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Imposing Off-Campus Discipline: Holding the Line on Schools' Off-Campus Duty of Care

by Michael D. O'Mara and Adam J. Pettit

In most jurisdictions, it is well-established that colleges, universities and other schools may impose discipline on students for purely off-campus behavior where that conduct “impacts the mission” of the school or otherwise creates a “substantial disruption” to the school or its students. All too frequent headlines underscore the need for schools to react to threats or other concerning conduct even where that conduct occurs entirely off campus. In fact, most codes of conduct explicitly provide for the imposition of discipline for conduct that happens on off hours and away from school to the extent it is inconsistent with the essential values of the institution. More and more often, however, questions are being raised as to whether a school, by policing off-campus behavior in one context, unwittingly assumes some broader duty over its students in other contexts. Some courts have held that a college assumes a broader duty where the off-campus harm is both foreseeable and subject to the school’s control through its code of conduct. Most courts, however, are resisting that broader articulation of a school’s duty of care.

Courts have long rejected the notion that colleges stand in loco parentis to their students, recognizing that they cannot ensure the well-being of adult students at all hours and all locations. Absent some special relationship between school and student, therefore, colleges typically have no duty to supervise or prevent off-campus conduct. A common example of such a special relationship is a university’s relationship with its student-athletes. Schools have been held liable when a student is injured while participating or engaging in conduct related to the sport for which he or she was recruited. Likewise, courts have held that a school’s Title IX responsibilities do not necessarily end at the campus boundary lines. But should the mere fact that a college’s code of conduct allows for the imposition of discipline for purely off-campus behavior open the school to untold liability for student actions away from campus?

An Ohio appeals court recently rejected such an argument.¹ There, a student sought to hold a university responsible for the harm caused to her by an off-campus criminal act. Among a variety of arguments advanced, the student contended that the university’s mere ability to impose discipline for off-campus conduct established a broader duty of care where harm results from off-campus conduct that contravenes school policy. The court flatly rejected this unbounded notion of duty of care, recognizing that a university’s ability to impose discipline for off-campus behavior does not, by itself, impose a duty to police conduct occurring away from the school.

Similarly, a Delaware court recently held that a university assumed no duty to students attending an off-campus event sponsored by a student organization, where the consumption of alcoholic beverages resulted in a student’s death.² Although the reach of the university’s student code of conduct plainly extended to off-campus conduct, the court properly concluded that the university had assumed no duty. On the contrary, the court noted that the university expressly disclaimed responsibility in its code of conduct for the use or

consumption of alcoholic beverages at off-campus events, including those sponsored by student organizations.

Because of the proliferation of social media, many schools are paying more attention to the off-campus conduct of its students. Consequently, schools are facing difficult questions regarding when and how to impose discipline for conduct that substantially disrupts the mission of the school. A bright line must continue to be drawn, however, between the ability to discipline off-campus conduct and the obligation to supervise student conduct beyond the school's borders. In the absence of facts or circumstances supporting a special relationship or the affirmative assumption of a broader duty of care, the former should not be mistaken for the latter.

Questions that balance issues of off-campus discipline against duties of care are nuanced and require careful consideration of the factual record against which decisions may later be judged. Although schools must ultimately take those measures necessary to protect their mission, administrators are well served to consult with counsel before imposing discipline that might arguably expand the school's duty of care beyond the reasonable norm.

¹ *A.M. v. Miami University*, 88 N.E.3d 1013 (Ohio Ct. App. 2017).

² *Connolly v. Theta Chi Fraternity, Inc.*, C.A. No. N14C-08-006 FWW, 2018 WL 1137587 (Del. Super. Feb. 28, 2018).



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