

**FLORIDA BOARD OF GOVERNORS  
NOTICE OF PROPOSED REGULATION AMENDMENT**

**DATE:** April 2, 2009

**REGULATION NUMBER AND TITLE:** 6.0105 Student Conduct and Discipline

**SUMMARY:** Regulation 6.0105 requires each university to establish a student disciplinary system, including a code of conduct, that provides a written description of the rights and responsibilities of students, the standards of conduct expected by the university, the appropriate penalties and sanctions for violations of those standards, and a description of the available procedures for initiating and conducting student disciplinary proceedings. This regulation, which was a prior Board of Regents' rule, had not been updated after the establishment of the Board of Governors and university boards of trustees in 2003 and, as a result, was inconsistent with current university procedures for student disciplinary proceedings and best practices reflective in student disciplinary systems based upon an educational, as opposed to legalistic, model.

**FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.**

**AUTHORITY TO AMEND REGULATION(S):** Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

**THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED AMENDMENT TO THE REGULATION:** Vikki R. Shirley, General Counsel.

**COMMENTS REGARDING THE PROPOSED AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW.** The comments must identify the regulation on which you are commenting:

Vikki R. Shirley, General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or [generalcounsel@flbog.edu](mailto:generalcounsel@flbog.edu).

## 6.0105 Student Conduct and Discipline.

(1) In furtherance of the educational mission of the universities, each university ~~president~~ board of trustees shall establish ~~university regulations that ensure fairness and due process in student disciplinary proceedings and that guarantee the academic integrity of the university.~~ This regulation applies to all student disciplinary proceedings conducted by a university under ss. 240.132, 240.1325, 240.133, 240.261, or 240.262, F.S.

~~\_\_\_\_\_~~ (2) ~~Each university shall establish a Student Disciplinary System, including a code of conduct, which shall include, at a minimum:~~

(a) A written description of the rights and responsibilities of students, standards of conduct expected by the university, a list of ~~specific~~ violations, appropriate penalties or sanctions, and procedures for ~~filing complaints~~ initiating and conducting student disciplinary proceedings, ~~which must be consistently administered by the university. An amendment to the list of specific violations in the university's code of conduct may not be applied retroactively to conduct that occurred before the effective date of the amendment;.~~

(b) Definitions of terms used in the university's code of conduct, such as "student" and "university community;." ~~and a description of the specific locations to which the code of conduct generally applies, except in circumstances of certain off-campus conduct as described in the code of conduct;~~

(c) ~~University hearing committees, panels, or courts, of which students, appointed by the appropriate university process, comprise at least one-half of the membership;~~

(c) A statement that the code of conduct shall govern student behavior both on and off the university's campus.

(d) A description of the available university hearing forum which may consist of a university official or officials or a committee or panel. Where a committee or panel is the hearing forum, students shall make up at least one-half of the membership.

~~(de) A written description of the general procedures to be followed in the initial student disciplinary proceeding which shall include a description of each step of the disciplinary process, and the services available to the student for preparing his or her defense, and the availability of impartial advisers for a student charged with a response to the reported code of conduct violation;.~~

(ef) A written procedure for the disposition of emergency cases that involve the health, safety, or welfare of the student or the university community;.

(fg) ~~Acknowledgement~~ A provision stating that the burden of proof in ~~student~~ a disciplinary proceedings is ~~on the complainant~~ not on the student subject to the disciplinary proceeding;.

~~(gh) Provision for the requirements as to~~ A provision stating that the burden of proof required in ~~student~~ disciplinary proceedings, ~~which shall, at a minimum, be a preponderance of the evidence;.~~ This means that the information presented supports the finding that it is more likely than not that the violation occurred.

(hi) ~~Provision of~~ A provision setting a time limit for charging a student with a violation of the university's code of conduct, ~~which may not exceed 1 year from the date the violation was committed or discovered, whichever is later. University administrators may exercise professional discretion when applying the time provision to account for circumstances that warrant a waiver of the one-year time limit from the date of discovery. Such circumstances include but are not limited to: stalking, sexual battery, relationship violence, in which the delay may be related to issues of victimization; and a~~

description of those circumstances in which that time limit may be waived by university officials.

(ij) ~~Provision for~~ A provision requiring an accurate and complete record of each student disciplinary proceeding and the preservation thereof to be made and preserved.

