

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021

212/794-5382




**ADMINISTRATIVE ADVISORY
MEMORANDUM #8**

June 27, 1991

MEMORANDUM

To: College Presidents

From: Vice Chancellor Robert E. Díaz 

Re: Exclusion from Campus for Misconduct of Persons who
are Not Students or Employees

An issue affecting many colleges during the recent building takeovers was how to deal with "outsiders" who disrupt college activities.

A college president or his/her designee has the general power to exclude from the campus persons who are not students or employees and do not abide by college rules of conduct. The college must demonstrate, however, that the exclusion of the individual has a legitimate basis rationally related to the power to maintain order on the campus. The college president may serve notice on a person who is not a student or an employee, advising the individual that, due to past specific conduct, he or she is barred from the campus and will be subject to arrest for trespassing if he/she should return. The excluded individual should also be informed of a college official that may be called to request an appointment if there is a legitimate need to be on the campus. There is no requirement for a college hearing on such an exclusion.

This authority is based on Article 125 of the Education Law. In particular, Section 6203 provides:

The City University shall have the care, custody, control, and management of the lands, grounds, buildings, facilities and equipment used for the purposes of the educational units of the city university and it shall have the power to protect, preserve and improve the same.

Furthermore, Article 129-A of the State Education Law, Section 6450, specifically requires that the governing board of every college "adopt rules and regulations for the maintenance of public order on college campuses and other college property" and that the penalties for violation shall include provisions for the "ejection of a violator from such campus and property." The authority of the chief executive officer of a publicly supported college to exclude persons from the college campus has been upheld in the case of People v. Leonard, 62 NY2d 404 (1984). It should be noted that the court stressed that an order to remain off such property must have a legitimate purpose, one rationally related to the need to maintain order on campus.

It is important that you maintain a file on a person whose behavior may lead to an order of exclusion. The file should contain witness statements, copies of incident reports, etc. The documentation should set forth observations which would support a determination that the individual violated the Henderson Rules. The statements in this file will provide the justification for your issuance of an order of exclusion.

To satisfy the elements of criminal trespass, the college would have to show that the order was issued by an authorized administrator who communicated this order to the individual. If the order of exclusion is not signed by the college president, it should be signed by an authorized designee. Personal delivery of the order of exclusion, in addition to registered and regular mailing is preferable.

A sample order of exclusion for an individual who participated in a building takeover is enclosed. You should include in the letter any other facts that may be asserted in support of your decision to bar a person from campus. A copy of the Henderson Rules should be attached to the order of exclusion, an updated certified copy of which is enclosed.

In the event that the need arises to utilize this procedure, it is recommended that you consult an attorney in my office before you proceed.

c: Deputy Chancellor Laurence F. Mucciolo
Acting Vice Chancellor Tilden J. LeMelle
Chief Administration Officers
Chief Student Affairs Administrators
Legal Affairs Designees

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ORDER OF EXCLUSION

To:

From: College President or his/her designee

Date:

You are hereby barred from _____ College for having engaged in acts of misconduct. Due to this past conduct, you are no longer allowed on the _____ College campus, and are excluded from the _____ College campus. If you appear on the campus, you will be in violation of this directive and subject to arrest.

The above action is being taken because you were observed to be engaged in the following acts of misconduct individually or in concert with others:

Beginning at about (time) on (date), a group of people unlawfully occupied the _____ building and ignored repeated instructions to vacate the building. This unlawful occupation continued until about (time) on (date). All entrances and exits were chained and locked; and students, faculty, and administrators were denied access to the facilities. You were observed to be a member of this group. Such behavior constitutes a violation of RULES (fill in rule

numbers from 1, 2, 3, 4, 5, 6, 7 and 8) of the Rules and Regulations for the Maintenance of Public Order pursuant to Article 129-A of the New York State Education Law, adopted as policy by the Board of Trustees of the City University ("Henderson Rules") and put into effect on the _____ College campus (copy enclosed).

[Insert Any Additional Relevant Facts]

Given your behavior, your presence on campus is deemed to pose a continuing threat of disrupting the educational process.

If you have a specific need to be on the college campus, you should call Dean _____, (telephone) to request permission to come to the campus and to arrange for your campus visit.

As a visitor, licensee, or invitee who engaged in conduct prohibited by the Henderson Rules, you are subject to ejection and/or arrest by the civil authorities thereunder. This notice constitutes the order of exclusion from the college campus.

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BOARD OF TRUSTEES
THE CITY UNIVERSITY OF NEW YORK

RULES AND REGULATIONS FOR THE MAINTENANCE OF PUBLIC ORDER PURSUANT TO
ARTICLE 129-A OF THE EDUCATION LAW

The tradition of the University as a sanctuary of academic freedom and center of informed discussion is an honored one, to be guarded vigilantly. The basic significance of that sanctuary lies in the protection of intellectual freedom: the rights of professors to teach, of scholars to engage in the advancement of knowledge, of students to learn and to express their views, free from external pressures or interference. These freedoms can flourish only in an atmosphere of mutual respect, civility, and trust among teachers and students, only when members of the University community are willing to accept self-restraint and reciprocity as the condition upon which they share in its intellectual autonomy.

Academic freedom and the sanctuary of the University campus extend to all who share these aims and responsibilities. They cannot be invoked by those who would subordinate intellectual freedom to political ends, or who violate the norms of conduct established to protect that freedom. Against such offenders the University has the right, and indeed the obligation, to defend itself. We accordingly announce the following rules and regulations to be in effect at each of our colleges which are to be administered in accordance with the requirements of due process as provided in the Bylaws of the Board of Trustees.

