

Orientation and Residence Life: Legal Considerations

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ORIENTATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

As orientation personnel plan programming for new students, ADA compliance is definitely something to keep in mind. The Americans with Disabilities Act of 1990 is “the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications” (EEOC, n.d.).

Because of this act, over the past twenty-two years, colleges and universities across the country have rebuilt entrances into buildings, installed elevators, included handicap-accessible restrooms, purchased specialized equipment (auxiliary aids), and hired skilled personnel to ensure their institution meets the ADA guidelines. When planning a new student orientation program, most orientation personnel would not have to consider ADA compliance for the accessibility of buildings on campus because this reconstruction has likely already occurred shortly after the act was passed. The ADA compliance which most orientation personnel will need to be aware of deals with providing students with disabilities accommodations, or auxiliary aids, such as qualified sign language interpreters, note takers, readers, captionists, braille and large print materials, adaptive equipment, and additional time for tests if necessary.

TIPS FOR ADA COMPLIANCE (ORIENTATION)

- Ensure that all buildings used for the orientation activities meet the ADA guidelines for accessibility for individuals with disabilities.
- If possible, speak with individuals with disabilities who have been a part of an orientation day at one’s institution to learn how to better accommodate future students with disabilities.
- Provide accommodations, also known as auxiliary aids, and services for students with disabilities if necessary.
- Do not charge students with disabilities money for reasonable accommodations.

FERPA

One can hardly speak of legal considerations surrounding the advising and registration piece of orientation without referencing FERPA. FERPA, or the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), was signed into law in 1974 to protect students' educational records and grant a series of rights to the "eligible" student. The "eligible" student is any student who has reached the age of 18 or has enrolled in an institute of higher education, before which time the rights remain with the students' parents or legal guardian. FERPA gives parents or eligible students the right to access, challenge, and consent to the disclosure of their education records (Higher Education Center, n.d.).

Orientation is an ideal time to educate students and their parents on the implications of FERPA. Students should know when, to which "parties," and under what conditions their information may be released without permission. Students should be aware that they may release the rights to their information to individuals (i.e. parents, guardians) by signing a waiver that is kept on file with the university. Conversely, students may also retract access to their records at any time by notifying the university.

Additionally, orientation leaders should be familiar with FERPA as they often handle student information protected under FERPA. The nature of the orientation department of the university serving as an initial liaison between the student (along with his or her family) and the university also means that these professionals often deal with visits, phone calls, and e-mails from parents. Orientation leaders must take precautions to ensure that they do not violate a student's rights as listed under FERPA.

It can be noted that medical treatment or vaccination records handled by the university or by university-owned health clinics fall under FERPA's broad definition of "education records" or "treatment records." As opposed to being protected under HIPAA (the Health Insurance Portability and Accountability Act of 1996), this information is often protected by FERPA and is subject to the same rules and exceptions (U.S. DOHSS & U.S. DOE, 2008).

TIPS ON HOW TO AVOID FERPA VIOLATIONS

- Do not release "directory" information (as defined by the institution).

- Do not release a student's information to anyone but the student unless they meet the criteria in FERPA's guidelines.
- Do not release information that could be easily traced back to a particular student.
- Do not allow access to one's computer or places where confidential documents are stored. This includes sharing passwords, leaving the monitor in plain view, or leaving a computer unlocked or unattended.
- Be mindful of phone and e-mail conversations.
- Destroy confidential documents when no longer needed.
- Do not provide anyone with student schedules or assist anyone other than university employees in finding a student on campus.

(Northwestern Indian College, 2010)

RISK MANAGEMENT

Some new student orientation programs, especially ones designed for freshmen directly before the fall semester begins, can include outdoor activities that may be considered risky from a liability aspect. Certain team-building exercises could require physical activity that may result in student injury. To manage the potential risks, orientation personnel should complete a risk assessment form before they will be allowed to lead an activity with the participating students. By completing the risk assessment, personnel will be more aware of potential liability issues and can plan accordingly.

According to the European College for Higher Education's (2010) guide entitled *Health and Safety during Field Trips, Visits and other Outside Activities*, the ratio of staff to students should be no less than "1:15 for the high risk activities, for learners above the age of 18." While many of the activities done at new student orientation would not be in the "high risk" category, this information provides a good starting point for orientation directors as they are distributing their staff members during orientation programs.

It is important for all orientation leaders to be aware of emergency procedures. A medical emergency would be a more likely situation that one might encounter in an orientation setting. Other emergency procedures that orientation leaders, or any leader for that matter, need to be aware of are related to building fires, weather-related dangers, bomb threats, violence, etc.