(32) Each university shall publish, ~~the following information at a minimum on its Internet website, and in its student handbook as described in s. 240.2097, F.S.:~~

~~(a) University policies implementing ss. 240.132, 240.1325, 240.133, 240.261, and 240.262, F.S., which govern the conduct and discipline of students, including the university's the regulations and policies comprising its Student Disciplinary System, including the code of conduct and the procedures for filing complaints and conducting student disciplinary proceedings; and~~

~~(b) A description of each step of the disciplinary process, the resources available to a student for preparing his or her defense, and the availability of impartial advisers for a student charged with a violation.~~

(45) Each university shall comply with ~~s. 228.093, F.S.~~, 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act of 1974, as amended, and other requirements of state and federal law relating to the confidentiality of the records and reports of students.

~~(5) The due process requirements contained in subsection (6), below, are applicable in all cases involving student discipline, including matters concerning academic dishonesty.~~

~~(64) Due process as applied by the universities must in all disciplinary proceedings shall include, as a minimum, the following minimum requirements:~~

~~(a) The student shall be provided with written notice of the charges against him or her in sufficient detail and in sufficient time to prepare for a hearing before an appropriate committee, panel, or court, as established by each university, or review before the appropriate university official or officials. The written notice of the charges shall be accompanied by the forms and information described in paragraph (6)(c), below. Written notice may be provided by electronic delivery to the student's officially designated university email address.~~

~~(b) Each university shall establish a minimum number of days before the student disciplinary proceeding within which the university must present to the student the written notice of charges, but in no case will this notice be less than 35 regular business days (excluding legal holidays), except in cases of emergency as specified below or unless waived by the student.~~

~~(c) The student shall be entitled to a prompt disciplinary proceeding before an appropriate committee, panel, or court, as within timelines established by each university, with allowances for delays due to the unavailability of student members serving on such committee, panel or court. Alternatively, the student has the option to waive the notice requirements in paragraph (b) and request adjudication of the matter by an appropriate university official or officials, as designated by the university. The student's right to a student disciplinary proceeding conducted by a committee, or panel, or court composed at least one-half of students may only be waived where (i) permitted by the university, and (ii) requested by the student in writing on forms provided by the university which include an explanation of the effect of the waiver.~~

(d) ~~The student may have, at his or her own expense and initiative, an adviser of the student's choice present at the student disciplinary proceeding. It is the student's responsibility to make appropriate arrangements for the advisor to attend the proceeding, and the proceedings shall not be delayed due to scheduling conflicts of the chosen advisor. The advisor may be present to advise the student but shall not speak for or present the case for the student or otherwise participate directly in the proceeding.~~

(e) ~~The student and his or her adviser, if any, have the right to inspect all of the information that will be presented against the student at least 3 regular business days (excluding legal holidays) before the student disciplinary proceeding. The University also has the right to review any information the student intends to use at least 3 regular business days (excluding legal holidays) before the student disciplinary proceeding.~~

(f) ~~The student may present information on his or her own behalf at the disciplinary proceeding.~~

(g) ~~The student may hear and question adverse witnesses. All parties to the disciplinary proceeding may arrange for witnesses to voluntarily present relevant information during the proceeding. The questions for each witness shall be directed to the person or body conducting the proceeding. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the person or body conducting the proceeding.~~

(h) ~~The student may not be forced to present testimony that is self-incriminating; however, the university is not required to postpone student disciplinary proceedings pending the outcome of a criminal prosecution, and a penalty or sanction imposed under the university's code of conduct is in addition to~~ The university disciplinary proceeding is not a criminal or judicial proceeding and is designed to address student behavior; therefore, alleged violations of the university's code of conduct will be addressed independently of any penalty imposed by the courts for the criminal offense.

(i) ~~The decision of responsible or not responsible on the charges of violating the university's code of conduct must be based solely on the information presented at the student disciplinary proceeding.~~

(j) A student found responsible for a violation of the university's code of conduct shall be subject to sanctions commensurate with the offense with consideration given to any aggravating and mitigating circumstances, including but not limited to the student's conduct record.

(jk) The decisions of any university committee, panel, or court, or of any university official or officials, hearing forum must be presented to the student in writing and within a reasonable period of time after the conclusion of the student disciplinary proceeding, as specifically prescribed by the university's rules code of conduct.

(kl) If a university's policies provide that the decision of a university committee, panel, or court hearing forum in a student disciplinary proceeding constitutes a recommendation to a university official for official action, then the following apply:

1. With respect to a finding of responsible or not responsible on the charges of violating the university's code of conduct, the university official reviewing the recommendation of the university committee, panel, or court may only:

a. Accept the recommendation; or

b. Remand the case for rehearing.

2. With respect to penalties or sanctions, the university official may modify the penalty or sanction recommended by the university committee, panel, or court if the penalty or sanction is inappropriate to the violation.

