Crafting A Code of Conduct: The Art of Writing Policies and Procedures with Brett A. Sokolow via ResLife.Net/ASJA Online Course

Introduction

Every year since the National Center was founded in 2000, we have published an annual Whitepaper on a topic of special relevance to student affairs professionals, risk managers, and higher education attorneys. The Whitepaper is distributed on the NCHERM e-mail subscriber list, posted on the NCHERM website, and distributed at conferences. In 2000, NCHERM published *Sexual Assault, Sexual Harassment and Title IX: Managing the Risk on Campus*. In 2001, NCHERM published *Complying With the Clery Act: The Advanced Course.* In 2002, the Whitepaper was titled *It's Not That We Don't Know How to Think – It's That We Lack Dialectical Skills*, on campus conduct decision-making. For 2004, the NCHERM Whitepaper topic is again of special currency and relevance: *Crafting a Code of Conduct for the 21st Century College*. This topic was chosen for 2004 because of the special opportunity we in higher education have been given by the generation of Millennial students who now reside on our campuses.

The Millennial Opportunity

We have all been reading about "The Millennials." According to the literature, this generation of students share noteworthy characteristics that differentiate them from previous generations of students. Perhaps most notably for readers of this Whitepaper, Millennials are "rule followers" to a much greater extent than students of any generation since the 1950s. Perhaps some in higher education reasonably expected a corresponding relaxation of campus conduct caseloads. Yet, as many student affairs professionals know, the presence of Millennials on our campuses has not resulted in across-the-board reductions of student conduct violations. Why?

Several reasons may provide explanation, including the reality that Millennials bring to campus more complex psychological issues and histories. However, there is another explanation that is also persuasive. Millennials are "rule followers," but their compliant nature is dependent upon at least two conditions: 1) that they understand the rule; and 2) that they agree with the rule or rulemaker. With this in mind, it is clear that we have been presented with an opportunity not to be missed. In theory (and at the same time if we can help students to better-manage their psychological difficulties and needs), we ought to be able to re-structure the campus environment to proactively reduce student misconduct. How?

We can provide Millennials with clear rules that are understandable to them, and with which they are in agreement. To do this, we must understand that the conduct code as we know it in its current form is an impediment to capitalizing on this Millennial opportunity. The conduct code is a legalistic anachronism, tacked onto the educational mission of the institution rather than being born of it and integral to it. We must reinvent the conduct code, and it is high time that we do so.

HOMEWORK QUESTION: Do you agree with the premise of the Millennial opportunity? Why? (email answers to: basokolow@aol.com)

Crafting a Developmental Code

On too many college campuses, conduct codes are not considered to be of high-priority importance. They languish, little-changed, over long periods of time. Or worse, they remain completely unchanged, and

rooted in the legalistic-style in which most codes are written. This Whitepaper advances not a further evolution of the conduct code, but a paradigm shift in what codes are, how they function, how they are utilized, and our perceptions of their value as a tool of risk management. The code is one of our most important tools for safeguarding the health and safety of our communities.

Before we delve any deeper into this Whitepaper, a quick note on terminology is in order. On many college campuses, we give a very broad meaning to the term conduct code that is imprecise and unwarranted.

- A conduct code IS nothing more or less than a list of rules governing the behavior of certain individuals and/or groups.
- A conduct code IS NOT a set of procedures. Procedural rules are distinct from conduct rules. Procedural rules tell us how the rules of a conduct code are enforced. This Whitepaper is not about procedures.

A conduct code is traditionally a laundry list of briefly stated "Thou Shalt Nots," though many campuses have seen fit to expand this list with more elaborate policies where needed. This has resulted in outgrowing our current format, such that lists of policies are being used to supplement laundry lists of rules, and this makes for confusion over what the true rule is. Is it the one sentence in the laundry list that says "Hazing is prohibited", or is it the paragraph about Hazing located forty-two pages later in the handbook? Is it both? On many campuses, the policy even seems to conflict with the rule, or elaborate on it in a way that shows the policy has been updated, but the rule has not. Frequently, statements in the handbook, online, and in brochures and other literature reveal multiple versions of rules that apparently address the same behavior (these provide a field day for plaintiffs' attorneys suing colleges on behalf of students suspended or expelled in the campus conduct process by giving them the argument that their student client had insufficient notice of institutional expectations). Thus, it will help us if we clarify the difference between a rule and a policy, as used in this Whitepaper.