Finally, a “no-alcohol” policy of some kind is good practice for new student orientation programs, especially for freshmen that are under 21 years of age. Stanford University adopted a policy that states

At no time should any Stanford student provide, serve or in any way make alcohol available to any new, incoming undergraduate student (freshman or transfer). All undergraduate student groups/organizations and residences will host only alcohol-free parties or events during Orientation. This specifically means that no alcohol is to be present, served, or consumed at any student group/organization and/or dorm function during NSO. (Stanford University, n.d.)

TIPS FOR RISK MANAGEMENT IN ORIENTATION

Here are some tips that orientation personnel should take into consideration when assessing risk:

- When planning programs, especially ones that involve physical activity, the ratio of staff to students should be relatively low.
- Complete some type of risk assessment of proposed activities before students arrive.
- Consider enacting some type of policy to reduce the chances of an underage student being served alcohol.
- Be familiar with all emergency procedures, particularly a medical emergency.

STUDENT STAFF TRAINING

The National Orientation Director’s Association Statement of Ethical Standards (2009) identifies the importance of making sure student staff leaders assisting with orientation are properly trained. Many orientation leaders employ several students to assist in the carrying out of their orientation efforts. Potential legal considerations can be combatted through thorough training.

AREAS OF CONSIDERATION FOR STUDENT STAFF TRAINING

- **Risk Management.** Student staff should know the overall risks associated with interacting with incoming students. Any decision a student staff member makes should be

evaluated to “determine whether the activity is truly the best course of action to meet one’s goals” and “poses a reasonable level of risk in light of those goals” (UConn Division of Student Affairs, n.d.).

- **Adherence to policy.** Students should be aware of and should follow all university policies and any policy outlined by the department.
- **Confidentiality.** Student staff leaders assisting with orientation – especially in the registration process – may know a student’s academic standing, schedule, test scores, etc., and should be familiar with the student’s rights listed under FERPA.
- **Providing Correct Information.** Student staff leaders are acting as agents of the department and of the university. These staff members should be knowledgeable about the institution and should know to refer parents and students via the appropriate channels if they are unable to answer a question.
- **Communication.** Supervisors should maintain communication with student leaders to resolve conflict and issues before they escalate. Things that may “slip through the cracks” of poor communication can potentially cause future litigation.

FREEDOM OF SPEECH

Lawsuits expressing the importance of free speech rights on college campuses have been surfacing for decades, and orientation is not spared of the possible issue. Through partnering with outside agencies, other students, speakers, and involvement or resource fairs, for example, the potential threat to free speech can exist if orientation leaders fail to consider first amendment rights. Some areas regarding freedom of speech implications include the power to reserve space, recognized versus unrecognized student organizations, and display or presentation materials.

RESERVE SPACE

Allowing reserved tables or space during orientation is fairly common. If dealing with reservations or permits, such should not be denied for reasons other than space, safety, or similar concerns; limiting what groups can participate or what presentations may consist of is a breach of rights. Any policies one’s department or university has regarding reserve space should make

clear when and under what circumstances permits shall be denied (for example, parties should know that content of proposed activity or speech shall not be a determining factor unless it is a threat to safety or if it falls under “unprotected” speech). It is good practice to provide a review of a reservation or permit denial (Office of General Counsel, The California State University, 2009).

GROUP RECOGNITION

Orientation leaders and their counsel should consider who they will allow to enhance the orientation experience for incoming students. Orientation leaders may strictly allow recognized student organizations to participate in activities such as involvement fairs, or they may choose to open up to all groups on campus and in the community. They may choose to allow campus departments to be represented as well. Unless one’s department has a firm policy allowing only recognized student organizations (recognized by the university or the appropriate organization board) to participate in an event or activity, orientation leaders should not discriminate against agencies or groups wishing to participate based on the message or mission of the group.

CONTENT OF SPEECH

To avoid potential lawsuit, orientation leaders should not stifle the content of speech, presentation, or display of a group unless the speech is not protected by the first amendment. Orientation leaders should consider tests such as the captive audience doctrine (“when the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure” [Captive-Audience Doctrine Law & Legal Definition, n.d.]) and the “Miller test” (*Miller v. California*) when weighing the risk of proposed speech. Student affairs professionals should avoid using their authority to censor a student’s free speech.

REMINDER: SPEECH UNPROTECTED BY THE FIRST AMENDMENT

- Causes clear and present danger
- Incites riot or violence
- Is false/misleading and damaging
- Is obscene (“Miller test”)
- Conflicts with governmental/societal interests (e.g. national security)

- Interferes in time/place/method of communication (regardless of content)
(“Limits of Freedom of Speech,” n.d.)