~~3. the university's code of conduct must specify the actions that the university official may take with respect to adopting, modifying, or rejecting the recommended decision and sanctions, or remanding the matter for a rehearing. Any differences between the recommendation of the university committee, panel, or court hearing forum and the university official's final decision, and the reasons therefore, must be based on information from the student disciplinary hearing and presented to the student in writing.~~

~~(4m) The student may appeal the decision of any university committee, panel, or court, or of any university official or officials, within a period specified by the university, to the president or the president's designee. Each university code of conduct shall describe the internal appeals processes. Each university shall have at least one level of internal appeal. No person may hear or decide an appeal if he or she participated in the decision to charge the student with the violation or if he or she conducted or participated in the student disciplinary proceeding being reviewed on appeal.~~

~~(mñ) The student's status will remain unchanged. A student shall remain eligible to attend classes and university activities pending the university's final decision in the student disciplinary proceeding, except However, in cases where the president or president's designee determines that the health, safety, or welfare of the student or the university community is involved, A student's enrollment status may be changed only in cases where the president or president's designee determines that an emergency exists, which affects the health, safety, or welfare of the student or the university community a student's privileges at the university, including the ability to attend classes or engage in university activities, may be suspended on an interim basis. If a student's enrollment status is changed under privileges are temporarily revoked as described in this paragraph, but the student is subsequently found not responsible for the violation, the university must:~~

- ~~1. Correct any record of the change in enrollment status in the student's permanent records and reports in a manner compliant with state and federal laws; and~~
- ~~2. Refund to the student, a pro rata portion of any fees and charges for tuition, other university specific and out-of-state fees, and charges as appropriate, due to the temporary change in enrollment status and in a manner consistent with university policies and procedures if the temporary revocation or suspension of the student's ability to attend classes lasts for more than ten school days.~~

~~(75) At the conclusion of the appeals process, the decision of the president or the president's designee shall be final. At a minimum, final appellate decisions resulting in a suspension or expulsion of a student must include notice to the student of the student's right to appeal to an external judicial forum.~~

~~(86) Each university shall include in its list of violations of the university's code of conduct, a description of those types of violations occurring off-campus for which the student may be subject to discipline. A student may be subject to discipline for his or her conduct that violates the university code of conduct, even where that conduct occurs off-campus. The action of the university with respect to any such off-campus conduct shall be taken independently of any off-campus authority. The disciplinary authority of the university for off-campus conduct will not be exercised to merely duplicate the penalties imposed under applicable federal, state, and local laws and ordinances. The university may only take disciplinary action against a student for violations committed off campus if at least one of the following applies:~~

~~(a) The off-campus conduct is specifically provided by law or the university's code of conduct as subject to university discipline.~~

~~\_\_\_\_\_ (b) \_\_\_\_\_ The off-campus conduct demonstrates that the continued presence of the student on campus presents a danger to the health, safety, or welfare of the university community; is disruptive to the orderly conduct processes and functions of the university; or is intimidating or threatening to the university community or an individual within the university community.~~

~~\_\_\_\_\_ (c) \_\_\_\_\_ The off-campus conduct is of such a serious nature that it adversely affects the student's suitability to remain a part of the university community.~~

~~\_\_\_\_\_ (9) \_\_\_\_\_ If a student charged with an off-campus violation of the university's code of conduct disputes whether the off-campus conduct is subject to discipline under the university's code of conduct, the university committee, panel, or court, or the university official or officials, shall consider the dispute and review the decision to charge the student with a violation.~~

(407) Each university's code of conduct shall include a description of the rights of alleged victims in the sStudent eDisciplinary sSystem. The university shall provide notice to the victim of his or her rights at least 3 5 regular business days (excluding legal holidays) before the ~~student judicial~~ disciplinary proceeding is conducted. Each university is encouraged to provide support and assistance programs for victims, as appropriate.

(448) Each university shall establish a committee, which shall include student representation, for the periodic evaluation of its sStudent eDisciplinary sSystem. ~~At least one-half of the committee members shall be students appointed by the student body president.~~

~~\_\_\_\_\_ (12) \_\_\_\_\_ At least once every 5 years, the committee created by s. 120.81 (1)(g), F.S., shall periodically review and evaluate this rule to determine that it ensures fairness and due process in disciplinary proceedings involving students in the State University System and systemwide accountability for the proper functioning of the student judicial system at each of the universities.~~

Authority: Section 7(d), Art. IX, Fla. Const., History--New 2-18-85, Formerly 6C-6.105, 4-29-01, Amended.