- A rule is a simple statement of that which establishes a violation of a behavioral expectation or standard.
- A policy is an explanation, expansion or elaboration upon a rule.

Having policies to supplement certain rules can be a welcome and beneficial addition to a conduct code, but only when it is clear how the rules and policies interrelate, and when drafters ensure internal consistency between rules and policies.

HOMEWORK QUESTION: Take a look at your campus conduct code – does it do a good job of rule/policy distinction or does it blur the lines confusingly? (email answers to: basokolow@aol.com)

Legalism v. Developmentalism

Those familiar with my writings and my consulting work know that I am somewhat oxymoronic—I am attorney who is leading the charge to meaningfully de-legalize conduct codes. I feel strongly about this because creeping legalism is rampant in judicial affairs—even the name is legalistic. And, creeping legalism is generally a negative phenomenon in the context of higher education (for a more thorough treatment of this subject, please see my article *Balancing Legalism and Developmentalism in the Campus Conduct Process*, posted at www.ncherm.org (click Publications and then Articles). My view is that

legalism and developmentalism are located on opposite ends of the continuum of student conduct practice. The more legalistic our processes, the less developmental and educational they will be. While I see certain areas where more attention to law as it impacts student affairs practice would be beneficial, each campus needs to balance legalism and developmentalism on the continuum, finding the balance that suits your campus best. Without question, campus conduct practice should be firmly located on the developmental side of that continuum. The conduct code can impact where on the continuum your campus falls, and most campuses could benefit from de-legalization of the code as a means of finding a more educational balance on the continuum.

HOMEWORK QUESTION: Where does your campus conduct code fall on this continuum? (email answers to: basokolow@aol.com)

De-legalization of a code of conduct can be accomplished at three levels.

Writing An Artful Code

Writing an artful code means taking extreme care with the language and phraseology and even the structure we use to construct a code. I will never forget my favorite conduct code blooper. I was engaged by a college in Massachusetts to review their code, and in doing so, I read the college's alcohol policy. It stated, in part: "Whenever members of the faculty entertain underage students at their homes, alcohol shall be served." Obviously, the word "not" was inadvertently omitted from the sentence, and that is a serious omission. But, artful code writing is about more than just good editing. Using descriptive language enhances the educational impact of a code. For some, this will be an entirely alien concept. Some of us were trained to write codes using vague language, to guarantee maximum flexibility in application.

In thinking about Millennials, we can see that a vague style of code writing does not serve a generation of students looking for guidance and rules they can understand. Here is an apt example. Most male students who commit sexual misconduct violations on our campuses do not intend to do so. They run afoul of our rules because our rules are vague, and students make self-serving assumptions against a backdrop of language that does not address their behavior realistically. Many of the codes I read are completely silent on the role alcohol plays in negating consent, on what incapacity means, and on the role blackouts play in misinterpretations of someone's level of capacity.

If We Build It, They Will Come

In this day and age, failure to use the policy to give students clear guidance and clear standards is an abdication of our ethical obligation as educators. It's this simple: if we give students clear rules they can easily understand, a great majority of them will choose to abide by these rules. If we continue with obtuse wording such as "it is a violation of policy to have sexual intercourse with someone whose alcohol or other drug consumption renders them unable to consent" they are left with an information gap. If we tell them not to have sex with someone "whose consumption of alcohol prevents them from reasonable resistance," we've created an information vacuum. What does resistance have to do with date rape? What if they are so drunk that they do consent, but aren't aware of it? These typical policy formulations are inartful.

