



ATHLETIC CODE OF CONDUCT V. STUDENT CODE OF CONDUCT

This month we will be talking about student-athletes. The focus of this discussion revolves around codes of conduct, specifically the athletic code of conduct for student-athletes and the student code of conduct for all students, and when the two intersect.

First, let's discuss some considerations regarding when Athletic Directors and Coaches should defer to other offices/departments.

1. Always defer cases of Title IX sexual harassment (including dating violence, stalking, and domestic violence) to the Title IX Coordinator.
 - a. Supportive measures (such as removal from practices, games, etc.) may need to be put in place. The Title IX Coordinator will work with you to identify and implement these supportive measures.
 - b. No disciplinary action should be taken unless and until a Respondent is found to have violated the Title IX policy.
2. Always defer athletic processes in order to allow evidence gathering if a criminal investigation is taking place.
 - a. May have to wait on taking action against a student so as not to tip off the student-athlete about the criminal investigation.
 - b. May limit a coach's ability to question the student-athlete (concerns against self-incrimination).
 - c. Consult with legal and Campus Police to define permissible and prohibited actions.
3. Always consult with administration/legal regarding when to speak and what to say regarding alleged misconduct.
 - a. If the incident is not known, easier to say nothing, not confirm.
 - b. If public enough in nature that everyone knows from the start (e.g., bar fight, car accident): Again, FERPA controls, but some measured, general
 - c. statement may be appropriate

Now let's turn our focus to codes of conduct.

Where does the idea of a separate athletic code of conduct come from?

The NJCAA (National Junior College Athletic Association) has an athlete conduct code that sets standards of behavior for student-athletes participating in NJCAA-sanctioned sports. The code outlines expectations for sportsmanship, academic integrity, respect for opponents and officials, and adherence to the team and institutional rules. Violations of the athlete conduct code can result in disciplinary action, including suspension or expulsion from the team. The specific details of the athlete conduct code may vary slightly from MCCC college to college, but the NJCAA provides guidelines for all member institutions to follow.

Colleges in the District with athletic programs have athletic codes of conduct that student-athletes agree to follow as part of their participation on an athletic team. Student-athletes are also beholden to the student code of conduct outlined in [Administrative Regulation 2.5.2](#).

Why have an athletic code of conduct?

College athletic departments often have their own code of conduct to promote ethical behavior and maintain the integrity of the program. College student-athletes are representatives of the institution more so than other students, and their actions can reflect positively or negatively on the school. Therefore, it is essential to establish a set of standards that outline the expectations for behavior, both on and off the field.

An athletic code of conduct can cover various topics, including sportsmanship, drug and alcohol use, sexual harassment, and other behaviors that may impact the reputation of the athletic department or the school as a whole. An athletic code of conduct can be an essential tool for promoting a positive and successful athletic program while upholding the values of the institution and creating a culture of personal accountability.

The reality for student-athletes is that they are bound by both the athletic code of conduct and the student code of conduct, and consequences for policy violations can be specific to their participation on the athletic team—through the athletic code of conduct—or their standing as a student at the college—through the student code of conduct. *Why is this the case?*

Is Participation in intercollegiate athletics a right?

Participation in intercollegiate athletics is generally considered a privilege rather than a right. While college students have the right to pursue their academic goals (their education), participation in athletics is typically contingent upon meeting certain requirements, such as maintaining a minimum GPA or meeting certain physical fitness standards, and following policies related to participation in athletics. Additionally, participation in intercollegiate athletics often requires students to sign a contract or agreement outlining the terms and conditions of their participation, which further reinforces the idea that it is a privilege that can be revoked if certain conditions are not met.

What does privilege vs. right mean?

A right is something that is typically recognized and protected by law and cannot be taken away from you without due process. For example, the right to free speech, the right to practice your religion, and the right to an education are all examples of rights.

A privilege, on the other hand, is a benefit or advantage that is granted to a person or group of people by another party, often based on certain qualifications or circumstances. A privilege is something that can be taken away or revoked if the person or group does not continue to meet the necessary requirements or conditions. Examples of privileges are the privilege to drive a car, the privilege to access certain services, the privilege to attend a private school, and the privilege to participate in an intercollegiate athletic team.

In summary, while rights are inherent and cannot be taken away without due process, privileges are granted and can be taken away if certain conditions are not met.