COVERING YOUR BASES

New student orientation provides a good opportunity for orientation personnel to share basic information about rules on campus. At some point, students should be able to access a copy of their institution’s student handbook. Whether the school wants to provide a hard copy for each student or simply a link to an online version, each student should be aware of their college or university’s policies. If appropriate, an abbreviated version of the student handbook could be discussed during the orientation program. Common legal issues like sexual harassment, safety on campus, etc., should be mentioned at some point so that the students won’t be able to say, “No one ever told me that.”

By federal law, all colleges and universities in the U.S. must disclose information and statistics about crimes that have occurred on or around their campus. Orientation may be a good time to share this information about crime on campus or at least share a hand-out about or link to this information.

This law went into effect after the Clery Act, which was originally known as the Campus Security Act, was passed. Jeanne Clery, a student at Lehigh University, was raped and murdered due to a lack of security in her residence hall. “Jeanne's parents, Connie and Howard, discovered that students hadn't been told about 38 violent crimes on the Lehigh campus in the three years before her murder. They joined with other campus crime victims and persuaded Congress to enact this law” (Omnilert, n.d.).

FINAL TIPS FOR ORIENTATION

Basically, if working in the field of orientation, have policies in place to decrease the chances of dealing with legal issues. “If you have your own campus policies, follow them and then you can be supported by your legal counsel. Make an exception to your policy and expect to receive a letter from a lawyer” (D.L. Sullins, personal communication, November 16, 2012).

HOUSING AND RESIDENCE LIFE

RISK MANAGEMENT

Risk is created by all of the decisions, activities, events, rules, regulations, practices, protocols, processes, and any deficiencies in such that create exposure for the university. Housing and Residence Life is a very high-risk area, and having a completed risk management plan can help prevent any foreseeable harm to the students living on campus. Risk Management is a well-documented process that includes analyzing risk, planning for management of risk, creating a detailed risk management plan, successfully and thoroughly implementing a plan, and conducting an after-action review. There are five risk categories to be made aware of, which are physical, reputational, emotional, financial, and facilities. Risk management for Housing and Residence Life administrators entails the following:

- Management of events and activities by identifying risks
- Minimizing institutional exposure through an understanding of what creates exposure
- Taking tangible steps (due diligence) to minimize or eliminate exposure

(Parrott, 2012)

FINE TUNING DOCUMENTS

In court cases concerning liability, the evidence often focuses on the forms, waivers, permissions, releases, authorizations, etc., that an institution requires its participants or the guardians of the participant to sign. By carefully drafting these documents, paying special attention to the wording to make sure that it is clear and unambiguous, and implementing policies to guarantee that forms are collected and carefully checked for the appropriate information and signatures before a person participates in an event, one can prevent a lot of trouble in the courts later on.

HOW DOES THE UNIVERSITY VIEW THE STUDENT?

- Students are adults and no longer children.
- Students are no longer in custody or under university control.

- A student's loss of a right to protection from harm is directly related to student freedoms/individual rights.
- Universities are not, cannot be, and should not be insurers or underwriters of dangerous behavior on campus.
- Universities cannot realistically enforce campus regulations, especially those involving alcohol use and campus activities.
- Universities can promulgate all sorts of rules regarding the same, and even if they do and can enforce them, they are not responsible to do so or to do so responsibly.
- Students are to bear the consequences of their adult choices.
- College is a luxury and a luxurious lifestyle in terms of personal freedom.
- The university is the crucible for major social problems, but it is helpless to do much except educate students in academic subjects.

(Bickel & Lake, 1999)

STANDARD OF CARE

The standard of care was determined when the university-student relationship went from *in loco parentis* (in place of parent) to a multi-dimensional legal relationship (Parrott, 2012).

Four areas the University is legally responsible to provide a standard of care is as follows:

- Age
- Mental ability
- Physical ability
- Level of risk

A minor requires a higher level of care than does an adult of legal age. This relationship between the non-student minor and university can easily be compared to an innkeeper/guest relationship and a student-university relationship can be compared to a landlord/tenant relationship. An innkeeper is someone who hosts one or more overnight guests; with this comes the legal responsibility for the guest that extends further than that of reasonable care to an invitee or licensee. A guest is an overnight person looking for overnight accommodations, not permanent housing. Since guests are "unconscious" when they sleep and cannot provide their own security and safety, the innkeeper is responsible for making sure these accommodations are

met. If not met, the courts will find a duty to aid or protect in a relation of dependence or of mutual dependence (Parrott, 2012).

A landlord/tenant relationship is a relationship in which there is a written contract (written to last 30 days or longer) and consists of permanent housing. In this relationship, there are set laws that *each* party is responsible for – not just the party providing the housing. The laws explain the relationship of who is responsible for responsibilities such as repairs, agreed upon rent and due dates of that rent, and property condition (Parrott, 2012). When students move into a residence hall, one of the documents they sign is the residence hall policy agreement form. By signing such at Western Kentucky University, residents agree to the following:

- Abide by all policies of the University outlined in the Western Kentucky University Student Handbook within the Hilltopics for Residence Hall Living.
- Adhere to an identification policy stating one will provide identification upon entering the residence hall at all times.
- Do not manufacture, possess, or distribute illegal drugs or alcohol on University property.
- Do not tamper with University property.
- Understand that the purpose of a residence hall is to provide a living/learning environment.
- Use the roommate lifestyle agreement to diffuse any conflict that may arise in the living environment.

