APLU Annual Meeting
Collaborative Session

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Student Conduct Codes and Disciplinary Processes Background

- In loco parentis (Dean of Men, Dean of Women)
- *Dixon v Alabama case and Goss v Lopez*
  - Some kind of notice and some kind of hearing
  - More than a thumbs up or thumbs down approach
- *Nzuve v Castleton State College 1975* – educational institutions have a need and a right to their own campus standards
- Key question: Did the individual have a fair opportunity to answer, explain and defend themselves
- According to General order – attendance at tax-supported institutions is not compulsory, it is voluntary and optional. By attending our institution, the student agrees to the obligations of attending including our rules and procedures
“The discipline of students in the educational community is, in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community.”
Other principles of Student Conduct

- Prompt, fair and equitable is what we should expect in ALL cases for ALL Students.
- Many campuses already do this well despite what you hear in the media.
- Primary goal of student conduct is education.
- ASCA has been teaching this for 26 years.
- Move away from legalism or similarities to Criminal Justice System.
- Student Conduct is about enforcing institutional policies not enforcing the law. We can’t find students guilty of rape or murder, but we can hold students responsible for sexual misconduct and harm to others.
More principles

- The more your process looks like the criminal justice system and the more legal language you use, the more you will be held to that standard and compared to it.
- Why is preponderance the right standard to use?
- What you do for one party you do for the other.
- Similar ability to prepare and review information, ask questions.
- Provide accommodations and support to both parties.
- This is about levelling the playing field for complainants.
Passed in 1972
- Initial focus was on athletics, math and science

2001 Guidance from OCR

2011 Dear Colleague Letter

Increased enforcement through Voluntary Settlement Agreements

2013 VAWA

2014 White House Task Force, OCR FAQs, Campus Accountability and Safety Act
Consistent Themes

Themes from DCL, OCR, White House Task Force, VAWA and CASA

- Expansion of reporting requirements
- More transparency
- Focus on trauma-informed, culturally relevant trainings and procedures
- Cultivation of culture of reporting (including amnesty policies)
- Training is critical
- Increased coordination between campus and local law enforcement and resources
Consistent Themes

- Conduct climate surveys
- Provide and inform of opportunities for access to confidential advocate(s)
- Increase transparent communication about cases and process
- Increase in institutional and governmental accountability
- Increased detail focused on how we do our work
- Increased enforcement options
- Differentiate this work from the criminal justice process
Sanctioning

- In most instances suspension and/or expulsion are the appropriate response to these cases.
- Transcript notations for the period of the sanction are also appropriate so that the next institution can decide if they want someone with that history at their institution.
- There are other alternatives – open enrollment, etc. for students. Sometimes with time and maturation, other institutions may admit
“While the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social, and economic future, he or she may not be fined, imprisoned, disenfranchised, or subject to probationary supervision. The attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound.” (p.5) The justices went on to say that the teaching process associated with higher education conduct processes would be frustrated and institutional control would be “impotent” should a judicial mandate require adherence to “intricate, time consuming, sophisticated procedures, rules, and safeguards of criminal law.”
“In the field of discipline, scholastic and behavioral, an institution may establish any standards reasonably relevant to the lawful missions, processes, and functions of the institution...Standards so established may apply to student behavior on and off the campus when relevant to any lawful mission, process, or function of the institution. By such standards of student conduct the institution may prohibit any action or omission which impairs, interferes with, or obstructs the missions, processes and functions of the institution...Standards so established may require scholastic attainments higher than the average of the population and may require superior ethical and moral behavior. In establishing standards of behavior, the institution is not limited to the standards or the forms of criminal laws.” (p. 7)