

Acceptance of Recommendations of Judicial Affairs Advisory Committee

Graham B. Spanier
President, The Pennsylvania State University
October 1, 2007

I am pleased to accept the recommendations of the Judicial Affairs Advisory Committee, as summarized in the final report of the committee submitted to me on September 28, 2007. This final version of the report follows the receipt of additional feedback from the University Faculty Senate, Office of Judicial Affairs, and members of student government organizations.

The recommendations are to be implemented by the Office of Judicial Affairs, effective immediately. Judicial Affairs shall have responsibility for the implementation of these recommendations and any policy and procedure changes necessary for a smooth and effective implementation.

The University owes a debt of gratitude to Vice Provost Emeritus Robert Secor, who chaired the committee, and to his associates on the committee, Yvonne Gaudelius, Louise Sandmeyer, and Scott Kretchmar.

In accepting this report, I wish to comment on two matters in particular that have benefited from additional discussion.

First, there were differing opinions as to whether, when off-campus allegations result in criminal charges or civil action, the Judicial Affairs Office should proceed simultaneously with its own review to ascertain whether the Student Code of Conduct has been violated, or rather wait until after the proceedings of the criminal or civil action have been completed to begin its review.

After reviewing the feedback it received concerning Recommendation Five (Sequence When Responding to Off-Campus Misconduct Allegations), the Committee has altered its language in the final recommendation. The committee concluded that the Office of Judicial Affairs needed the ability to engage in educative intervention in a timely matter just as it should provide students the opportunity to have their cases heard and dealt with in a timely matter if they so chose. The new language presumes simultaneous review, but allows for sequential review upon a request by the student for such consideration and the concurrence of the Office of Judicial Affairs. A student may also decide to seek Disciplinary Withdrawal from the University until the criminal or civil action is completed.

I accept these changes for the reasons given and because I believe Recommendation Five as rewritten is more flexible, precise, and clear.

Second, there has been additional discussion about the question of whether the University should restrict a student's participation in extracurricular activities for violating the Code of Conduct and where responsibility should be exercised when such restrictions are applied. This discussion is most applicable when the sanction of "probation" is used, since more severe sanctions result in separation from the University, making the role of extracurricular or curricular involvement moot.

The committee's rationale, which I fully support, is based on the assumption that involvement in student activities is for the most part a healthy influence on student behavior. Removing such involvement as a way of getting a student's attention to correct misbehavior may or may not be productive. When an extracurricular sanction is thought to be appropriate, such a determination is best left to those most closely associated with the activity. Nevertheless, as the committee appropriately notes, there are rare circumstances when the student activity itself, or continued association with others involved in it, may be determined by the Office of Judicial Affairs to be a significant contributor to a student's misbehavior. And there are cases where the infraction rises to a level of seriousness that requires removing the student from situations where he or she represents the University as a member of an extracurricular activity.

While public attention is most readily drawn to student-athletes, student conduct policies must apply to all students in an equitable manner. The recommendation addresses students involved in all of the University's many curricular and co-curricular activities and gives as examples not only athletic programs but programs in the arts, all student activities and organizations, internships, cooperative education, and study abroad. Removing students from activities should not be a normal sanction imposed by the Office of Judicial Affairs, which is committed to an educational and rehabilitative process when dealing with students who come before it. Instead, it is expected that officials who oversee such activities will consider the appropriateness of disciplinary sanctions for their activities. The recommendation thus makes clear that sanctions imposed by Judicial Affairs do not limit administrators who have ultimate responsibility for a student activity—such as Deans, the Vice President for Student Affairs, or the Director of Athletics—from imposing an additional sanction on a student who has violated activity or team rules or a student code of honor, particularly when the student is in the position of representing the University.

THE PENNSYLVANIA STATE UNIVERSITY

Date: September 28, 2007

From: Robert Secor, Vice Provost Emeritus for Academic Affairs

To: Graham Spanier

Subj: Judicial Affairs Review

I here present a series of Issues and Recommendations that in different ways address the nine questions you presented to me and my advisory committee—Yvonne Gaudelius, Louise Sandmeyer, and Scott Kretchmar—in your charge letter to us (July 6, 2007), asking us to review certain policies and procedures in Judicial Affairs. The ten issues are those we identified from our conversations with multiple stakeholders in the Judicial Affairs system and others impacted by the system in the Penn State community. We also took into account recent reviews of the system and its sanctions and the response to those reviews by the Office of Judicial Affairs. Our review of each of these issues is accompanied in this report by one or more recommendations for addressing the issue. The twelve recommendations cover some territory not in your original list of questions but which surfaced as we conducted our interviews.

