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Student Advisory
Memorandum No. 2000-5

December 12, 2000

M E M O R A N D U M

To: College Presidents
From: Frederick P. Schaffer 
Re: Student Disciplinary Hearings--Open or Closed
(Training Manual Updates)

As discussed in Student Advisory Memorandum No. 2000-4 dated October 27, 2000, new federal regulations implementing statutory amendments to the Family Educational Rights and Privacy Act (FERPA), provide that student disciplinary proceedings are confidential student records with certain specific exceptions. Since the University's Bylaws give a student the right to request an open hearing, but FERPA generally requires a student's written consent to disclose disciplinary records, this advisory memorandum will set forth the procedures and conditions for providing a student an open hearing.

The Bylaws of the Board of Trustees of The City University of New York give an accused student the right to a closed disciplinary hearing, as well as the option to request an open hearing. Section 15.3(f)(5) provides:

The student is entitled to a closed hearing but has the right to request an open public hearing. However, the chairperson has the right to hold a closed hearing when an open public hearing would adversely affect and be disruptive of the committee's normal operations.

This Bylaw provision seeks to balance the student's interests in privacy and due process. The Bylaw provides for privacy by entitling the student to a closed hearing. With certain narrow exceptions, if the hearing is closed, FERPA prohibits the disclosure of student disciplinary records. One exception to this prohibition is when the student is determined to have committed any crime of violence or a nonforcible sex offense. In that case, the final results may be released, i.e., the student's name, the violation committed, and the sanction imposed.

An important exception to the confidentiality of a closed proceeding is provided by the Federal Campus Security (Cleary) Law for victims of sexual assault, pursuant to which the accuser is entitled to the same opportunities to have others present during the disciplinary hearing as the accused student. The accuser is also entitled to be informed of the outcome of the hearing (determination and sanction). Thus, even at a closed hearing on a sexual assault case, the accusing student may be present and be accompanied by a person of his/her choice. This exception for sexual assault complaints was covered in Student Advisory Memorandum No. 15, dated February 3, 1994 (copy enclosed).

If the student requests an open hearing, the student waives his/her privacy rights under FERPA, since the hearing then becomes open to college faculty, staff, and students, invited members of the public, as well as the campus and possibly the public media. Once a disciplinary hearing is open, the entire proceeding must be open, except for deliberations.

FERPA requires a student's written consent for the disclosure of student records. Accordingly, any student who requests an open hearing should be required to sign a form requesting the open hearing and consenting to the disclosure of his/her disciplinary records, including any appeals. Attached to this memorandum is such a form.

A student's request for an open hearing should ordinarily be granted, unless the faculty-student disciplinary committee chairperson determines that "an open public hearing would adversely affect and be disruptive of the committee's normal operations." Any decision by a chairperson to deny a student's request for a closed hearing must be reasonable, lest it be subject to attack as an abuse of discretion and form the basis of an appeal. See the Faculty-Student Disciplinary Committee

Training Manual (A Manual for Chairs of the Faculty-Student Disciplinary Committees) issued by this office in September 1998, at p. 19 ("Closed or Open Hearing"). As with other issues relating to the disciplinary hearing, committee chairs may call Deputy General Counsel Jane Sovern at 212-794-5589 if they have questions about a student's request for an open hearing.

Please provide this memorandum, along with the enclosed copies of Student Advisory Memoranda Nos. 15, and 16 regarding the University-wide effect of expulsions and suspensions for more than one term, to all faculty-student disciplinary committee chairpersons along with their Faculty-Student Disciplinary Committee Training Manual, as well as to all college personnel presenting student disciplinary cases along with their Student Disciplinary Hearing Training Manual (A Manual for College-Based Personnel Presenting Student Disciplinary Cases).

If you have any questions regarding this memorandum, please feel free to call this office.

Encls.

(w/encls.)
c: Executive Vice Chancellor Mirrer
Vice Chancellor Hill
Vice Chancellor Hershenson
Chief Student Affairs Officers
Legal Affairs Designees

REQUEST AND CONSENT FOR AN OPEN PUBLIC

STUDENT DISCIPLINARY HEARING

In the Matter of Charges Dated _____,
Against _____ (Student's Name)
at _____ College.

I request an open public hearing on the above disciplinary charges. I understand that I am entitled to a closed hearing, but I am waiving my right to a closed hearing. I understand that at an open public hearing members of the college community (faculty, staff and students), the public, and the campus and public media may obtain knowledge of the proceedings and the charges and evidence against me. I also understand that if the disciplinary hearing is an open public hearing, the entire proceeding will be open and public, except for deliberations. I consent to the release of the student disciplinary hearing record (transcript and exhibits including the charges), the decision of the hearing committee, any subsequent decision on appeal, and any letters, memoranda, briefs and other documents submitted on appeal, to members of the college community and the public. The purpose of this consent and disclosure is so that I may have the benefit of an open public disciplinary hearing.

Signed: _____

Dated: _____