It's Not Easy Being Gray

Some code writers prize vagueness for its flexibility. I think that is a cop-out. I challenge you to write code language that is both specific and flexible. It is possible, and it is preferable. Recognize vagueness as a vestige of the legal underpinnings of codes. Historically, conduct codes have been modeled on legal statutes, and have taken on many of the same terms, imprecision, double-speak, and obfuscation. Have you ever read the language of a complex statute? Was it easy to understand? Was the language simple and clear? Even the sentence structure is peculiarly impenetrable. I suspect we lawyers make things difficult to understand as a means of self-preservation. We know that non-lawyers will need to hire us to interpret what we have written, thereby guaranteeing we will always have work. College conduct codes have followed this mode, with imprecise language, confusing punctuation, sloppy terminology, and intentionally vague clauses and terms. An example of such a rule from a college conduct code follows. It is from the actual code of a college, and though that college shall remain nameless, it is hardly blameless.

Harassment includes exhibiting, distributing, posting, or advertising publicly, offensive, indecent or abusive matter concerning any person
or groups of persons;

This is exactly the sort of rule that is commonly found in many college conduct codes, and hardly begs a second look. But, take that look. Does this sentence make any sense? Is it hard to decipher? It is easy to read? Is the meaning inherently obvious on the first reading? No. You probably translated it in your head, automatically supplying what you think is the correct meaning. Would others give it the same interpretation? This sentence is mis-punctuated, the conjunctions and disjunctions are sloppy or non-existent and the elements of the rule are hidden within poor grammatical construction. Simply put—it has no art.

HOMEWORK: Rewrite this rule in a way that makes sense to you.

Look at the same rule as I would re-frame, written this time with care, precision and elaboration. How does it compare to your redraft? (email answers to: basokolow@aol.com)

Harassment includes, but is not limited to:

1) The Public
   - Exhibition, or
   - Distribution, or
   - Posting, or
   - Advertising of
2) matter that is
   - offensive, or
   - indecent, or
   - abusive, and that is
3) about any person or group

HOMEWORK QUESTION:
Is this a good policy now? (email answers to: basokolow@aol.com)

It is certainly clearer. But, is it a good policy? Hardly. It lacks critical descriptive elements. It is also fatally overbroad in its trampling of free speech. If you look beyond the language of the two versions, which is almost identical, the punctuation changes help. But, what was most useful to you in interpreting what was written was the format change from the first version to the second. Most rules are written in narrative, or paragraph form. For a simple rule, that is best.

Structuring Rules Elementally

Though we do have some simple rules on our campuses, most rules are complex and multi-part. For such rules, a conduct code for the 21st century will express them elementally, using numbers and bullet points, clearly identifying for the reader the elements of the offense. Elements are those things that must transpire in order for a violation to exist. From the numbering of the elements above, it is clear that three elements must be satisfied in order for this harassment policy to be violated. Without these three elements, there is no policy violation. One or two out of the three is not enough. Not only is this type of formatting useful for identifying elements, it can also be used to clarify distinctions in terminology, as in this example:

Sexual Assault is sexual contact against the will of the victim, by force or without consent, or where the victim is incapable of resistance because of mental or physical incapacity.

HOMEWORK:

Before you read on, try re-writing this rule in a format that is not narrative. As you do so, put yourself in the shoes of a male student on your campus, unsure of what the expectations of your community are with respect to your sexual conduct. You are looking for guidance. Try to frame the language educationally, to teach a student what he needs to know. Would you use the same words? Is simpler verbiage available? When I revise a code for a client, I take out my red pen, and mark through any language the meaning of which isn't inherently obvious to me. If it doesn't jump off the page, I have to work at interpreting it. I am willing to do that, but will our students put in the time and effort to understand it? Don't see the rule as an "after the fact" tool to interpret whether someone has committed a violation. Instead, see the educational potential it can have for someone who isn't sure what he can and cannot do. Here's my shot at it. What does yours look like? (email answers to: basokolow@aol.com)