We interviewed 38 different stakeholders, colleagues, and outside experts, most from the list of potential interviewees that you and Vice President Triponey presented to us, but also several who were suggested to us along the way. The list of those interviewed is presented as an appendix to this report. I was involved in every interview. Members of the committee also participated fully in the interviews, according to their availability. My interviews with several members of the Penn State Board of Trustees and my phone calls to several outside experts did not include participation by committee members.

A draft of this report was reviewed by a number of stakeholders, including the Faculty Senate, Judicial Affairs, the University Park Undergraduate Association (UPUA) Legal Affairs group, and the Board of Trustees. This final version of our report includes revisions as a result of some of the feedback that we received from these groups. UPUA Legal Affairs has made three recommendations that we have asked them to pass on to the Office of Judicial Affairs for its consideration.

I am grateful to all the people whom we interviewed, but most of all to Vicky Triponey and Joe Puzycki who did all they could to help me and the committee understand the current system and to consider with us remedies to some of the issues. Some of the recommendations we make are actually versions of those that they had presented to us in their desire to be responsive to observations in recent studies of the disciplinary system and to problems they have recognized. In working with Joe Puzycki I came to appreciate why everybody who has worked closely with him, both in and outside of Judicial Affairs, made sure to let us know how much they respected him and his commitment to the process he oversees. I should add that many with whom I spoke, both in and outside of the University, praised our Judicial Affairs System and said that it was a model for the rest of the country.

Mostly, however, I am grateful to Yvonne Gaudelius, Louise Sandmeyer, and Scott Kretchmar. They gave many hours of their time during the last five weeks accompanying me

to interviews and deliberating with me throughout the process. They reviewed drafts of this report and made important suggestions. It is as much theirs as mine and they all endorse it and deserve credit for any recommendations in it that you find useful.

I also want to thank the support I was given during the process, particularly from Kathleen Kokus and Joan Summers and members of the Trustee Office who let me share their facilities.

REVIEW OF JUDICIAL AFFAIRS POLICIES AND PROCEDURES: ISSUES AND RECOMMENDATIONS

ISSUE: ADVISORS AT THE DISCIPLINE CONFERENCE

There is no provision in *Office of Judicial Affairs Procedures* for a student to be accompanied by an advisor of any sort to the first Disciplinary Conference meeting, even though the Director of Judicial Affairs told our committee that students may bring an advisor with them to the conference. Moreover, the Vice President for Student Affairs has herself proposed to us a procedure for involving trained advisors to accompany students to the Disciplinary Conference. We therefore make the following recommendation:

RECOMMENDATION ONE

The *Office of Judicial Affairs Procedures* should make explicit the opportunity of students to bring an advisor to the Disciplinary Hearing. The language below, currently in the section under Hearing Board Advisors, should be altered as follows to include the Disciplinary Conference (underline indicates new text):

Disciplinary Conference and Hearing Advisors

The student shall have the right to be assisted by an advisor of his/her choice. An advisor must be a regular administrative official, regular faculty or staff member, or student of the University. As used in this paragraph, the words “regular” shall have the same meaning as defined in Human Resources Policies HR-05 (<http://guru-psu.edu/policies/OHR/hr05.html>).

For a statement of roles that the advisor might play, see the next recommendation.

ISSUE: THE PREPARATION OF ADVISORS

One of the concerns that we have heard is that advisors are not always prepared or in a position to be helpful. They may not understand the Student Code of Conduct or the disciplinary process. There has been in place a student advisor program available through student government and JA helps to train the student volunteers, but since the students serving in the role are constantly changing, the consistency is spotty and students may not have the experience or the credibility to be effective in the most serious cases. In consultation with the Vice President for Student Affairs, who suggested the initiative and most of the language below, we are recommending that the pool of student advisors be supplemented by a dozen or so full-time employees at the university who would be trained to assist students accused of violations of our Student Code of Conduct. It is

important that these trained advisors not be themselves associated with the Office of Judicial Affairs.

