

Follow Clear Process When Disciplining Students Who Violate COVID-19 Protocols

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A New York state court recently invalidated a private university's suspension of three students for violating COVID-19 protocols because the court decided that the university did not provide advance notice to the students that discipline might occur for violations of the protocols.

The Off-Campus Gatherings and Disciplinary Sanctions

Several members of NYU's track and field team allegedly attended or hosted one or more "small" gatherings of less than 15 people at private, off-campus apartments during summer break.

Three of the students were charged with violating university protocols because they had "attended a large gathering at an off-campus location without proper use of masks and social distance" and endangered the health and safety of themselves, others, the community, and/or the operation of NYU.

All three students were found responsible for violating NYU COVID-19 protocols after the students admitted that they attended the gatherings and did not wear masks or maintain social distance (those admissions were confirmed with photographic evidence). NYU suspended the students for the fall 2020 semester and imposed other sanctions on them.

Lack of Pre-Conduct Notice Leads to Judicial Reversal

The case ended up in court where the students primarily argued that their suspensions were unfair because they did not have "pre-conduct notice" that conduct prior to the start of the semester *during summer break* may subject to them to discipline.

The court agreed. It found that NYU's warnings to students and parents set expectations *for the coming academic year* but "did not give pre-conduct notice that a rooftop gathering over the summer break could result in sanctions including suspension." The court explained that the discipline could not be imposed absent "clear, concise, and full advance notice."

The court therefore ordered NYU to immediately reinstate the students, expunge their records, and provide them extra time to complete any missed schoolwork.

The Court Did Not Invalidate a School's Obligation to Regulate Dangerous Conduct

The court's ruling was focused on the particular facts and did not prohibit NYU from enforcing health and safety provisions in its Student Conduct Policy. The court observed "that care and safety during COVID-19 is critical and must be regulated." The court's decision was limited to ensuring that "regulations of student behavior during these unprecedented times must still be conducted in a fair manner . . . that affords *notice* to students of the specific types of conduct prohibited."

The decision is *Marc Santonocito et al. v. New York University*, No. 157787/2020, 2020 WL 6161628, at *1 (N.Y. Sup. Ct. Oct. 21, 2020).

Ensure Protocols Are Clear

The court's decision is a reminder to schools that notice of potential discipline must be clear when describing prohibited conduct under COVID-19 protocols. With Thanksgiving and/or winter break fast approaching, schools should ensure there is clear, written communication to students and their families that discipline may be imposed for violating safety protocols during breaks and off-campus.

Although the court reversed the suspensions in this case, it also provided sufficient reasoning to justify discipline of students, after fair notice, for violating COVID-19 protocols.

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