

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-10-74
POLICY TITLE: Employees & Students Arrested for Offenses of Violence ("1219" Proceedings)	EFFECTIVE DATE: 9/5/2011
RESPONSIBLE DEPARTMENT: Safety & Security/Student Affairs/Human Resources/General Counsel	All Employees and Students

(A) PURPOSE

- (1) To establish a policy for the immediate suspension and possible termination of employees arrested for Offenses of Violence. This policy will also be used for the suspension and dismissal of matriculated students arrested for offenses of Violence.

(B) SCOPE

- (1) All employees and matriculated students of the University.

(C) DEFINITIONS

- (1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.
- (2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.
- (3) "Hearing Officer" refers to the person who will preside over the hearing initiated when a student or employee is arrested for an Offense of Violence. The Hearing Officer shall be an attorney admitted to the practice of law in Ohio, but the Hearing Officer shall not be attorney for or an employee of the University.
- (4) "Matriculated" enrolled or admitted to any course of study in any one of the Colleges of the University.
- (5) "Offenses of Violence" are those offenses set forth in sections 3345.22 and 3345.23 of the Ohio Revised Code, or any substantially equivalent offenses under a municipal ordinance. These offenses include, but are not limited to, the following offenses:

Aggravated Murder, Murder, Voluntary Manslaughter, Involuntary Manslaughter, Felonious Assault, Aggravated Assault, Assault, Permitting Child

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Abuse, Aggravated Menacing, Menacing by Stalking, Menacing, Kidnapping, Abduction, Extortion, Gross Sexual Imposition, Arson, Aggravated Robbery, Rape, Sexual Battery, Aggravated Arson, Arson, Disrupting Public Services, Terrorism, Robbery, Aggravated Burglary, Burglary, Inciting to Violence, Aggravated Riot, Riot, Inducing Panic, Domestic Violence, Intimidation, Intimidation of Attorney, Victim or Witness in Criminal Case, Escape, Aiding Escape or Resistance to Lawful Authority, Having Weapons While Under Disability, and Improperly Discharging Firearm at or into a Habitation, in a School Safety Zone or with Intent to Cause Harm or Panic to Persons in a School Building or at a School Function.

- (6) “Physical Harm to Persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
- (7) “Physical Harm to Property” means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. “Physical Harm to Property” does not include wear and tear occasioned by normal use.

(D) PROCEDURES

- (1) Duty to Report. While the arresting authority is required to immediately notify the President of the University of the arrest of an employee or student for an Offense of Violence, the employee or student who has been arrested is also under an obligation to so report. A student’s failure to report will be deemed a violation of the Student Academic Integrity and Conduct Code. An employee’s failure to report will be deemed as grounds for discipline or termination.
- (2) Immediate Administrative Suspension Pending Hearing. Upon receipt of the information that an employee or student of the University has been arrested for an Offense of Violence, the President or his/her designee may impose an Immediate Administrative Suspension upon the student or employee until a hearing is held on the matter. The Chief Student Affairs Officer has the discretionary authority to impose an Immediate Administrative Suspension upon a student, and the Department of Human Resources has the same discretionary

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authority to issue such a suspension to an employee. Imposition of an Immediate Administrative Suspension will only occur after there has been an in-person meeting to discuss the alleged conduct, or a good faith effort upon the University to hold an in-person meeting. An Immediate Administrative Suspension may still be imposed where the circumstances of the person’s arrest prevent such a meeting from occurring or if the person fails to acknowledge the University’s request for such a meeting. For students, the meeting will be held with the Chief Student Affairs Officer, while employees will meet with the Director of Human Resources. The Safety Officer shall be present for the meeting. If an Immediate Administrative Suspension is issued following the in-person meeting, the student or employee must surrender his/her University identification badge and will be escorted off the University property by the Safety Officer.

- (3) Hearing to Determine Further Action. Irrespective of whether a student or employee is placed on Immediate Administrative Suspension, a subsequent hearing will be held to determine if further action is necessary based on the person’s Offense of Violence.
 - (a) Hearing Notice. An employee or student of the University arrested for any Offense of Violence shall be afforded a hearing on the facts of the case. The University will issue a notice of hearing within two business days of learning that a student or employee has been arrested for an Offense of Violence. The hearing notice will identify the time, date, and location of the hearing.
 - (b) Hearing Timeframe. The hearing shall be held within not more than five business days after the person’s arrest, subject to reasonable continuances for good cause shown, which continuances shall not exceed a total of ten business days.
 - (c) Hearing. The University will appoint a Hearing Officer to hold the hearing to determine whether further disciplinary measures will be imposed upon the employee or student. The hearing shall be held at the

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University or other location in Portage County on the time and date specified in the Hearing Notice.