Sexual assault is sexual contact that is:

- physically forced; or
- done without someone's consent; or
- where someone says `no' or acts to show they do not want the contact; or
- where alcohol, drugs, or mental deficiency prevent resistance

Again, I don't recommend this phraseology to you as a model for your campus. It is just an example of how to reframe narrative rules into educational tools. I chose to use alternate language to replace "against the will of" because there was more direct, descriptive language available to me. I also chose to clarify the distinction between mental and physical capacity incapacities. Finally, it should be clear that these bullets are not elements, unlike the harassment example above. Rather than being conjunctive, they are disjunctive. Each creates, on its own, a policy violation.

The Case for Examples

Artful codes teach. They fill in the gaps and answer questions. They are drafted with knowledge of the problem areas of campus conduct compliance. Having a problem with hazing—what can a better policy do to define and describe the behaviors in issue? Too many students needing hospital transports for alcohol, but not getting the help they need? Policy can help. Are students demonstrating confusion and ambiguity in sexual misconduct hearings? Policy can give proactive guidance if it answers the questions students need to have answered. Can I have sex with someone who is drinking? Someone who is drunk? How is drunk different from incapacitated? What if the person I am hooking-up with is blacking out, and I don't know that? How much is too much? Does your policy answer these questions clearly? It should.

An element that distinguishes an educational and developmental code is the use of clear examples. For high-risk issues and policies that are frequently violated, the modern code takes the language off the page for students. Even an elemental rule, clearly identifying behavioral expectations, can lack context. I have innovated with the codes of my clients by providing, within the body of the code, examples of key policies. A short paragraph creates a vignette of a realistic scenario. The paragraph explains the behaviors and why the behaviors violate the policy. Examples bring the policy to life for students in a way that aids in code compliance. Suppose hazing is a campus problem, and that most of the students who haze are not identifying the behaviors as violative because the hazees are cooperating in the hazing voluntarily. A simple example showing consensual hazing can easily clarify for students that hazing violates the policy regardless of the consent, participation or cooperation of the hazee. Such an example can thereby become a useful tool for prevention.

HOMEWORK QUESTION: What do you think of the ideas of examples in a code of conduct? How might they be helpful? How might they detract? (email answers to: basokolow@aol.com)

<u>Remove Legal Language and Phrases</u>

The second method I propose for de-legalization of codes is attention to the legal language and phraseology we use. Codes are rife with legalisms, and we often aren't even conscious of them. They set a tone, and send a message that conduct systems are like the criminal justice system, set up to right wrongs and mete out punishments. That's not what a student conduct process is or does. For students to understand the administration of student conduct as an education process, we have to walk the talk. "Shall" is an inherently legal term. I've even seen definition sections that tell us that within the code, "shall" shall be used in the imperative sense. Glad we clarified that. "Will" is more direct and less legalistic. It can always substitute for shall. Shall we agree to use will in all our future code revision efforts? Words like "therefore", "heretofore", "hereinafter", "whereas" and similar constructions also obfuscate our meanings. We must eradicate that which obfuscates. Where a sentence seems to cry out for a fancy conjunction like these, I find the old trick of reversing the sentence eliminates that need, and therefore makes the sentence much clearer. To wit, "The old trick of reversing the sentence makes it clearer by eliminating the need for fancy conjunctions."

There is also a class of legally laden words drawn from the criminal law that I strive to avoid, and find codes without them to be easier to navigate. Below, I have created a table with examples of such words, and the non-legalistic, policy-based and civil alternatives I prefer. I am sure you can think of more.