(Residence Hall Policy Agreement, 1999)

Therefore, students living in the residence halls have safety and security provided to them but also are responsible for their own safety and security as well. This is something a *guest* does not have and the University has to take full responsibility for. Students living in the residence hall at Western Kentucky University must also attend informational sessions before their first semester to orient themselves to residence hall policies and the Student Code of Conduct.

In Housing and Residence Life, we provide accommodations for those with mental and physical abilities such as a room on the first floor or more intensive explanation of fire alarm procedures. The level of risk is determined by the rate of injury the activity or event could cause. For example, if one were to plan a haunted house, one would need to have a waiver to have each

participant sign so that they understand the level of risk and that they will not hold the University responsible.

THE CONTACT DIMENSION

A *tort* is a civil wrong other than the breach of contract for which the courts provide a remedy. Two ways one could be found responsible are defamation and negligence in care. There are four common law duties that exist under the overall duty of care: To train, to supervise, to maintain equipment and property, and to warn of impending danger (Parrott, 2012).

NEGLIGENCE, FORSEEABILITY, AND DUE DILLIGENCE

Negligence is the failure to exercise the care toward others that which a reasonable or prudent person would do in the circumstances, or taking action which such a reasonable person would not. Negligence occurs when a court determines that four conditions have been met. There must be a duty, a breach of that duty, an injury, and linkage between the breach and the injury. Colleges and Universities are expected to provide reasonable care to prevent foreseeable harm (Parrott, 2012).

The ability to perceive, know in advance, or reasonably anticipate that damage or injury will probably ensue from acts or omissions is foreseeability. In the law of negligence, the foreseeability is established by proof that the actor, as a person of ordinary intelligence and circumspection, should reasonably have foreseen that his or her negligent act would imperil others (whether by the event that transpired or some similar occurrence) and, regardless of what the actor supposed, would happen in regard to the actual event or the manner of causation of injuries (Parrott, 2012).

Due Diligence is a term used to describe the action or inaction of administrators in meeting their duty to provide reasonable care. Duty is defined as setting limits on responsibilities owed to others (Bickel & Lake, 1999). Due diligence is the care that a reasonable person exercises to avoid harm to other person or their property (Parrott, 2012).

The Housing and Residence Life office at Western Kentucky University performs weekly facility reports to make sure facilities are meeting the standard of care for the students living on campus. Some of the items that go into weekly reports are updating maintenance requests

throughout the week, tracking of spare keys to the students' rooms, and checking emergency exit door alarms. The department does this to prevent tragedies such as one that occurred in *Mullins v. Pine Manor College (1983)*, in which a young lady was kidnapped from her room, required to walk around campus masked by a pillow case, and later raped by her kidnappers. The facilities were not kept in condition to provide the safety and security to the students living in the building and the security guards were not properly trained or supervised (Parrott, 2012).

IMMUNITY

In the case *Harlow v. Fitzgerald (1982)*, the Supreme Court set the standard for the qualifications for qualified immunity as follows:

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional right of which a reasonable person would have known. (Parrott, 2012)

Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. Qualified immunity only applies to suits against government officials as individuals, not suits against the government for damages caused by the officials' actions. (Cornell University Law School, n.d.)

Working in Housing and Residence Life, it is important to not ignore situations and let them escalate in to a more serious situation. Whether the situation is a student talking of suicide or a small drip from the bathroom sink, an escalating situation is a sure way to lose immunity. One has immunity as an administrator as long as one neither knew nor should have known; negligence, foreseeability, and due diligence are important here.

WAYS TO LOSE YOUR IMMUNITY

- Violating clearly established law
- Operating outside the role of employment
- Operating outside of scope of employment

MINGER ACT

The Minger Act was created after the death of Michael H. Minger, a student who attended Murray State University in Kentucky. Michael was killed in his residence hall after someone poured gasoline in the hallways and set the building on fire. Gail Minger, Michael's mother, presented the act to the Kentucky Congress, and the Minger Act was passed and went into effect on July 14, 2000. The Minger Act was revised in 2004 to include additional measures of safety within residence halls (Michael H. Minger Foundation, 2012). It is important to remember that the Minger Act is not a federal law, but it is a Kentucky state law.