- (i) The Hearing Officer may administer oaths, issue subpoenas to compel the attendance of witnesses and the production of evidence, and enforce the subpoenas, as well as preserve the order and decorum of the proceedings over which the Hearing Officer presides, by means of contempt proceedings in the court of common pleas as provided by law.

- (ii) The hearing shall be adversarial in nature and shall be conducted fairly and impartially, but the technical rules of evidence applicable to civil and criminal cases shall not apply. A person whose suspension is being considered has the right to be accompanied by counsel, but counsel will not be furnished for the person. The person also has the right to cross-examine witnesses against the person, to testify, and to present the testimony of witnesses and other evidence in the person's behalf. In the absence of a waiver of the right against compulsory self-incrimination, the testimony of a person whose suspension is being considered, given at the hearing, shall not subsequently be used in any criminal proceeding against the person. The Hearing Officer may require the separation of witnesses and may bar from the proceedings any person whose presence is not essential to the proceedings.

- (iii) The person subject to the hearing may appear with another person, who may serve only in an advisory capacity during the hearing. If serving as an advisor to the student/employee, that person may not participate directly in the hearing or address the Hearing Officer on behalf of the student/employee unless a communication difficulty exists that is sufficiently severe so as to prevent a fair hearing.

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- (4) Sanctions. Upon hearing, if the Hearing Officer finds by a preponderance of the evidence that the person whose suspension is being considered committed any Offense of Violence, the Hearing Officer may:
 - (a) Order a University Suspension, whereby the person suspended from further employment or matriculation; or
 - (b) After consulting with University officials and making a determination that the good order and discipline of the University will not be prejudiced or compromised by the person's continued presence, permit the person to return to the University on terms of strict disciplinary probation. Subsequent violation of the terms of the probation automatically affects a suspension.
- (5) Failure to Appear. A person afforded a hearing pursuant to this section who does not appear at the hearing will be issued a University Suspension by the Hearing Officer.
- (6) Waiver. A person afforded a hearing pursuant to this section may waive the right to the hearing by responding in writing to the University official designated in the hearing notice. Waiver of the hearing will result in the automatic imposition of a University Suspension.
- (7) Campus access. Campus security shall escort the person subject to a University Suspension from the premises following the imposition of such a sanction and the suspended person must surrender their University identification badge. That name of the suspended person will be provided to campus security and that person shall be denied access to any University property until the sanctions ordered under this policy have been lifted.
- (8) Duration of the Suspension. A University Suspension under this section is in effect until the person is acquitted or convicted of the crime, or a crime related to the same facts for which the person was arrested. If the person is convicted

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of the crime or a crime related to the same facts, the University Suspension will remain in effect for the duration of any criminal sentence imposed by the court. Should the person plead guilty to or be convicted of a lesser charge related to the same facts, the University Suspension will remain in effect under the terms originally imposed by the University.

If the person is acquitted or there is a final judicial determination that does not result in a conviction related to the charges for which a person is suspended pursuant to this policy, the University Suspension will automatically terminate, and the person suspended shall be reinstated. The record of the suspension shall be expunged from the person’s personnel or academic record held by the University.

- (10) Appeals. A person ordered to a University Suspension under this policy may appeal from the order of a Hearing Officer on questions of law and fact to the court of common pleas in Portage County, within twenty calendar days after the date of the order. If the court to which an appeal is taken determines that the good order and discipline of the University will not be prejudiced thereby, it may permit the person suspended to return to the University on terms of strict disciplinary probation.

- (9) Petitions for Reinstatement after a Suspension. Upon completion of the criminal sentence imposed, the person may petition the University, in writing, for re-entry into the curriculum or return to employment. Students petitioning to re-enter their curriculum must submit their petition to the Committee on Academic and Professional Progress (CAPP). The petition will then be reviewed by a standing subcommittee appointed by Phase 2 CAPP. Employees petitioning to be reinstated to their position of employment must submit their petition to the Director of Human Resources for review by the President and/or the Board of Trustees. Decisions on reinstatement to the University will be based on a review of the following considerations:
 - (a) The nature of the student’s profession or employee’s position;
 - (b) The person’s present and past disciplinary record;

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- (c) The nature of the offense;
- (d) The severity of any damage, injury, or harm resulting from the person’s conduct;
- (e) The continued threat posed to campus personnel or property should the person return;
- (f) The risk of harm to the health and safety of the University and its students and employees.

Students or employees petitioning for reinstatement may appear accompanied by another person. That person cannot, however, be a relative or an attorney.