Legalistic terminology	Policy-based alternative

Case	Complaint
Defendant	Accused or respondent
Charge (a charge, to charge, be charged with, be guilty of the charge)	Complaint, accusation (accuse), or violation
Guilty	Responsible or in violation
Punishment	Sanction
Verdict	Finding or outcome

Another level of legalistic terminology relates to what we name offenses. If you have not yet read the holding in Mallory v. Ohio University, 2001 WL 1631329 (Ohio Ct. App. Dec. 20, 2001), I strongly commend it to you. This case stands for the proposition that using legalistic terminology can get us in legal trouble. Colleges have no legal authority to determine if a student has committed a crime, in Mallory a sexual assault. We have authority to determine if a student violated our policy on sexual misconduct, but to imply more is to risk defamation. In this case, a University Health Director stated "[Mallory] definitely committed a sexual battery, from the information that was gathered." The court held this statement to be slander per se. We use legal terms of art in codes without considering the consequences. Perhaps we should consider alternate language to substitute for burglary, robbery, vandalism, arson, fraud, rape, sexual assault, and other words commonly understood to be crimes?

A Values-Based Code

The third technique for de-legalization of a code has to do with the overall format of the code itself. I first heard the idea of a values-based code from Jim Lancaster, when he was at UNC, Greensboro. I take no credit for this idea, but I am hoping to popularize a version of it and motivate administrators to champion values-based expressions. A values-based code couches violations in terms of community interests, and as expressions of the institutional mission. Yet, the purpose of this Whitepaper is not to encourage you all to go out and copy the format of Greensboro's code, worthwhile though it may be. Most values-based codes are simply a shell of mission-centered categories imposed over a typical laundry-list of rules. The NCHERM Code of Conduct that I have written takes the values-based idea to its next logical step by weaving the values throughout the rules. What results is values-based, educational and developmental. The rules are embedded in the context of five core values that reflect the missions of many colleges and universities: community, fairness, integrity, respect and responsibility. I also have included in my code an effort to phrase my rules, when possible, as positive expressions of community expectations. I think this takes a values-based code to a whole new level, if you are among those of us who believe that our thoughts, and how we convey them, are strongly determinative of our actions. The NCHERM Code of Conduct expresses rules as "Thou Shalt (or "You Will" in my terminology), rather than as a list of "Thou Shalt Nots." An example of a positive expectation is "Members of this community view hazing as disrespectful behavior. Hazing is defined as…"

Good Rules are Transparent, Accessible and User-Friendly

Yet another critical evolution for codes is the avoidance of what I call self-proving or self-defining terminology. Let's take the example of vandalism. A laundry-list code might state as a rule that "Vandalism is prohibited." My code would cover the same behavior as:

Damage or destruction to the property of another,

- intentionally or recklessly; and
- without authorization of the owner

This rule of course uses the elemental format you've seen above. More importantly, it does not use the word "vandalism." Instead, it describes the behaviors that constitute vandalism. Vandalism is one of those terms that appear to be self-proving, and that is the danger of it. It is not self-proving or self-defining at all. Is vandalism intentional? What if you damage it accidentally? What if you destroy your own property? Your understanding of what vandalism is may differ from mine. Using only the word vandalism as the rule leaves it open for interpretation, and too vague to be considered an educational or developmental rule. Where possible, the goal is to specifically describe the behavior you want the rule to address, because when we set a fair and clear behavioral expectation for Millennials, they are likely to uphold it.

Selling Your Code

Even if you drafted a code that included all of the elements I have identified in this Whitepaper, it might not manage risk any better than your current code. To be effective, policies must take form off the paper pages of your handbook, or the electronic pages of your website. Millennials are no more likely than other generations of students to look up the rules and learn them. The policies must be brought to them. That educational effort is the obligation of the institution, and it requires conduct affairs and allied staff to see their functions not just as reactive, but as more proactive. The goal is to find opportunities to communicate policy and connect with students on expectations. Have the VP, Dean or President share some key policy highlights in a speech at orientation. Get your orientation leaders, RAs, FYE instructors and faculty to talk about some of the most critical rules with small groups of students. Provide programs that emphasize the policies of your campus. Use peer education and social norms messaging to promote policy awareness. Millennials have challenged us to understand their values. Let's see what they can do with a set of clear rules that reflect their values and are communicated to them meaningfully. We owe them nothing less.