CRIME REPORTS

One of the main priorities of the Minger Act is to inform students, faculty, and staff about crimes on campus. This is done with crime reports and timely reports. The Minger Act is very specific on how the reports are to be written and when they are to be made public (with some exceptions). According to the Minger Act,

Each postsecondary education institution shall make, keep, and maintain a daily log, written in a form approved by the Council on Postsecondary Education that can be easily understood, recording all crimes occurring on campus and reported to campus security authorities or local law enforcement agencies...All entries in the campus crime log shall be made available for public inspection within twenty-four (24) hours after the first report of an incident was made to any campus security authority or local law enforcement officials. (Minger Act, 2004)

One important provision to remember is that even if some of the facts are not presented to the public, the crime must still be available for the public to view.

REPORTING OF FIRE INCIDENTS

All fire incidents must be reported to the State Fire Marshall's office in Frankfort, Kentucky, even if the fire was not large enough to need the fire department. The Minger Act also states that no one will interfere with the work of fire safety employees who show up to extinguish or examine the cause of a fire (Minger Act, 2004).

SUBMISSION OF CAMPUS SAFETY AND SECURITY POLICIES

All universities and institutions must supply a list of all campus safety and security policies to the Council on Postsecondary Education. The Council requires documentation of the following:

- “The enforcement authority of security personnel, including their working relationship with state and local police agencies.
- A description of programs designed to inform students and employees about the campus safety and security procedures and practices, how to report crimes, and how to prevent crimes
- Statistics concerning the occurrence of crimes on campus during the most recent calendar year”

(Minger Act, 2004).

The Minger Act is very specific in what and how this information is to be sent in, and the best way to understand how the information is to be submitted is to read word-for-word from the Minger Act.

DUTY TO NOTIFY STUDENTS OF AN AUTOMATIC FIRE SUPPRESSION SYSTEM

In the continuation of fire safety, the Minger Act requires that students are notified of the automatic fire suppression systems and how they work (Minger Act, 2004). One easy way to educate students about this system is to discuss the system during orientation week, or registration days.

PRIORITY HOUSING FOR DISABLED STUDENTS

Michael Minger had a learning disability that affected his sense of direction and played a role in his death. In July of 2004 the Minger Act was revised in order to better accommodate students with disabilities. According to the Minger Act, any student with a disability is to be given first choice of rooms on the bottom floor of residence halls. If the housing and residence life department cannot provide these accommodations, then they must allow the student to find alternative housing, even if that means the student must move off-campus. The housing and residence life department cannot fine or punish a disabled student if this is the case. The Minger

Act defines disabled as “a sensory, cognitive, or neurological deficit or impairment, or a learning disorder, minimal brain dysfunction, dyslexia, pervasive developmental disorder, autism, or Asperger syndrome” (Minger Act, 2004). The second revision that was made to the Minger Act in 2004 requires faculty and staff to notify safety and emergency personnel of students with disabilities in the event of a fire or emergency (Minger Act, 2004).

LANGUAGE

Understanding what the language means in the Minger Act can help professionals stay out of court. The four major terms that the Minger Act outlines are *campus*, *campus security authority*, *crime*, and *postsecondary education institution*.

CAMPUS

According to the Minger Act, *campus* is defined as

All property owned, managed, or controlled by an institution of postsecondary education including, but not limited to, academic buildings; student housing and recreational facilities; residential facilities operated by any officially recognized student organization; all sections of public property such as streets, sidewalks, and parking facilities immediately contiguous to campus buildings; and remote facilities leased for use as classroom space or student living. (Minger Act, 2004)

One common misconception is that sidewalks and streets are not considered campus; however, officials are required to report any crime associated with these areas. For example, if a student is found intoxicated on a sidewalk directly in front of a residence hall, that crime must be reported.

SECURITY AUTHORITY

Security authority could be the most important of the four when considering how to stay out of court. The Minger Act defines *campus security authority* as

Campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student life administration.

Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities. (Minger Act, 2004)

CRIME

The Minger Act has spelled out what defines a campus, and who is responsible for reporting crimes, but what is a crime? A *crime* is defined by the Minger Act as

Murder, manslaughter, reckless homicide, assault, menacing, wanton endangerment, terroristic threatening, stalking, forcible or non-forcible sex offenses, burglary, criminal damage to property, arson, theft, motor vehicle theft, robbery, weapons possession and criminal attempt for any of the aforementioned crimes, and arrests for drug-related violations and liquor law violations. (Minger Act, 2004)

It should be noted that examples of non-forcible sex offenses are incest and statutory rape.