Students or employees reinstated following a suspension may be placed on strict disciplinary probation for a period of at least one year and may face restrictions, including but not limited to, limitations on facility use.

- (10) Student Appeals from the denial of a Petition for Reinstatement. A student who has petitioned for reinstatement may appeal the decision of the Phase 2 CAPP subcommittee on the following grounds:
 - (a) The student sets forth significant new information, which was not available at the time the subcommittee reviewed the Petition; or
 - (b) The student identifies a procedural error that occurred when the subcommittee was reviewing his/her Petition.

Any such appeal shall be directed to the Associate Dean for Academic Affairs within five business days of the Phase 2 CAPP decision. The Associate Dean for Academic Affairs will make a determination as to whether the matter will be further reviewed by the CAPP Executive Review Committee. Should the CAPP Executive Review Committee determine that the new information brought forth or procedural error alleged had a substantive effect on the decision of the Phase 2 CAPP subcommittee, the matter will be resubmitted to the subcommittee for further consideration and the same process, including the right to an appeal of that decision, will ensue.

- (11) Dismissal of employees or students upon conviction of certain offenses.

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- (a) If convicted, the person is dismissed from the University pursuant to section 3345.23 of the Ohio Revised Code.
- (b) A tenured faculty member dismissed pursuant to this section is not entitled to the protections set forth in Appendix D of the Bylaws of the Faculty.
- (c) Upon conviction of a University employee or student for any Offense of Violence, the court shall immediately notify the President of the University of such conviction. The University Registrar or the Human Resources Department shall immediately notify such person of the person's dismissal and provide a copy of the dismissal letter to the University General Counsel. The notice shall be in writing and shall be mailed by certified mail to the person's address as shown in both the court and the University records. If such person has been suspended pursuant to this policy, and not permitted to return to the University, the period of the person's dismissal shall run from the initial date of the University Suspension.
- (d) No degrees or honors shall be conferred upon, no instructional credit or grades shall be given to, and no student assistance, scholarship funds, salaries, or wages shall be paid or credited to any employee or student, during the period such person is properly dismissed pursuant to this section or under a University Suspension pursuant to this policy.
- (e) A dismissed person may later seek readmission or re-employment pursuant to division (A) of section 3345.23 of the Ohio Revised Code.
- (f) Without limiting the grounds for dismissal, suspension, or other disciplinary action against a student or employee of the University, the commission of an Offense of Violence or a substantially equivalent offense under a local, state or federal law, which offense is committed on or affects persons or property of the University, or which offense is

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committed in the immediate vicinity of the University with respect to which an emergency has been declared and is in effect pursuant to section 3345.26 of the Ohio Revised Code, is cause for dismissal pursuant to this policy.

- (g) If a final judicial determination results in an acquittal, or if the conviction is reversed on appeal, the student or employee shall be reinstated and the University shall expunge the record of the student's or employee's dismissal from the student's or employee's University records, and the dismissal shall be deemed never to have occurred.

(E) **ADDITIONAL AUTHORITY OF THE UNIVERSITY**

- (1) Sections 3345.22 and 3345.23 of the Ohio Revised Code and all other sections provided for in this policy shall be applied and followed, notwithstanding any rule, regulation, or procedure of the University, but such sections shall not be construed to limit any duty or authority of the University to take appropriate disciplinary action, through such procedures as may be provided the Policies and Bylaws of the University.
- (2) Sections 3345.22 and 3345.23 of the Ohio Revised Code and all other sections provided for in this policy shall not be construed as modifying or limiting the duty or authority of the University to summarily suspend a student or employee, when necessary to preserve the good order and discipline of the University under other existing policies.
- (3) To the extent that sections 3345.22 and 3345.23 of the Ohio Revised Code and all other sections provided for in this policy conflict with civil service requirements and procedures, persons otherwise subject to disciplinary action pursuant to such sections, but who are employees in the classified civil service, shall be disciplined according to civil service requirements and procedures.
- (4) Dismissed or suspended person are not to enter University premises. No employee or student under dismissal or suspension from the University pursuant

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to section 3345.22 or 3345.23 of the Ohio Revised Code or this policy, shall enter or remain upon the land or premises of the University from which he or she was suspended or dismissed, without the express permission of the University.

- (5) Pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act, 20 U.S.C. § 1092(f), upon receipt of a written request from an alleged victim of an Offence of Violence (as that term is defined in this policy and in Section 16 of Title 18, U.S.C.) or that victim's next of kin, the University will issue a report of the result of the disciplinary proceeding instituted against the alleged perpetrator of the act.