RECOMMENDATION TWO

Judicial Affairs should offer to train faculty or staff (including current advisors) in the various colleges and programs (including, for example, the Graduate Program, the Honors Program, Athletics, and the Division of Undergraduate Studies) about the University Student Code of Conduct and the Judicial Affairs Process. These trained advisors, or any other advisor of the student's choice, might assist the student in the following ways:

1. Attend any meeting that the student has with Judicial Affairs, beginning with the original Discipline Conference and including any subsequent hearings.
2. Advise students on an original complaint and help them through the decision-making process after hearing their rights and options (e.g. accept the charges and sanction, select a hearing, accept the charges, but select a sanction review, etc).
3. Help craft (not actually write) any written responses to the Office of Judicial Affairs, such as hearing statement requests, requests/rationales for a sanction review.
4. Help prepare the student for a hearing, if there is to be one.
5. If there is an appeal, help the student prepare appeal statements being sent via JA to the appeal person.

A list of JA trained advisors, including their contact information, with a statement of the advisors' role in the process, should be provided to students before the first scheduled meeting with Judicial Affairs.

NOTE: As indicated above, individual programs, such as the Graduate Program, the Honors Program, Athletics, and the Division of Undergraduate Studies, might each provide one or more trained advisors that students in their own programs could seek out if they so desired. Russ Muchinsky, the Director of the Morgan Academic Support Center for Student Athletes, has agreed to recommend several members of his staff to undergo Judicial Affairs training, so that they would have a full understanding of the process and be able to accompany student athletes to all meetings and provide advice and support to them as outlined above.

ISSUE: LEGAL REPRESENTATION

People we spoke to with experience in judicial affairs, both at Penn State and elsewhere, feel strongly that the educational function of the judicial process is undermined when the participation of attorneys is encouraged. At the same time, students who face criminal charges should be given protection against self-incrimination by being encouraged to consult with an attorney and offered the option of being accompanied by an attorney when questioned by a member of the Judicial Affairs Office. That is particularly important in light of the fact that testimony by the student can be subpoenaed and used against him or her in criminal cases. That option is currently afforded to students who

appear before a hearing board, but there is no such option stated in *OJA Procedures* in relation to the Disciplinary Conference. We therefore make the following recommendation.

RECOMMENDATION THREE

The statement about legal representation at hearing boards (under VI. Hearing Board Procedures) should be amended as follows and applied to both the Disciplinary Conference and the Hearing Board:

If the accused student is charged with a criminal offense by the courts, he/she may have an attorney present as well as an advisor. The attorney is limited to advising the student about answering questions that may be self-incriminating. The attorney may not question any individual, raise objections or otherwise participate in the Disciplinary Conference or hearing.

ISSUE: OFF-CAMPUS MISCONDUCT

We are convinced that it is important to both the community and to our students that the Office of Judicial Affairs continues to respond to off-campus misconduct. If Penn State and JA see their role as mostly educative in the judicial process, and they do, then they must serve in that role for all of Penn State students, whether instances of misconduct have occurred on or off campus.

In accepting that role, however, Penn State increases the number of cases in its system to the point that, in the last available numbers that we were given (for 2003-2004), it recorded the most disciplinary cases in the Big Ten. Five of our peer institutions in that period had 20% fewer cases than us and three had 40% fewer. Ohio State handled only 750 cases as opposed to Penn State's 3887 cases. Ohio State, however, does not process incidents involving students that occur off campus in Columbus.

Penn State's numbers are inflated because it lists as a case every incident that takes place off campus, no matter how minor, that is referred to Judicial Affairs. About 85% of the referrals from off-campus are for summary, first-time minor offenses that are counted as JA cases, even though the sanction students receive is no more than an email that says their infraction has been recorded and they will receive a sanction if they repeat the offense. However, similar minor infractions when they take place on campus often do not enter the disciplinary system or records of JA, as when such incidents take place in the residence halls and are handled by simple warnings by the RA.

If off-campus referrals for summary offenses were listed as what they really are, referrals noted by JA (with a letter to students indicating the meaning of the notation), and reported separately from cases actually acted upon by JA, the number of Penn State cases would reflect more accurately the number of offenses that receive sanctions from Judicial Affairs, putting the University's case numbers more in line with that of other institutions.

We also learned that case numbers at campuses are inflated by “Pre-Enrollment Reviews.” These are reviews made by campus Judicial Affairs offices of students who have been admitted but have not yet enrolled, but who had received discipline sanctions at other institutions or have prior criminal histories. These reviews are currently counted in the number of cases handled by JA at the campuses, even though they represent misconduct that occurred at other institutions or settings. We therefore make the following recommendation:

RECOMMENDATION FOUR

Judicial Affairs should consider treating off-campus referrals for summary offenses (involving first-time minor offenses) that do not require any action by Judicial Affairs beyond a notation to the student that the referral has been received and recorded, in a category (such as Off-Campus Summary Referrals) that would not consider them as part of the Judicial Affairs case load, even though students are told that they will be subject to sanctions if the action is repeated. The Disciplinary Warning category might be retained for the more serious of these offenses only. This procedure, however, would have to be transparent, and in most instances when asked to convey the number of cases or charges that Judicial Affairs has dealt with, the University should report both the number of cases and the number of Off-Campus Summary Referrals.

