



# Due Process on Campus

The right to due process means that fair procedures must be followed before someone accused of wrongdoing is found responsible and punished. This primer outlines rights that students should have within campus disciplinary proceedings and details a handful of warning signs that student due process rights may be at risk. For a more thorough analysis of due process rights on campus, consult [FIRE's Guide to Due Process and Campus Justice](#).

## PROCEDURAL DUE PROCESS RIGHTS GUARANTEED AT PUBLIC INSTITUTIONS UNDER THE FOURTEENTH AMENDMENT

### Notice and an Opportunity to be Heard

If you face suspension or expulsion from a public university, you have a right to hear the evidence against you and to have an opportunity to rebut it. This right was first recognized by the Supreme Court in *Goss v. Lopez* (1975), which held that “[a]t the very minimum ... students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.”

The Court in *Goss* held that the opportunity to be heard includes the right to both “an explanation of the evidence the authorities have and an opportunity to present his side of the story.” Although the right to be heard does not, in the school setting, guarantee the right to a right to a formal hearing, some circumstances “may require more formal procedures.” *Goss* holds that the more serious the potential punishment, the more due process protections are required.

### The Right to Be Present at a Formal Hearing

As established in *Goss*, you have the right to hear for yourself “an explanation of the evidence” against you before you present your defense. As a result, if your public university uses a formal hearing to decide your case, you have the right, even where potential punishments are minimal, to be present at all of the hearing in order to hear the evidence being used against you.

### Composition of the Hearing Panel

Hearing boards in university disciplinary cases must be free from unreasonable bias. If you believe that the tribunal charged with hearing your case is biased, you should object in writing before the panel considers your case or as soon as possible.

## PROCEDURAL SAFEGUARDS GRANTED BY INSTITUTIONAL POLICIES OR LEGISLATION

In addition to the constitutional rights students at public institutions enjoy, students at both public and private institutions may be afforded additional procedural safeguards through school policies or state legislation. For this reason, it's important to know and understand your university's disciplinary



policies and procedures.

For example, the law does not require colleges and universities to offer a full and formal judicial hearing, but many institutions offer a more robust hearing to students accused of misconduct. Federal law does not guarantee that attorneys hired by students can actively participate in proceedings, but some universities have provisions that allow for such participation, and some states have enacted laws guaranteeing students the right to active assistance of counsel. Similarly, although federal law does not require campus tribunals to permit cross-examination of witnesses in all cases, some universities have policies specifically granting students that opportunity.

When a school offers more than the law requires, it has a moral and often contractual obligation to live up to its promises. Courts in some jurisdictions will compel both public and private institutions to give you all of the procedural protections that they have promised you. If your college or university fails to follow its own rules, do your best to document everything and [contact FIRE](#) for help.

## **DUE PROCESS RED FLAGS TO WATCH FOR**

Due process rights may be infringed not only by unfair or unclear disciplinary procedures, but also policies that are vague, overbroad, or unfair.

### **Vague Rules**

Rules must be written with enough clarity that individuals have fair warning about prohibited conduct. The courts do not demand perfect precision in the formulation of rules, but they can find a law “void for vagueness” if people of common intelligence would have to guess at its meaning or would easily disagree about its application. For the courts, how much clarity is required depends on the extent to which constitutional rights are implicated. For instance, rules restricting free expression must be wholly clear to avoid “chilling” free speech.

### **Overbroad Rules**

Laws are said to be overbroad if, in addition to whatever else they prohibit, they restrict protected First Amendment freedoms. The overbreadth doctrine has its roots in the First Amendment’s guarantees of freedom of speech, assembly, and press. When a provision of a law violates the First Amendment, it is possible to salvage the rest of the law by removing the offending section.

### **Unfair Rules**

Public universities possess significant authority to prevent disruptions of the educational process. However, this does not give them the authority to enact rules that are arbitrary or grossly unfair, violate the First Amendment or other constitutional rights, or intrude unnecessarily upon the rights of privacy or conscience.