POSTSECONDARY EDUCATIONAL INSTITUTION

Reading and understanding the meaning of *postsecondary educational institution* is crucial; the definition clearly states which entities are responsible for reporting. Being ignorant of this definition will not hold up as an acceptable excuse for not complying with the Minger Act. The Minger Act explains *postsecondary educational institution* as

Any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947. (Minger Act, 2004)

NONCOMPLIANCE: FINES AND CIVIL COURT

A Kentucky postsecondary institution will be fined for failing to follow the requirements in the Minger Act. An institution or person who violates the Minger Act, either intentionally or unintentionally, will be fined any amount between five hundred dollars and fifteen hundred dollars, or could face up to thirty days in jail. In addition to fines, the institution or person can also be held liable in civil court. If held liable in civil court the violator can face fines between one thousand and two thousand dollars per day the infraction is in effect (Minger Act, 2004).

DOCUMENTATION

Documentation is important in that it could be the information that keeps an individual out of court; conversely, the lack of information is what places someone *in* court. Documentation is important when interacting with staff and students and when reporting facility maintenance. Documentation is not meant to create more work but, rather, to create protection. This is what helps one maintain immunity as a Housing and Residence Life administrator.

TIPS FOR THOROUGH DOCUMENTATION

- Keep minutes of meetings.
- Record attendance.
- Retain copies of training materials.
- Detail one-on-one meetings.
- Copy proof of correspondence.

HANDLING MINORS IN RESIDENCE LIFE

TRAINING STUDENT STAFF

In the realm of Housing and Residence Life, the importance of having a well-trained staff cannot be stressed enough. In terms of a residence hall's front desk, there are several crucial items to consider when training student staff:

- What is a minor?
- Is the minor accompanied by his/her legal guardian?
- Does the minor have a valid ID to use for checking into the building?
- No minor should ever stay overnight in the residence halls.

It's important to refer to Housing and Residence Life policies at this point to become aware of exactly how one's institution defines a minor. At Western Kentucky University, any person under the age of 18 is considered a minor. Once one is aware of an institution's housing policies, it is easier to enforce them and provide rationale to student staff. The next step in the process of determining who can have access to the building is found in some follow-up questions that student staff should pose to that minor. *Is the minor accompanied by his/her legal guardian?*

If the answer is yes, then the minor and the accompanying guardian may use their valid IDs to check in. If the answer is no, then the minor should not check in at all. Assuming the minor is accompanied and is granted access to the building, the Hall Director should then be notified. It is not uncommon for Hall Directors to grant visitation to a minor for a few hours. Student staff should also note that a minor entered the building on one's residence hall's visitation roster. Perhaps the most important thing to remember when training student staff about minors in the residence halls is that no minor may stay overnight in any residence hall as a guest of a resident. The importance of enforcing this helps to decrease any liability that may be incurred by the institution, the Hall Directors, and/or the student staff.

MINORS IN RESIDENCE HALLS

Whenever minors *are* staying in residential halls (exclusively for activities, camps, or other authorized functions), conduct a premises safety risk assessment paying close attention to safety issues for the age group that will be staying in the residence hall.

- Review window openings, accessibility of locks on windows and doors, safety of room fixtures/furniture for minors, stairs and stairwells, automatic closing doors.
- If possible, limit access for the minors in the residence hall to a specific wing, preferably the ground floor.
- If children are in a range of ages, group them by age and keep the groups separate.

CAPACITY TO CONTRACT

When handling minors, forms, waivers, and permissions are often involved. However, it is important to note the following: “As a general rule, minors do not have legal capacity to enter into contracts, to give consent, or to sign waivers and liability releases. All legal documents must be signed by the minor’s parent or legal guardian” (Office of General Counsel, 2011).

CONSENT FOR MEDICAL TREATMENT

When minors are participating in events on campus, a valid consent for medical treatment/emergency care should be required. Essential elements for this consent form include:

- “Child’s full name, date of birth, and address

- Full names of parents/guardians
- Contact information
- Dates of event for which the medical release is granted
- Medication lists
- Permission to obtain professional emergency medical treatment for child
- Health insurance information”

(Office of General Counsel, 2011)

CONSIDERABLE FACTORS REGARDING LIABILITY AND MINORS

- Inherent dangerousness of the activity
- Age and skill level of minors
- Maturity and number of children involved
- Whether adequate measures have been taken to ensure the safety of the premises/equipment used
- Whether the children have special needs or other disabilities
- Whether the activity is supervised by staff adequately addresses the number, age, and skill level of participating minors

(Office of General Counsel, 2011)

DISCIPLINARY PROCESS

The disciplinary process at an institution may be handled solely, primarily, or rarely by the Office of Student Conduct. In the case of primarily or rarely, in-house Housing and Residence Life staff will account for the other portion of handling student conduct on campus. At Western Kentucky University, the judicial system operates similarly to the courts of a criminal law system. The Hall Directors in the residence halls can be seen as lower court judges. The Office of Judicial Affairs (OJA) would be seen as the highest court judge for the campus judicial system. Any case may be referred to the OJA. The OJA can facilitate any case of student conduct that originates within the residence halls, to any off-campus issues of student conduct, and even on issues of academic dishonesty and plagiarism. The most important thing to remember when wading through the disciplinary process of one’s institution is to attempt to align one’s process

by the General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline, 45 F.R.D. 133 (Western Kentucky University, 2011).