Pre-enrollment reviews on the campuses should not be included in the number of cases reported and should not be reported separately except as indications of the work-load of JA staff on the campuses.

ISSUE: SEQUENCE WHEN RESPONDING TO OFF-CAMPUS MISCONDUCT ALLEGATIONS

There are differing opinions as to whether, when off-campus allegations have resulted in criminal charges or civil action, the Judicial Affairs Office should proceed simultaneously with its own review to ascertain whether the Student Code of Conduct has been violated, or rather wait until after the proceedings of the criminal or civil action have been completed to begin its review. The current statement in *OJA Procedures* suggests that that decision will be made on a case by case basis, according to the interest of the University and the student, but it offers no further guidelines. However, the default position of the Office of Judicial Affairs has been to proceed simultaneously. Our proposal below expands the Judicial Affairs statement to offer some more specific guidelines for instances when action from the Office of Judicial Affairs might not begin its formal process until after criminal investigation as been completed.

RECOMMENDATION FIVE

The following paragraphs (underlined) should be added to the current paragraph (not underlined) in Section 16: Responding to Off-Campus Misconduct.

When a student has misconduct allegations brought against him/her either on or off-campus, the University will decide, on the basis of its interest and the interest of the student, whether or not to proceed with its internal review simultaneously or defer action until after the proceedings of the criminal or civil action.

Under normal circumstances, the Off-Campus Misconduct Policy will be reviewed simultaneously by the University. However, the University may defer action until proceedings of the criminal or civil action have been completed when requested to do so by the student. Such a request will be considered by Judicial Affairs following an initial review of the circumstance and the basis for the student's request. Whether or not such a request is made and approved, students may also delay action by Judicial Affairs by seeking a Disciplinary Withdrawal (see OJA Procedures, section XII), whereby they would withdraw from the University until the criminal matter has been resolved.

At the same time, where there is a compelling reason (such as concern for safety of other students), Judicial Affairs may, after an initial review of the evidence, impose the sanction of Interim Suspension, requiring that the student leave the campus pending disciplinary proceedings (or medical evaluation).

ISSUE: THE CURRENT SANCTIONS

The 2007 Sanctioning Team Review recommended that “Penn State consider the current separation sanctions to reflect what students will understand.” We agree. The current policy has five different categories of expulsion, one of which does not prevent the student from enrolling on campus and two of which separate the student from campus for a limited period of time. Moreover, the various levels of expulsion do not seem to be listed in order of seriousness, since the least severe of these, “Interim Expulsion” for a student who is pending disciplinary proceedings or medical evaluation, is listed just before “Permanent Expulsion.” It is all rather confusing. We will therefore recommend reducing the five expulsion sanctions to four sanctions, two of which will be renamed as suspensions since they are for limited periods of time and do not require another administrative decision for reentering the University unless an additional action is taken.

Most problematic of all is the first expulsion sanction listed, the Deferred Expulsion Sanction, the first sanction presented in *OJA Procedures* after Disciplinary Probation. Originally designed as a sanction to be the last step before Expulsion, the Deferred Expulsion Sanction in practice or perception is seen as a broad-brush sanction used as the first step beyond simple probation. As a result it has led to unintended consequences that have not served the University well. The Deferred Expulsion sanction states that “while permitted to remain enrolled, the student shall not represent the University in any extracurricular activity, run or hold office in any student group or organization and can include study abroad programs during the period of deferred expulsion.” The sanction has been viewed as the “athletic sanction,” even by those in leadership positions in student activities, because few students other than athletes are impacted by it. By its very nature this sanction places the Office of Judicial Affairs and

the Department of Athletics in unnecessary conflict and restricts the flexibility that the OJA needs to apply appropriate sanctions. We found very little sympathy for retaining this sanction, either within the University or from outside experts with whom we consulted, and it is with the concurrence of the Office of Judicial Affairs that we recommend eliminating it.

