# Due Process and Student Discipline

## What is Due Process?

Due process in the university disciplinary context is derived from the Fifth and Fourteenth Amendments. Although there is no clear definition of “due process of law”, at minimum, it includes the rights of students to:

1. be notified of the charges against them
2. be given the opportunity to respond to the charges

However, a long history of case law has also guided our interpretation of due process, and in the higher education setting, due process also includes the rights to:

1. a speedy and equitable hearing
2. receive discipline that is proportionate to the violation and founded on precedent
3. notice of avenues of appeal

There are two elements of due process: *procedural* and *substantive*.

### Procedural Due Process

Procedural due process refers to specific provisions laid out in the 14th amendment, as outlined above. Whenever a government agency (UNEX) denies a person their rights (ability to benefit from an education), that person must be provided with a fair process before receiving discipline.

### Substantive Due Process

Substantive due process is a vaguer concept. It essentially captures a person’s civil liberties and right to autonomy without government interference, whether specifically addressed in the law or not. In conduct proceedings, substantive due process is interpreted to mean that the school will act in good faith, and without bias in the proceeding, as well as provide discipline that is not arbitrary or capricious. That is to say, we will set and follow our own fair rules.

## Is A Conduct Proceeding A Legal Process?

Our disciplinary procedures are not legally binding, but closely mirror the legal process. This means that student conduct hearings follow federal and state APA (Administrative Procedures Act) guidelines. **Any disciplinary action taken against a student must follow these guidelines.** This includes changes of grade due to suspected academic dishonesty, dismissing a student from class for disruption, and any other action you might take as an instructor that interrupts a student’s ability to fully participate in your class. That is why it is important that any violation of the Conduct Code or other policy is reported immediately to the SRRC, even if you have handled the situation yourself. Doing so ensures that all necessary measures have been taken to uphold the student’s right to due process.

## Legal Precedent

Students who are not given adequate due process in disciplinary matters have the right to bring legal charges against the University. This is especially prevalent in matters of substantial interest (i.e. the student stands to be suspended or dismissed), like Title IX matters. The links below reference major case law where students have successfully sued their schools and won for violation of due process.

### Overview of founding case law<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1484&context=law_faculty_scholarship>

### Due process in student discipline

<https://www.ndsu.edu/fileadmin/studentrights/documents/Due_Process_1996.pdf>

### Recent Title IX cases ending in due process lawsuits

<https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>

### Goss v. Lopez

<https://www.law.cornell.edu/supremecourt/text/419/565>

### Ingraham v. Wright

<https://www.oyez.org/cases/1976/75-6527>

### Board of Curators of University of Missouri v. Horowitz

<https://supreme.justia.com/cases/federal/us/435/78/>

### Regents of University of Michigan v. Ewing

<https://supreme.justia.com/cases/federal/us/474/214/>

### Basile v. Albany College of Pharmacy

<https://www.courtlistener.com/opinion/2401952/papelino-v-albany-college-of-pharmacy/>

### McConnell v. Le Moyne College

<https://caselaw.findlaw.com/ny-supreme-court-appellate-division/1102432.html>