The discipline of students in the educational community is, in all but the case of irrevocable expulsion for misconduct, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community.

In the field of discipline, scholastic, and behavioral, an institution may establish any standards reasonably relevant to the lawful missions, processes, and functions of the institution. Standards so established may apply to student behavior on and off campus when relevant to any lawful mission, process, or function of the institution.

(The General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline, 45 F.R.D. 133)

HOW TO ACT ACCORDING TO THE GENERAL ORDER:

- Explain the judicial system of the university (judicial vs. criminal system).
- Explain why the university has a judicial system.
- Explain the role of a student conduct officer: high school principal vs. hall director.
- Make sure the sanction fits the action(s) of the student(s).
- Inform the student of his/her rights to appeal and on what grounds:
 1. To determine whether the original conference was conducted fairly and in accordance with the Office of Judicial Affairs sanction determination and procedures.
 2. To determine whether the decision reached regarding the accused student was based on substantial information to determine the preponderance of evidence and/or the level of responsibility.
 3. To determine whether any sanctions imposed were appropriate and not unduly harsh for the violation(s) set forth in the Student Code of Conduct.

(The General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline, 45 F.R.D. 133)

DUE PROCESS

Particularly within the legal waters of the student conduct system, one should always make every possible effort to ensure due process is given to the student(s) involved in a conduct case. Whether directly as an employee in the OJA or indirectly as a Hall Director, the fourteenth amendment should always be adhered to: "...Nor shall any state deprive any person of life, liberty, or property, without due process of law" (Comment, 1969). *Due process* is a fundamental principle of justice that involves providing protections to minimize the erroneous deprivation of life, liberty, or property interests. The Due Process Clause serves a few basic goals: to produce, through the use of fair procedures, more accurate results; to prevent the wrongful deprivation of interests; and to make people feel that the government has treated them fairly by listening to their side of the story. The amount of process that is due is contingent upon the level of deprivation that may occur (Linder, 2012a).

There are two types or categories of due process protections: Procedural and substantive. *Procedural due process* guarantees the right to notice and the right to a hearing to hear the charges brought against the student. This also allows the student time to give his/her version of the events that led to the hearing (Linder, 2012b). *Substantive due process* guarantees a reasonable, factual basis for finding any sanction differential as so determined by the conduct officer, notice of rules and rule changes, no overly broad or vague rule construction, and that rules can't be applied in an arbitrary or capricious manner (Linder, 2012b).

COURT CASES ILLUSTRATING DUE PROCESS & FAIR PRECEDENCE:

- *Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961)* Established that students shall, prior to suspension or expulsion, be afforded due process rights to include: notice of specific charges, an opportunity to be heard, names of witnesses, oral or written report of the facts to which each witness testifies, and an opportunity to present a defense.

- ***Goss v. Lopez, 419 U.S. 565 (1975)*** Due process requires that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version (Linder, 2012a).
- ***Esteban v. Central Missouri State College, 415 F.2d 1077, 1089 (CA8 1969) cert. denied, 398 U.S. 965 (1970)*** "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power to properly discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct."
- ***Ingraham v. Wright, 430 U.S. 651(1977)*** The issue is whether a hearing of some sort must precede corporal punishment by a school teacher. "The range of interests protected by procedural due process is not infinite" (Linder, 2012a).
- ***Horowitz v. Board of Curators of the University of Missouri, 435 U.S. 78 (1978)*** Considers what procedures are required before a student may be dismissed for academic failure (Linder, 2012a).

FREEDOM OF SPEECH

There are several tips for adhering to a student's right to freedom of speech within the residence halls on-campus at a university or institution. However, we would be remiss without first mentioning the court cases which give us these tips:

Healy v. James (1972) makes it clear that the mere dissemination of ideas - no matter how offensive to good taste - on a state university campus may not be shut off in the name alone of conventions of decency. (Parrott, 2012) [*From the Supreme Court Case Papish v. Board of Curators of University of Missouri (1973)*]

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and -as it did here- inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a nation we have chosen a different course - to protect even hurtful speech on public issues to ensure that we do not stifle public debate. (Parrott, 2012) [*Chief Justice Roberts, Supreme Court Case: Snyder v. Phelps, 131 S. Ct. 1207, 1220 (2011)*]

TIPS FOR RESPECTING STUDENTS' FREE SPEECH IN THE RESIDENCE HALL:

One should not:

- Erase a student's white board on his/her room door.
- Ask a student to change clothing based on hurtful/harmful words/images.
- Take anything off a student's door because it seems in poor taste (porn, vulgar language, disturbing photos, etc.).