As a corollary to eliminating the Deferred Expulsion sanction, we see a need to expand the Disciplinary Probation sanction, and we will make that recommendation as well. The Office of Judicial Affairs has considered replacing the Deferred Expulsion Sanction with a two-tiered probationary sanction, Probation I and Probation II. Probation I would not be entered on the student's transcript; Probation II would be entered on the transcript. Violation of Probation I would result in Probation II; violation of Probation II would result in expulsion. In the interest of simplifying rather than complicating the system, we recommend below instead a single probation sanction, but one that would carry within it the range of possible sanctions considered by OJA for both Probation I or Probation II. Doing so would eliminate the sense that if a student violates Probation I, then he or she will really be put on probation, while at the same time it will carry the threat of a possible suspension or expulsion consequence for a serious violation of probation at any level.

Our review of the issue of sanctions has thus led us to three recommendations: 1) eliminate the Deferred Expulsion Sanction; 2) expand the definition of the Probationary Sanction; and 3) substitute "Suspension" for "Expulsion" in sanctions that separate the student from the University for a limited period of time. They are worded as follows:

RECOMMENDATION SIX

Eliminate the Deferred Expulsion Sanction.

RECOMMENDATION SEVEN

Revise the Disciplinary Probation Sanction as follows (the additions capture suggestions from Judicial Affairs in their consideration of a two-tier probation sanction):

DISCIPLINARY PROBATION: *disciplinary probation may be assigned for a specified period of time or it may be assigned for an indefinite period. The probationary period is intended to foster reflection, responsibility, and improved decision-making. Disciplinary Probation will be recorded in the student's confidential disciplinary file maintained by the Office of Judicial Affairs.*

Additional restrictions, conditions, or educational programs may be assigned as a component of the probation, depending on the nature and severity of the infraction. In more serious cases or cases involving repeat offenses, the Disciplinary Probation may be entered on the student's transcript during the probationary period. Future established misconduct or failure to comply with any conditions to complete any assignments may

lead to a more severe disciplinary action, including suspension or expulsion from the University.

RECOMMENDATION EIGHT

Terminology should be revised to more clearly and accurately describe the University's administrative sanctions. By definition a separation from campus for a limited period of time is a suspension, not an expulsion. Therefore, the expulsion term should be used only when the student is expelled from campus either permanently or for an extended period of time with no guarantee of being readmitted to the University. We therefore recommend that, in addition to eliminating the Deferred Expulsion sanction (Recommendation Six), we revise the sanction terminology so that instead of five levels of expulsion there are two suspension sanctions and two expulsion sanctions that have a clear rationale for the distinctions. The current list of sanctions—Disciplinary Warning, Probation, Deferred Expulsion, Temporary Expulsion, Indefinite Expulsion, Interim Expulsion, and Expulsion—would therefore be replaced by the following:

Proposed Sanctions

Disciplinary Warning

Probation

Interim Suspension (pending disciplinary proceedings)

Suspension (for a specified period of time)

Indefinite Expulsion (at least a year--a request for return must

be made in writing, and approved by the Director of Judicial Affairs)

Expulsion (permanent)

ISSUE: THE APPEAL PROCESS

In our current process, appeals go directly to the Vice President for Student Affairs or the campus Chancellor. In either instance, two problems arise. The first is that the appeal is made to the administrator to whom the person who has made the decision, the Director for Judicial Affairs, reports. That presents something of a due process issue. The second is that the person who acts on the appeal must not be involved in the process itself, and that is not always possible or desirable when that person is the academic leader of the unit. In consultation with vice presidents Pangborn and Pell, and after conversations with several campus Judicial Affairs directors, we are therefore making the following recommendation:

RECOMMENDATION NINE

The appeal function should be performed at University Park by the Vice President for Undergraduate Education or the Vice-President for Research and Dean of the Graduate School and at our other locations by a person designated by the Chancellor. We further recommend that no sanction should be overturned on appeal without consultation with either the Vice President for Student Affairs or the campus Chancellor.

The policy statement for appeals in *OJA Procedures* should therefore be changed as follows:

A student found responsible by the University Hearing Board for a University Student Code of Conduct violation may only appeal a sanction of ~~Deferred Expulsion~~ Suspension or to Permanent Expulsion. Appeals shall be only to the ~~Vice President for Student Affairs (VPSA)~~ Vice President for Undergraduate Education or the Vice-President for Research and Dean of the Graduate School at University Park or the Campus Chancellor ~~or a person designated by the Campus Chancellor at other University locations~~. No sanction applied by Judicial Affairs will be overturned without consultation with either the Vice President for Student Affairs at University Park or the campus Chancellor.

