

Board of Trustees of the Nebraska State Colleges

Student Affairs

POLICY
NAME: Due Process

POLICY
NUMBER: 3200

A. PURPOSE

To establish and provide procedural due process to students accused of misconduct pursuant to Policy 3100.

B. DEFINITIONS

1. **Preponderance of the Evidence:** The standard of evidence to be used to determine responsibility for misconduct meaning it is more likely than not that the misconduct occurred.

C. POLICY

1. **Informal Resolution**

The College may resolve conduct issues informally if warranted by the individual circumstances including, but not limited to, the responsiveness of the student, the severity of the offense, a student's prior misconduct, and the health and safety of the student or other members of the campus community.

Informal resolution of conduct issues in which two (2) or more students are involved in a physical altercation with one another will not be permitted unless all students involved agree to informal resolution.

2. **Disciplinary Sanctions**

Disciplinary Sanctions may include warnings, demands for restitution or reimbursement, fines, a period of probation, remedial behavioral requirements, remedial educational requirements, suspension, or expulsion.

3. **Withdrawal**

At the discretion of the senior student affairs officer, a student may be allowed to voluntarily withdraw when continued enrollment no longer appears to be in the best interests of the student and/or College in conjunction with mutually agreed upon conditions that will be required for the student to reapply for admission.

The senior student affairs officer will work with the Vice President for Academic Affairs to determine what, if any, academic penalties would apply. Any

unresolved conduct issues will remain pending and must be resolved as a condition of readmission. Additional conditions may include, but not be limited to, the length of time a student must wait to reapply and/or the length of time a student has to reapply for admission.

4. Notice

- 4.1. The student shall be notified in writing by an appropriate College official that they are accused of misconduct. The student shall be made aware of the grounds which would justify such action by way of the student handbook or other published College regulation.
- 4.2. The student shall be notified that they may elect one of three (3) courses of action. The student shall be advised of a date (deadline) by which such an election must be communicated to the appropriate College official.
 - Option 1: The student may admit the alleged violation and request, in writing, that the appropriate College official take whatever action seems appropriate.
 - Option 2: The student may admit the alleged violation in writing and request a hearing before the appropriate hearing panel designated by the College. The hearing panel will determine the appropriate sanctions.
 - Option 3: The student may deny the alleged violation, in which case, the appropriate College official shall refer them to the appropriate hearing panel designated by the College. The hearing panel will determine responsibility and the appropriate sanctions.
- 4.3. The student's decision can be binding, if freely and knowingly made, even though suspension, expulsion or the imposition of a stigmatizing sanction might result.
- 4.4. Students should be advised in writing of all risks associated with any waiver of due process rights and provided a reasonable amount of time to consider their decision and to confer with a family member or advisor.
- 4.5. If the student fails to respond to the appropriate College official in a timely manner according to the date (deadline) and/or fails to elect one (1) of the three (3) courses of action, the appropriate College official may address the alleged misconduct without providing further due process.

5. Option 1 Procedure

If the student chooses to admit the alleged violation and have the College take appropriate action, the College may address the alleged misconduct without providing further due process.

6. Option 2 or 3 Procedure

- 6.1. If the student selects either to admit the alleged violation and have a hearing panel determine appropriate sanctions or deny the alleged

violation and have a hearing panel determine responsibility and the appropriate sanctions, a hearing shall be conducted in accordance with this section within ten (10) class days, unless the student requests an extension in writing, which shall not be unreasonably denied.

- Requests for an extension should be directed to the senior student affairs officer.
- Students studying abroad shall be under the direction of the accompanying College official until the student's return to campus, at which time, if needed, the due process procedures will commence.

