



## DUE PROCESS IN ACADEMIC MISCONDUCT CASES

This month's Melissa Talks will wrap up the year by ending where we started. In January of 2021 the Melissa Talks was on Due Process in Academic and Conduct Issues. Today we will cover pretty much the same topic—due process in academic misconduct issues. You may ask why we are covering due process twice on one year. Well, it is such an important topic we thought covering it again would be really helpful. In this half hour, we will first talk very briefly about due process itself. Next, we will talk about academic misconduct and how due process works in real time.

### DUE PROCESS BASICALLY MEANS FAIRNESS

Basic fairness requires:

1. Notice (notice of the rules to which students are held, notice of the consequences of violating those rules, and notice of the allegations being made against the student that may lead to a deprivation of their liberty and property).
2. An opportunity to be heard at a specific time and in a meaningful way (meeting or hearing where a student can present their “side of the story”).
3. A decision supported by evidence that meets the standard of proof and is not arbitrary or capricious (no action taken against the student before the decision is made, decisions made based on the “more likely than not” standard of proof, and information regarding an appeal right—including procedures for such an appeal are shared with the student).

In the college setting, academic misconduct can take many forms. Some examples of academic misconduct include:

#### 1. Cheating

- a. Obtaining work or information from someone else and submitting it under one's own name
- b. Using, or attempting to use, unauthorized notes, or study aids, or information from another student or student's paper on an examination
- c. Communicating answers with another person during an exam
- d. Allowing another person to do one's work and submitting it under one's own name
- e. Using electronic devices (e.g., phones, watches, calculators) that provide answers or other unauthorized information for exams
- f. Taking an exam for another person or having someone take an exam for you

#### 2. Plagiarism

- a. Copying word-for-word or lifting phrases, special terms, or definitions from a source or reference (whether oral, printed, or on the internet) without proper attribution
- b. Paraphrasing, that is, using another person's written words or ideas, albeit in one's own words, as if they were one's own thought

- c. Borrowing facts, statistics, graphs, or other illustrative material without proper reference, unless the information is common knowledge, in common public use

### **3. Falsification of Data, Records, and Official Documents**

- a. Fabrication of data
- b. Altering academic records, or documents related to academic records
- c. Misrepresentation of academic status, including attendance
- d. Forging a signature of authorization or falsifying information on an official academic document, grade report, letter of recommendation/reference, letter of permission, petition, or on another official document

### **4. Unauthorized or Malicious Interference/Tampering with Office Property**

- a. Unauthorized or malicious interference or tampering with faculty, administrative, or staff offices, including computers

### **5. Classroom Disturbances**

- a. Interference with the course of instruction or an exam to the detriment of other students
- b. Disruption of classes or other academic activities in an attempt to stifle academic freedom of speech
- c. Failure to comply with the instructions or directives

The level of due process is significantly less for academic performance dismissals than for conduct discipline and the decision to dismiss a student based on academic performance rests on the academic judgment of school officials in accordance with the institutional policies. Courts are typically unwilling to challenge or otherwise interfere with an institution's decision-making process as long as there is adherence to institutional policy and have a rational basis.

### **What does this mean in real-time?**

Courts will defer to the institution's decision-making during an academic misconduct case unless it has substantially deviated from its own rules and regulations or if the decision was arbitrary, irrational, or in bad faith. In order to protect against such arguments, academic misconduct issues should still follow the principles of due process. Students should be:

1. Provided adequate written notice of the charges being made against them (and the policy at issue)
2. Provided written notice of the date and time of a meeting to discuss the charges being made against the student
3. Advised that at the meeting they are able to provide their side of the story or provide a defense to the charges being made against them
4. Notified in writing of a decision that is based on the facts and that has taken into consideration the student's defense.

## **Additional Considerations:**

Always consider whether there is bias or conflict of interest in the process or in any participant in the process. If a student alleges bias or conflict of interest, it is a good idea to determine whether such bias or conflict exists and to remove an administrator from the process.

Always follow the established appeals process, if one exists. Individuals reviewing an appeal should examine all available evidence provided by the student and the college. Any due process irregularities should be addressed and remediated.

When considering sanctions, the penalty should mirror the severity of the charge(s) and finding(s) against the student. Not every academic misconduct situation will rise to the level of suspension or expulsion, meaning every case should be evaluated independently to determine the appropriate sanction. Typically, if a student is found responsible for academic misconduct, they will experience two consequences—a disciplinary sanction and an impact to the assignment or course grade. *Disciplinary Sanction:* Depending on the severity of the offense, a disciplinary sanction ranges from a verbal or written reprimand to suspension or dismissal from the college. *Grade Impact:* A student's grade for any work involving academic misconduct will be determined by the course instructor and may include a zero on the assignment, quiz, or test, which may result in failing the course.

## **Example**

During a Biology class, Student A is observed by the professor to have cheated on the midterm exam. As the class was leaving the exam, the professor tells the student that he observed the cheating and that the professor wanted to visit with the student the following day at 2 PM. The professor follows up by sending the student an email detailing the charge of cheating and highlights the academic misconduct policy related to cheating. The email outlines the date, time, and location of the meeting and the expectation that the student will attend. The student does not attend the meeting and does not attend the next class period.

The professor emails the student and indicates that a decision has been made that the student did, indeed, cheat on the exam. The penalty for the cheating was that the student would receive a zero for the midterm exam. The professor also indicates that the matter will be forwarded through the student conduct process where there may be additional disciplinary sanctions. Was due process followed?

If you have any questions, please feel free to contact Melissa Flores.



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