as a later ground for appealing a decision.

Q: How do I access my client's records?

Information regarding student records may be reviewed at:

<https://www.ndsu.edu/registrar/records/ferpa/>

The following release must be completed by the student to release records to another party:

https://www.ndsu.edu/fileadmin/reslife/Discipline_Record_Release_Form.pdf

NDSU communicates with students in the process, but will copy attorneys on all correspondence once a release is received.

Q: What is my role during the process?

The role of the attorney is to assist the student in: sharing their account, making opening and closing statements, and asking questions of the parties participating in the hearing as prescribed by the NDSU hearing process and procedures.

Q: My client has not been charged with a crime-how is this a matter for the University?

The University has jurisdiction and in some cases a legal responsibility to address alleged conduct violations. A student does not need to be charged criminally or civilly for the University to investigate or pursue action under the Code.

WHAT DOES THE STUDENT CODE OF CONDUCT SAY?

*Suspension/Expulsion
eligible cases
(NDCC 15-10-56)*

***“Any student
enrolled...has the right to
be represented, at the
student’s expense, by the
student’s choice of either
an attorney or a
nonattorney advocate,
who may fully participate
during any disciplinary
proceeding or during any
other procedure adopted
and used by that
institution to address an
alleged violation of the
institution’s rules or
policies.”***

5.3 STUDENT ADVISOR OPTIONS

Students have the right to have an individual present who may act in an advisory capacity. Hearing advisors may not serve as witnesses. If a student would like an advisor but needs assistance in identifying an appropriate individual, the Student Affairs Office will identify a trained staff or faculty member to work with the student.

If a student chooses to have an attorney present as his or her hearing advisor, NDSU may request legal representation be present as well. In cases that do not involve potential for suspension or expulsion, the role of an attorney shall be to advise his or her client, not to participate in the hearing.

Any advisor, attorney, or non-attorney advocate who does not respect this provision may be cautioned by the hearing officer and, if they persist, may be asked to leave and the hearing will proceed.

In cases that could result in suspension or expulsion, attorneys or nonattorney advocates may fully participate, which means they may make opening and closing statements, examine and cross-examine witnesses present during the hearing, and provide the student with support, guidance and advice throughout the process.

5.14 STANDARD OF PROOF

The standard of proof will be a “preponderance of the evidence.” A student is found to have violated this Code when:

- a) The student admits to the violation or
- b) Evidence admitted at the hearing indicates by a preponderance of the evidence that the student is responsible for a violation.

Policy 601 *Rights and Responsibilities of Community: A Code of Student Conduct*

<https://www.ndsu.edu/fileadmin/policy/601.pdf>

Other Applicable Policies:

Policy 162 <https://www.ndsu.edu/fileadmin/policy/162.pdf>

Policy 156 <https://www.ndsu.edu/fileadmin/policy/156.pdf>

Policy 100 <https://www.ndsu.edu/fileadmin/policy/100.pdf>