That being said, athletic directors/coaches do not want to act arbitrarily. They should provide fundamental fairness (due process) when addressing violations of athletic codes of conduct and should thoughtfully consider whether to refer the student through the student code of conduct process. It is always recommended that there be communication and coordination between Athletic Departments and Conduct Coordinators.

Challenges to Athletic Sanctions for Violations of an Athletic Code of Conduct

In recent years, both the content and implementation of student-athlete behavior policies that are more restrictive than student codes of conduct have been challenged in court based on five general categories.

First, the student-athlete suspended from athletics participation often asserts that his or her *due process rights have been violated*. The basis of this constitutional argument is that participation in school sports is a property right and that both procedural and substantive due process is mandated before any deprivation of that property right occurs. Courts have generally held that students do not have a federally protected property right in extracurricular activities. That being said, at MCCCCD, athletic departments are expected to be fair and provide basic due process (notice, a meeting where they can present their side of the story, and a decision based on evidence and not arbitrary) to their athletes.

Second, student-athlete behavior policies are often challenged using another constitutional argument—the assertion of an *equal protection violation*. In such cases, the suspended student-athlete claims that the code of conduct intentionally or incidentally distinguishes between classes of persons based upon discriminatory criteria such as race, ethnic origin, religion, or some other suspect basis and, as such, violates the Fourteenth Amendment's Equal Protection Clause. Courts usually have reviewed equal protection challenges under the lenient standard of rational basis review. This requires the challenger to show that a behavior policy is not rationally related to a legitimate school interest. These challenges fail when the policy (the athletic code of conduct) is related to preserving a safe environment that prioritizes the learning environment.

Third, student-athlete behavior policies are consistently challenged for allegedly containing *unreasonable or arbitrary provisions*. This non-constitutional issue requires an analysis as to whether the specific component of the policy that resulted in the suspension of a student-athlete is rationally related to the effective operation of the school or its athletics program. If a violation by a student-athlete of the code of conduct would have no detrimental effect on the mission and goals of the school or its athletics program, the policy generally is considered arbitrary and unreasonable. Courts usually give deference to student codes of conduct so long as those policies are rationally related to legitimate educational goals and the effective operation of the school.

Fourth, rules and regulations governing conduct implicate constitutional issues of student free speech, free expression, and free association. The student-athlete who is suspended from athletics participation for violating social media guidelines, wearing a prohibited tattoo, or being present at a party where others are drinking alcohol will often use the First Amendment's Free Speech Clause or Free Association Clause as the basis for challenging the school's actions. To stay on the safe side, codes of conduct should focus on regulating on-campus (or school-related) conduct and not purely off-campus speech by student-athletes. It is also very important not to include “gag” rules such as “what happens in our program stays in our program,” as it implies covering up inappropriate happenings and limits student-athletes from coming forward about situations that may be harmful to the health and safety of individuals and/or a program.

Finally, the fifth basis for a challenge of student-athlete codes of conduct is one that appears in those cases where the suspended student-athlete has a disability and argues that the Americans with Disabilities Act and related disability legislation mandates that an exception should be made to the behavior policy because of the individual's disability. Student-athletes with disabilities are not exempt from the mandates of codes of conduct as long as those policies are applied in a non-discriminatory manner.

Considering the complexity of this issue, it may be helpful to work with your college’s student affairs conduct team to create a chart that might help triage conduct issues as they arise. An example of one is shown below.

Type of Incident	What policies, rules, laws are relevant	Who to communicate with
Sexual misconduct	AR 5.16	Title IX Coordinator
Misconduct, non-sexual in nature	AR 2.5.2	Student Conduct Coordinator
Violation of athletic code of conduct	Athletic Code of Conduct/Student Code of Conduct (for referral, if the alleged conduct is severe enough)	Student Conduct Coordinator
Violations of student code of conduct	AR 2.5.2	Student Conduct Coordinator
Academic Misconduct	AR 2.3.11	Faculty/Dean/Program Director
Criminal conduct	Arizona state law	Campus Police/ Student Conduct Coordinator

Works Consulted:

In the Penalty Box: Navigating student misconduct issues within athletics. Debra Kowich, Amy Piccola, and Jen Vining-Smith. (2022). National Association of College and University Attorneys.

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