With respect to enforcement of these rules and regulations we note that the Bylaws of the Board provide that:

"THE PRESIDENT. The president, with respect to his education unit, shall:

"a. Have the affirmative responsibility of conserving and enhancing the educational standards of the college and schools under his jurisdiction;

"b. Be the advisor and executive agent of the Board of his respective College Committee and as such shall have the immediate supervision with full discretionary power in carrying into effect the Bylaws, resolutions, and policies of the Board, the lawful resolutions of the several faculties;

c. Exercise general superintendence over the concerns, officers, employees, and students of his educational unit."

1. RULES

1. A member of the academic community shall not intentionally obstruct and/or forcibly prevent others from the exercise of their rights. Nor shall he interfere with the institution's educational processes or facilities, or the rights of those who wish to avail

- themselves of any of the institution's instructional, personal, administrative, recreational, and community services.
2. Individuals are liable for failure to comply with lawful directions issued by representatives of the University/college when they are acting in their official capacities. Members of the academic community are required to show their identification cards when requested to do so by an official of the college.
 3. Unauthorized occupancy of University/college facilities or blocking access to or from such areas is prohibited. Permission from appropriate college authorities must be obtained for removal, relocation, and use of University/college equipment and/or supplies.
 4. Theft from, or damage to University/college premises of property, or theft of or damage to property of any person on University/college premises is prohibited.
 5. Each member of the academic community or an invited guest has the right to advocate his position without having to fear abuse, physical, verbal, or otherwise, from others supporting conflicting points of view. Members of the academic community and other persons on the college grounds shall not use language or take actions reasonably likely to provoke or encourage physical violence by demonstrators, those demonstrated against, or spectators.
 6. Action may be taken against any and all persons who have no legitimate reason for their presence on any campus within the University/college, or whose presence on any such campus obstructs and/or forcibly prevents others from the exercise of the rights or interferes with the institution's educational processes or facilities, or the rights of those who wish to avail themselves of any of the institution's instructional, personal, administrative, recreational, and community services.
 7. Disorderly or indecent conduct on University/college-owned or controlled property is prohibited.
 8. No individual shall have in his possession a rifle, shotgun, or firearm or knowingly have in his possession any other dangerous instruments or material that can be used to inflict bodily harm on an individual or damage upon a building or the grounds of the University/college without the written authorization of such educational institution. Nor shall any individual have in his possession any other instrument or material which can be used and is intended to inflict bodily harm on any individual or damage upon a building or the grounds of the University/college.
 9. Any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization is prohibited.
 10. The unlawful manufacture, distribution, dispensation, possession, or use of illegal drugs or other controlled substances by University students or employees on University/college premises, or as part of any University/college activities is prohibited. Employees of the

University must also notify the College Personnel Director of any criminal drug statute conviction for a violation occurring in the workplace not later than (5) days after such conviction.

11. The unlawful possession, use, or distribution of alcohol by students or employees on University/college premises or as part of any University/college activities is prohibited.

2. PENALTIES

1. Any student engaging in any manner in conduct prohibited under substantive Rules 1-11 shall be subject to the following range of sanctions as hereafter defined in the attached Appendix: admonition, warning, censure, disciplinary probation, restitution, suspension, expulsions, ejection, and/or arrest by the civil authorities.

2. Any tenured or non-tenured faculty member, or other member of the instructional staff, or member of the classified staff engaging in any manner in conduct prohibited under substantive Rules 1-11 shall be subject to the following range of penalties: warning, censure, restitution, fine not exceeding those permitted by law or by the Bylaws of The City University of New York or suspension with/without pay pending a hearing before an appropriate college authority, dismissal after a hearing, ejection, and/or arrest by the civil authorities, and, for engaging in any manner in conduct prohibited under substantive rule 10, may, in the alternative, be required to participate satisfactorily in an appropriately licensed drug treatment or rehabilitation program. A tenured or non-tenured faculty member, or other member of the instructional staff, or member of the classified staff charged with engaging in any manner in conduct prohibited under substantive Rules 1-11 shall be entitled to be treated in accordance with applicable provisions of the Education Law, or the Civil Service Law, or the applicable collective bargaining agreement, or the Bylaws or written policies of The City University of New York.

3. Any visitor, licensee, or invitee, engaging in any manner in conduct prohibited under substantive Rules 1-11 shall be subject to ejection, and/or arrest by the civil authorities.

4. Any organization which authorized the conduct prohibited under substantive rules 1-11 shall have its permission to operate on campus rescinded.

Penalties 1-4 shall be in addition to any other penalty provided by law or The City University Trustees.

APPENDIX

SANCTIONS DEFINED:

A. Admonition.

An oral statement to the offender that he has violated university rules.

B. Warning

Notice to the offender, orally or in writing, that continuation or repetition of the wrongful conduct, within a period of time stated in the warning, may cause far more severe disciplinary action.

C. Censure.

Written reprimand for violation of specified regulation, including the possibility of more severe disciplinary sanction in the event of conviction for the violation of any University regulation within a period stated in the letter of reprimand.

D. Disciplinary Probation.

Exclusion from participation in privileges or extracurricular University activities as set forth in the notice of disciplinary probation for a specified period of time.

E. Restitution.

Reimbursement for damage to or misappropriation of property. Reimbursement may take the form of appropriate service to repair or otherwise compensate for damages.

F. Suspension.

Exclusion from classes and other privileges or activities as set forth in the notice of suspension for a definite period of time.

G. Expulsion.

Termination of student status for an indefinite period. The conditions of readmission, if any is permitted, shall be stated in the order of expulsion.

H. Complaint to Civil Authorities.

I. Ejection.

A true copy of resolution adopted by the Board of Trustees of The City University of New York on June 23, 1969, as amended on October 27, 1980, May 22, 1989, and June 25, 1990.


Martin J. Warmbrand, Secretary of the Board