QUESTIONS FOR HOMEWORK (email your answers to basokolow@aol.com)

1) What "delegalizing" terms and phrases identified here resonate with you, and which go too far?
2) Can you suggest other terms not identified here that you think need reframing?
3) Download Ed Stoner's Model Code from http://www.edstoner.com/uploads/stoner___lowery_JCUL_2004_cropped.pdf
   Compare his model to the precepts discussed in this course:
   a) How does the model code adhere to the "best practices" elaborated in this course?
   b) How does the model code materially differ from the "best practices" elaborated in this course?
   c) What elements from this course would strengthen the model code?
   d) What approaches of the model code do you think are stronger than the "best practices" suggested in this course?

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Words Have Weight

by Brett A. Sokolow, JD

Here are my reasons for urging my clients to banish legalistic language from our policies and procedures:

1) Our culture understands criminal rights and processes, though media exposure. In fact, our culture assumes them. Our students arrive on our campuses assuming that campus conduct processes will mirror the rights and procedures of criminal courts. We must understand that our words have great weight in setting up expectations. Policy-based, non-legal terminology can help us to reset student expectations for an educational process with less formality than they are expecting.

2) Many of our judges are not as familiar with higher education law as they should be. This is caused in part by how relatively rarely colleges are sued. Talented higher education attorneys keep us out of court, and we tend to settle often and only go to trial on slam-dunks. Yes, we cherry pick. And, we have a pretty high winning average as a result. Because of this, we aren't giving judges enough practice, though we want to keep it that way. Yet, we have an obligation to educate the judges we do come before.

Many have neither heard of nor understand student development theory. They don't educate offenders in their world, they incarcerate or punish them. They need to understand that campus conduct processes are more administrative, and less formal than the criminal and civil matters they are more accustomed to reviewing. If they look at our codes, and see something that looks to them like a criminal statute or an adversarial proceeding, they may be inclined to hold us to the due process standards of the criminal justice system.

Chuck Carletta put it very bluntly at the Stetson conference: No private college should ever use the words due process in any written or oral communication. Never. Ever. Not only is Chuck absolutely right, but a trend in recently lost cases (or motions) shows that substituting "fundamental fairness" for due process can be problematic, too. The Goodman, Ackerman and Gomes cases show that plaintiff's attorneys all got the same memo on that issue, and three cases is enough to be a trend, in my book. (See footnote 34 on p. 11 of the Model Code for citations). This should be an easy one for us to win. My advice is that every private college's code should define "fundamental fairness" if it uses this term. Here is a sample definition that may help to keep the courts off our backs:

Fundamental fairness assures written notice and a hearing before an objective decision-maker, as described within these procedures. No student will be found in violation of university policy without substantial information [or, information showing that it is more likely than not that a policy violation occurred; or, clear and convincing information, etc], and any sanction will be proportionate to the severity of the violation.

3) Colleges do not have legal authority to determine if crimes have occurred. Yet, we borrow liberally from the terminology of criminal statutes in our states.

Many campuses prohibit assault, battery, sexual assault, rape, robbery, burglary, hazing, etc. We have no legal authority to do so, and continued use of this terminology will get us into trouble (and already has caused one court to vacate a college's

conduct finding, in Hardison v. Florida Agric. and Mech. Univ. 706 So. 2d 111 (Fla. Dist. Ct. App. 1998, which is worth reading).

I would also argue that if the campus rape advocate in Mallory v. Ohio had understood that distinction, perhaps she could have saved Ohio University from losing a defamation case when she was quoted as saying "Based on the evidence, Mallory was definitely guilty of a sexual battery." Instead, she could have said "Mallory was found in violation of our college's policy on sexual misconduct," which she would have been well within her rights to say.

When we use statutory language, we run the risk of making seem as if we are imputing to the accused student the commission of a crime, which is defamatory if they have not been found to have committed a crime.