ISSUE: THE RECOMMENDATION BY A COLLEGE FOR A DISCIPLINARY SANCTION

Colleges have sole responsibility for applying academic sanctions for cases of academic dishonesty, whereas the Office of Judicial Affairs is the sole authority for applying disciplinary sanctions. The goal is to insure that colleges retain authority in the academic areas that they oversee and that Judicial Affairs insures that disciplinary sanctions are assigned evenly and fairly for all students and across colleges.

When a student admits responsibility for academic dishonesty, an instructor may recommend that a disciplinary sanction be applied by the Office of Judicial Affairs. That request is then passed on to the college's Associate Dean, who forwards the case to the college/campus Academic Integrity Committee for review. If the AIC agrees that the sanction is warranted, it forwards the request to Judicial Affairs. The problem occurs when the sanction that the college finds most applicable for an academic infraction is actually a disciplinary one, but Judicial Affairs does not accept its recommendation. This has come up particularly in the case of the XF grade, which is applied by Judicial Affairs as a result of repeated acts of academic dishonesty or for a serious breach of academic integrity. The XF grade can have serious implications for a student's career, and Judicial Affairs is in the position to insure that it will be imposed as "a rare occurrence and reserved for the most serious breaches of academic integrity."

However, having Judicial Affairs determine whether a college recommendation that a plagiarism is or is not "a serious breach of academic integrity" seems to place a non-academic unit rather than the college and its faculty in the position of determining an academic matter. Moreover, although according to the policy, XF sanctions "are only issued with the concurrence of the instructor, the college/campus Academic Integrity Committee, and the Office of Judicial Affairs," there is no policy for consultation with the academic unit if JA decides not to accept the recommendation for an XF grade from the college/campus AIC. We therefore recommend the following:

RECOMMENDATION TEN

While for the sake of equity across units it is important for Judicial Affairs to retain responsibility for the imposition of disciplinary sanctions, when college committees recommend a disciplinary sanction for an academic infraction steps should be taken to insure that the recommendation is carefully considered and that the unit is consulted if it is not accepted. If the recommendation is not accepted the reasons for its rejection should be fully explained so that the faculty members who reviewed the case and made their recommendation can understand why it was not accepted. The following steps should be followed:

- 1) The Office of Judicial Affairs should exercise oversight for the assignment and removal of XF grades, in consultation with the academic colleges.
- 2) When a College committee recommends a disciplinary sanction of academic dishonesty, all information or evidence gathered by the College to support its referral should be conveyed with it to the Office of Judicial Affairs, which in turn should take into account the reasons and submissions submitted by the College committee that led to its recommendation.
- 3) Judicial Affairs should reject the college recommendation only because, after accepting the college's findings, it believes that, according to the Office's guidelines and experience, the case does not rise to the bar to merit the sanction without violating the principle of equity across colleges. No recommendation from the College should be rejected by Judicial Affairs without consultation with the Dean of the College and/or his or her representative, which may include the chair of the Academic Integrity Committee.
- 4) If the recommendation is not accepted, the reasons should be presented in a written statement that can be shared with the members of the College's Academic Integrity Committee.

ISSUE: JUDICIAL AFFAIRS AND THE DICKINSON SCHOOL OF LAW

As long as the Dickinson School of Law was at a single location at Carlisle, it was responsible for conducting its own judicial process, as it did when it was an independent law school, and as does the College of Medicine at Hershey. In opening a presence at University Park, however, it comes under the umbrella of University Park's Judicial Affairs Office, as do all other colleges and students on the University Park campus.

The new situation has created several problems for DSL. First of all, it means that its two locations address student misconduct separately rather than as part of a single school of law—student violations at University Park are treated centrally by Judicial Affairs while disciplinary issues by students at Carlisle continue to be addressed locally at the Carlisle location. The model is the commonwealth campus system, but the Carlisle location is not a campus location of DSL. The two locations have a single dean and students and faculty may migrate between the two locations. The separate administration of a disciplinary system undermines the sense of a single law school and, given the attention that is given to such issues by the ABA, may cause some problem with ABA accreditors.