One should:

- Have an educational conversation about the implications of his/her words/actions.
- Encourage a civil, safe living/learning environment (community standards).
- Educate staff to have appropriate conversations with residents about their choices.
- Educate other residents who might be offended with conversational tools to address behavior they might disagree with and prepare them for various responses.

PUBLIC SPACE

Although there are many court cases that deal with a student's ability to use public space on a college campus, one of the most noteworthy cases is *Widmar v. Vincent* (1981). In this case, the Supreme Court ruled that universities could not deny the use of their buildings or grounds to student groups based on the nature of the group, even if the group was a religious group. Essentially, schools must have an equal access policy.

However, residential halls are not a typical public facility. In fact, they can be classified as a non-traditional public forum, which places them in a different category than other facilities on campus. As such, schools have more liberties to control who is or is not allowed to use these facilities. Though policies vary from university to university, Western Kentucky University has decided to avoid possible confrontations by preventing any groups from reserving space in the residence halls. Through this policy, WKU protects itself and its students from those groups who would be unwelcome guests for most students. By stopping all groups from using their facilities, those controversial and disruptive groups/individuals who get denied from using the residential facilities would have a hard time making a case against the university since no one is given this right.

SEARCHING A STUDENT'S ROOM

The fourth amendment to the United States protects individuals from improper and unreasonable search and seizure of property. As students rent their rooms in their residence halls from WKU, a public university, they are also protected by the fourth amendment. As such, WKU has adopted a very transparent policy that allows its residential life staff to do the proper safety checks while maintaining the students' rights.

WKU'S ROOM SEARCH PROCEDURE

- On the first Tuesday of every month, Residential Life staff will enter student's rooms from the hours of 10 a.m. to 10 p.m. to check the smoke detectors and perform their safety checks.
- Everything that is in plain sight can be inspected, but drawers, refrigerators, and other things that are out of sight may not be searched.
- Four times per year – during Thanksgiving Break, Winter Break, Spring Break, and Summer Break – similar checks may be performed to ensure that students have left their rooms in a safe condition for their absence.
- Otherwise, if a Residential Life staff member wants to search a room for any other reason, they must receive permission from a member of the Leadership Team, which consists of six high-ranking Residential Life professionals. This need for official approval protects the students from undeserving searches.

HOW TO ASSESS RISK

In order to understand risk management more and be able to wade through the confines of it, one should become aware of how to assess risk. The following steps can help one to appropriately assess risk:

- Identify hazards to oneself as an individual or to one's organization.
- Assess the risk(s) associated with each hazard. Plan and decide control measures for each hazard.
- Implement decided control measures.
- Monitor and review one's control measures post-implementation.

To further help an individual or an organization assess the risks associated with particular tasks, one should consult a risk matrix (Figure 1). It will be an invaluable tool and a wonderful visual in the risk management arena (Parrott, 2012).

FIGURE 1:

		Impact				
		Trivial	Minor	Moderate	Major	Extreme
Probability	Rare	Low	Low	Low	Medium	Medium
	Unlikely	Low	Low	Medium	Medium	Medium
	Moderate	Low	Medium	Medium	Medium	High
	Likely	Medium	Medium	Medium	High	High
	Very likely	Medium	Medium	High	High	High

(Tsurek, 2012)

SEVERITY OF CONSEQUENCES (IMPACT):

- **Extreme** - May Result in Death
- **Major** - May cause severe injury, major property damage, significant financial loss, and/or result in negative publicity for the organization and/or institution
- **Moderate/Minor** - May cause minor injury, illness, property damage, financial loss and/or could result in negative publicity for the organization and/or institution
- **Trivial** - Hazard presents a minimal threat to safety, health, and well-being of participants

PROBABILITY:

- A -- **Very likely** to occur immediately or in a short period of time, expected to occur frequently
- B -- **Likely/Moderately Likely** to occur in time (multiple times at that)
- C -- **Unlikely** to occur in time (but could be a one-time episode)
- D -- **Rare** (almost certain this would not occur)

Covering bases by understanding how risk management fits into one's field of Housing and Residence Life is essential to becoming a successful and lawsuit-free housing professional. Remember these basic tools: how to assess the various risks, understanding visual aspects of a risk matrix, and how to apply these concepts to day-to-day job performance. Using knowledge and application in tandem will certainly help one navigate the legal waters of risk management safely and professionally (Parrot, 2012).

BEST PRACTICES

- Understand the "legal waters" in which higher education and particularly student conduct offices navigate.
- Understand risk management strategies.
- Understand best practices for risk management (organizational & individual).

(Parrott, 2012)

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