With respect to avoiding statute-based language, we can prohibit the same behaviors, but with policy-based terminology, such as:

a. Assault = Threats of physical harm
b. Battery = Physical violence
c. Sexual assault = Sexual misconduct
d. Rape = Sexual misconduct
e. Robbery, Burglary, Theft, etc. = Taking the property of another
f. Hazing = Abusive affiliation/initiation activities
g. Vandalism=Damage to property

4) Finally, I fear that if we incorporate state law into our codes, we may take on more of a burden than we realize.

Here's an example of one of my favorite policies. This comes from a real code at a private college:

"Sexual Assault: *The University recognizes and adopts the Florida State statute as appropriate for this particular location…"*

This policy shows a common, but incomplete understanding about statutes. Statutes are only part of how offenses are defined. Every statute has hundreds, if not thousands, of cases in that jurisdiction which give interpretive layers to the often skeletal terms of the statute.

Do we, as administrators, want to be held to the standing of knowing and understanding the intricacies of a statute and all the cases that interpret it?

Our hearings are complicated enough.

We'll hold a student accountable, and give some plaintiff's attorney the chance to hunt for the one case in our jurisdiction that proves we misapplied the statute. We'll lose a lawsuit because they knew about the case, and we didn't. So much for judicial deference to the educational decisions of college administrators. That case will control for us if we claim the state law as our policy. Or, worse, we might give the attorney a backdoor for the assertion of state action, with the argument that a private college is providing a public function by enforcing the law. That may not be a winning argument, but I'd rather not have to defend against it.

SOME WORDS ARE WEIGHTIER THAN OTHERS

Ed Stoner and John Wesley Lowery cogently argue in their Model Code for us to abandon use of the terms "guilty", "beyond a reasonable doubt", "trial", "prosecutor", "sentence", "judges", "evidence", "defendant" and "victim."

Until the ASJA conference, I thought the idea of not using the word "evidence" was a little silly, because it is a fairly generic term with a non-legal common usage. At Ed's concurrent session, he made a case that to a judge, the word "evidence" has a very specific legal meaning, and even though we might use "evidence" in a generic sense, those in the legal realm will not necessarily give it that interpretation.

Point taken.

From here forward, I will join him in recommending that we use the word "information" as a substitute.

Here are some other substitutes offered in their Model Code, to which I have made some additions, in italics (which would make it very easy for you to edit your code,

using the find and replace function—hint, hint):

1) Guilty = responsible *or accountable or in violation*
2) Trial = *hearing or meeting*
3) Prosecutor = Presenter, witness *or complainant*
4) Sentence = Sanction *or consequence (also avoid punishment)*
5) Judges = Board members *or fact finders, decision-makers, panelists, administrators, officers, etc.*
6) Evidence = Information *(maybe testimony should also = information?)*
7) Defendant = Accused student or student respondent
8) Victim = Student, witness *or complainant, alleged victim, accusing student*
9) Verdict = *Finding or outcome*
10) Case = *complaint, allegation, grievance*

(NB: We talk about our "cases" all the time, on the listserv, at conferences, or when my clients call with the latest "case"—but words have weight—and if we call it a case, a student may just take us up on that and make it one. This is an area where we need not only to reset the language of our codes, but also the terminology of our daily discourse).

11) Charges = *complaint, allegation, violation*
12) Presumption = *a legal concept I'd rather avoid than find a policy equivalent*
13) Standard of Proof = *"information must show a violation was more likely than not" or "Our process reaches a reasonable conclusion based upon substantial information"*
14) Burden of Proof = *a legal concept I'd rather avoid than find a policy equivalent*
15) Right to remain silent = *right to refuse to answer questions/participate**

How far do we take this sanitizing of our codes, though?

I'm on board with evidence = information, but is the use of the term "appeal" too legalistic for your campus? Would you rather use *"secondary review" or "final review?"*

All information offered is the opinion of the author, and is not given as legal advice. Reliance on this information is at the sole risk of the reader.

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