6.2. Prior to the hearing, the student shall be entitled to the following:

- Written notification of the time and place of the hearing with reasonable time allowed to prepare a presentation and defense;
- A written statement of the allegations (incident or behavior) with sufficient particularity so that the student may prepare their defense;
- The grounds which would justify disciplinary action cited in the student handbook or Board Policy and the possible sanctions that may be imposed;
- Written notification of the names of the witnesses who are directly responsible for having reported the allegations, or if there are no such witnesses, written notification of how the allegations came to the hearing panel's attention; and
- A copy of all documentary evidence to go before the hearing panel.

6.3. Members of the hearing panel shall have the opportunity to examine the case file beforehand.

6.4. The student shall be entitled to appear in person before the hearing panel, and may call witnesses on their behalf. If the student does not appear before the hearing panel, the hearing shall be held in their absence.

6.5. The student shall be entitled to be accompanied by a person of their own choosing from the College community to assist in the proceedings or by counsel at the student's expense. An attorney or advisor, if present at the request of the student, may be present to counsel the student, but may not directly participate in the hearing by making oral presentations or arguments, examine or cross examine a witness, or object to testimony of a witness or to the introduction of other evidence.

6.6. Members of the hearing panel shall have the opportunity to question the accused and witnesses at the hearing.

6.7. The student shall be entitled to ask questions of the hearing panel or any witness.

6.8. The student shall be entitled to an expeditious hearing of the case.

- 6.9. Hearings are closed to the public.
- 6.10. An audio recording of the hearing will be made and kept by the College consistent with document retention schedules.
- 6.11. The student shall be entitled to an explanation in writing of the reasons for any decisions rendered against them and the discipline imposed, and shall be given access to the hearing panel's decision for their personal records.
- 6.12. Technical rules of evidence or procedure need not be employed in the hearing proceedings. Hearsay evidence is not required to be excluded, but a finding of misconduct on hearsay evidence alone is not appropriate in hearings, including a serious disciplinary case such as suspension or expulsion.
- 6.13. A student's misconduct shall be determined by a preponderance of the evidence standard.
- 6.14. Hearing decisions need not be unanimous. A simple majority vote shall be sufficient.
- 6.15. The student shall be notified of their right to appeal the decision of the hearing panel to the senior student affairs officer.
- 6.16. Appeals must be in writing and are due to the senior student affairs officer within five (5) class days after the student received the hearing panel's decision. If the senior student affairs officer was a member of the hearing panel, the student may submit the appeal directly to the President.
- 6.17. Appeals must be based on one (1) of the following grounds:
 - Procedural due process was violated;
 - The sanction was excessive;
 - The evidence did not support the decision; or
 - Substantive new information is available that was not available at the hearing.
- 6.18. Should the student appeal, any action assessed by the hearing panel shall be suspended until acted upon by the President.
- 6.19. Appeals of the President's decision may be submitted to the Chancellor but shall be limited to allegations that fair procedural due process has not been provided in accordance with this policy.
- 6.20. Appeals to the Chancellor must be in writing and are due within five (5) days after the student receives the President's decision.
- 6.21. Should the student appeal, any action assessed by the hearing panel shall be suspended until acted upon by the Chancellor.

7. Hearing Panel

- 7.1. The hearing panel shall be the decision-making body acting independently of the President.
- 7.2. The hearing panel designated by the College shall be composed of College administrators, faculty staff, and/or students. Such selection shall be at the approval of the President or designated Vice President or Dean. Individuals serving on the panel need not be disqualified because they have superficial knowledge of the background of the case, or because they may know the participants. The basic test shall be whether or not the panelist can judge the case fairly, without bias or prejudice, and solely on the evidence presented.

FORMS/APPENDICES:

None

SOURCE:

Legal Reference: Neb. Rev. Stat.	85-602	Faculty, administrative staff, student; dismissal or expulsion; procedure.	
	Neb. Rev. Stat.	85-603	Faculty, administrative staff, student; dismissal or expulsion; order; contents; service.

Policy Adopted: January 1977

Policy Revised: June 1993, March 1994, April 2003, June 2006, March 2008, March 2011, April 2012, June 2018, September 2019, July 2020, June 2021, April 2022, June 2023, October 2023