Dean McConnaughay raised other issues with us related to ABA expectations and the reasons why law schools need to retain oversight of the disciplinary process when dealing with issues of misconduct. The following is from an email he sent us making his case:

Standards imposed by law school accreditation bodies require DSL to monitor, manage, take action, and report on the behavior of law students. ABA standards contemplate law school assessments and reporting to the various state bar authorities of all "character and fitness issues" pertaining to law students that may affect their ability to practice law. The thoroughness and fairness of the DSL adjudication process, which is considerably stricter than the procedure employed by the University, is necessary to provide accurate and comprehensive character and fitness assessments. We must have complete confidence in procedural determinations of misconduct before we can be confident of our reports which turn on whether the procedures for adjudicating the findings comport with conventional lawyer-notions of reliability.

There are other issues that distinguish law schools from other units on campus that argue for giving DSL responsibility for overseeing its own disciplinary process, including the need for law students by dint of their training to understand, administer, and observe the operation of their own disciplinary code and to practice the due process procedures that they are learning about in their studies. In addition, more than any other unit on campus, the law school is qualified to manage its own disciplinary hearings because of the educational background and professional experience of its faculty and administration.

The issue remains, however, as to whether it would be irregular to treat law students differently from other students on campus and whether to do so would be anomalous as related to peer law schools. We therefore asked for benchmark information with the other CIC law schools, and it appears, presumably for the reasons presented above, that the large majority of them (eight of the ten) have the authority to manage their own distinct non-academic policies or administer internally the policies of the central university for student violations. Exceptions are Wisconsin, which refers non-academic cases to the central University, and Michigan State, which only handles non-academic matters that occur in the law school's facilities.

Non-academic Misconduct at CIC Law Schools

Chicago

Law school has separate judicial process from the central University.

Illinois

Law students are held accountable under central University standards and Law School standards, which mirror those of the Illinois Bar. However, the Law School administers the central University's process internally for law students.

Indiana

The School of Law has jurisdiction over the non-academic misconduct of law students. The School of Law has law student disciplinary procedures that supersede and supplement the central University's student code of conduct.

Iowa

The College of Law incorporates by reference non-academic conduct regulations of the central University. However, the College of Law has its own procedures for non-academic misconduct wholly distinct from the central University.

Michigan

The Law School has its own rules of non-academic conduct and disciplinary procedures that are distinct from the central University, although the Law School has the discretion to refer matters to the central University. Note: I administered the central University's code of conduct for 6 years; on only 1 occasion did the Law School refer a case to the University.

Michigan State

The Law College handles non-academic matters that occur in their facilities. All non-academic matters that occur outside the Law College building are handled by the University.

Minnesota

The Law School maintains its own code of conduct for non-academic matters and may either resolve internally or refer to the central University.

Northwestern

Non-academic disciplinary matters are managed by the Law School's Dean of Students Office. If the Dean of Students cannot resolve a matter informally it is referred to a panel of 3 members of the Law School faculty or to the central University at the Dean's discretion. The Dean said he almost never sends cases to the central University "...because of the professional impact unique to law students."

Ohio State

Non-academic misconduct is handled administratively within the College of Law or by the College of Law in accordance with central University procedures.

Wisconsin

Non-academic cases are referred to the central University.

We therefore make the following recommendation:

RECOMMENDATION ELEVEN

Given the unique expertise of a University school of law, its special expectations for monitoring, addressing and reporting student misconduct as conveyed by the American Bar Association, and the independent authority given to almost all of the law schools at peer institutions to administer disciplinary procedures, we recommend that the Dickinson School of Law be given responsibility to oversee disciplinary procedures for its students. The Dean of the Dickinson School of Law should confer with the Office of Judicial Affairs to insure that its procedures will be designed to uphold Penn State's Student Code of Conduct.

ISSUE: UNDER WHAT CIRCUMSTANCES SHOULD THE UNIVERSITY RESTRICT A STUDENT’S PARTICIPATION IN EXTRA-CURRICULAR ACTIVITIES FOR VIOLATIONS OF THE STUDENT CODE OF CONDUCT? SHOULD EXTRACURRICULAR SANCTIONS BE IMPOSED BY JUDICIAL AFFAIRS OR BY THOSE RESPONSIBLE FOR THE EXTRA-CURRICULAR ACTIVITY?

There are three assumptions that should determine the question of whether the University should restrict a student’s participation in extracurricular activities for violating the Code of Conduct and where responsibility should be when such restrictions are applied. Assumption 1: Involvement in student activities is for the most part a healthy influence on student behavior and removing such involvement as a way of getting a student’s attention to correct misbehavior is likely to be counterproductive. Assumption 2: There are rare circumstances when the student activity, or continued association with others involved in it, may be determined to be a significant contributor to a student’s misbehavior. Assumption 3: There are cases where the infraction rises to a level of seriousness that requires removing the student from situations where he or she represents the University as a member of an extracurricular activity. It is based on these three assumptions that we make the following recommendation:

RECOMMENDATION TWELVE

Students’ participation in extracurricular and co-curricular activities should be seen as a healthy and important part of their development and socialization, and there should be no standard sanction (such as the Deferred Expulsion sanction) imposed on students to restrict such participation as a result of violations of the Code of Conduct.

A decision not to allow a student who has been placed under Disciplinary Probation to represent the University in an extra-curricular activity—whether it is in student government, the arts, athletics, or any other student activity or organization--should be made by the officer in the administrative unit to whom the director, advisor, or coach who is responsible for that activity reports: e.g., the academic dean, Vice President for Student Affairs, Director of Athletics, etc. The same principle would apply for such co-curricular credit-based programs as internships, cooperative education, and study abroad. If the Office of Judicial Affairs, as a result of its investigation, feels it has information that should be shared with administrative leaders of extra-curricular or co-curricular activities to better inform their decisions, it should do so. However, if Judicial Affairs believes that a violation is so egregious that the student should be separated from the University entirely under a sanction of suspension or expulsion, it has the responsibility to make that determination.

In special (and rare) cases, Judicial Affairs may impose a restriction that limits a student’s involvement in an extra-curricular or co-curricular activity if it has determined that such involvement has had a significant negative influence on the student’s behavior

or on others in the unit. Before reaching that determination and imposing such a sanction, Judicial Affairs should consult with the administrative leadership of the unit.

All students, whether or not they are involved in extra-curricular activities, are subject to the Judicial Affairs system when they commit infractions and to the normal procedures and sanctions that Judicial Affairs applies to all students for similar infractions, without interference from, but not necessarily without consultation with, the administrative leader of the activity.

Penn State has reason to be proud of its Judicial Affairs System, which, as we stated earlier, is considered by many to be a model for the rest of the country. The best systems though are those that can evolve and adjust as conditions change and issues arise. It is in that spirit that we offer these twelve recommendations.

APPENDIX

LIST OF THOSE INTERVIEWED

William Asbury, Vice President Emeritus, Student Affairs
Lee Bird, Vice President for Student Affairs, Oklahoma State University
Jan Bortner, Assistant Athletic Director
Barry Bram, Director, Center for Student Engagement
Jay Burlingame, Associate Director Student Affairs, Altoona
Philip Burlingame, Associate Vice President, Student Affairs
Alvin Clemens, Board of Trustees
Wendell Courtney, University Counsel, McQuaide Blasko Attorneys
Timothy Curley, Director of Athletics
Rodney Erickson, Executive Vice President and Provost
Fran Ganter, Associate Athletic Director
Steve Garban, Vice Chairman, Board of Trustees
Donald Gehring, Professor Emeritus of Higher Education and Past Director of the Higher Education Administration Doctoral Program, Bowling Green State University
Dennis Heitzmann, Senior Director, Center for Counseling and Psychological Services
Gail Hurley, Associate Vice President, Auxiliary Business Service
Jennifer James, Assistant Athletic Director
Thomas King, Chief of Police, State College
Kenneth Lehrman, Affirmative Action Director
Donald Leslie, Assistant Vice President Emeritus, Undergraduate Education
Michael Madeira, Centre County District Attorney
Philip McConaughay, Dean, The Dickinson School of Law
Felicia McGinty, Associate Vice President, Student Engagement
Kenneth Miller, Director, Student Affairs, Erie
Russell Mushinsky, Director, Morgan Academic Support Center for Student Athletes
Robert Pangborn, Vice President and Dean for Undergraduate Education
Joe Paterno, Head Coach, Football
Joseph Puzycki, Director, Judicial Affairs
Robert Reason, Assistant Professor of Higher Education and College Student Affairs
Anne Riley, Board of Trustees
Arthur Sandeen, Former Vice President for Student Affairs, University of Florida
Stephen Shelow, Director University Police Services
Gale Siegal, Director, Student Affairs, Abington
Margaret Spear, Director, University Health Services
Blaine Steensland, Director, Student Affairs, Berks
Paul Suhey, Vice Chairman, Committee on Campus Environment, Board of Trustees
Vicky Triponey, Vice President for Student Affairs
Mark Wardell, Associate Dean, Graduate Student Affairs
Susan Welch, Dean, College of Liberal Arts