

Faculty Rule 3335-11-02 on Disruption

Origins and Purpose

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September 13, 2024¹

¹ Special thanks to Emma MacGuidwin at the Moritz Law Library and to Michelle Drobik at the University Archives for their assistance in tracking down old versions of the Ohio Administrative Code and in locating historical Faculty Council and University Senate records.

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Introduction

One important question that has arisen in our discussions around how to best align 3335-11 and 3335-23 relates to the origins of Faculty Rule 3335-11-02, -02.1, and 02.2. Where did these sections of the Faculty Rules come from, and what were they trying to accomplish?

Understanding this can help us determine which, if any, elements are worth retaining and then motivate a discussion of the best mechanisms for doing so.

Faculty Rule 3335-11-02, -02.1, and -02.2 emerged in the aftermath of the campus protests that swept OSU between 1968 and 1970. In January and February of 1968, white students protesting against military recruitment in Hamilton and Hitchcock Halls were arrested by campus police for not leaving the premises upon request. Then, in late April, black students occupied Bricker Hall for five hours to protest discrimination on and off campus. Although University leaders acknowledged that “black students face unique problems in America and in the University”—and initially agreed to terms with protesting students—the president with the support of the BOT quickly reneged on the deal. Within a week, the so-called OSU-34 were dismissed from the university, their records tagged to prevent readmission.² Criminal charges for protesting black students—but not white students—were also sent to a grand jury, who indicted them on twelve felony counts.³ These incidents provoked widespread debate both on and off campus about how best to address campus protests.⁴

As the waves of student strikes escalated over the next several years, the university experimented with different definitions of disruption and different associated disciplinary regimes. After the mass arrests of hundreds of demonstrating students in the wake of Kent State in May 1970, students and faculty alike called for a reevaluation of procedures for hearing students charged

² OSU University Archives webpage on OSU’s [Spring of Dissent](#), 2017; OSU Board of Trustees meeting minutes, 11 July 1968, p. 37.

³ These charges included blackmail, extortion, making menacing threats and conspiracy to kidnap. The maximum penalty for each count ranged from 5 to 30 years. Some students initially faced potential sentences of hundreds of years of imprisonment.

⁴ See “Indictments are Returned Against 34 Black Students,” *OSU Monthly*, July 1968, p. 15; Stanford-Randle, Greer C., “The Black Student Movement at the Ohio State University.” Thesis, Georgia State University, 2010. doi: <https://doi.org/10.57709/3806863>

under the university's disruption rules.⁵ In 1970, Faculty Council asked the Council on Student Affairs to draft new language on disruption and due process procedures, and in May 1971 also commissioned a committee to study the problem and to make additional recommendations. These shared governance bodies engaged in robust discussions of how we might design fair processes for those caught up in protest (or any type of misconduct), with a special emphasis on distinguishing demonstrations versus disruption and protecting the university community from excessively punitive sanctions by state authorities. The result was our current Faculty Rule 3335-11-02 and a new Student Code of Rights and Responsibilities (now called the Student Code of Conduct).

This memo focuses on the sections of our Faculty Rules relating to disruption. To understand the motivation for the 'Disruption Rule,' it divides the analysis of 33335-11 into three sections. For each section of the rule—relating to the *definition* of disruption (-02); how to design a *fair hearing system* for those accused of disruption (-02.1); and the question of *appropriate jurisdiction* (-02.2)—I summarize the perceived problems with the status quo and how the new rule worked to address these problems.

A. Definition of Disruption [3335-11-02]

Faculty 3335-11-02 lays out a definition of disruption. Even though this definition sits in Chapter 11 of the Rules (covering "Student Affairs"), the definition of disruption applies to students, faculty, staff and visitors alike.

The justification for this rule came out of dissatisfaction with the existing 1968 definition of individual and group disruption, which had been put in place immediately after the arrest of the OSU-34. By 1970, however, both faculty and administrators agreed that those rules were "virtually impossible to administer."⁶ After the closure of OSU for two weeks during the chaotic spring of 1970, Faculty Council convened the very afternoon that campus reopened, voting unanimously to suspend disciplinary action against students until the university's Disruption Rule was reconsidered.⁷

⁵ Untitled 1970 USG document listing information "obtained from a letter to Mr. Krause from Dean [Charles] Gambs." Arrest numbers between 4/29/1970-5/4/1970 included 528 students and 299 non-students as arrested on the OSU campus, with another 200 arrested for curfew violations, among other arrests.

⁶ Vice President and Provost James Robinson, speaking at a Faculty Council Extraordinary Session, 12 May 1970.

⁷ The resolution was in fact introduced by acting Provost, VP Edward Moulton, as follows: "RESOLVED, that it is the consensus of the Administration and Faculty Council that all disciplinary proceedings be suspended during the pendency of criminal proceedings, and that temporarily suspended students be reinstated until the Faculty Council

A 1971 committee report to Faculty Council noted that Rules 51.03 and 51.05, defining disruption, were excessively vague. Crimes better suited to criminal prosecution, such as assault and battery, could be prosecuted under university disruption rules. This made it too easy to convict students who had *not* been disruptive. So too did specific parts of the existing definition—for example, the inclusion of the terms *intimidate* and *by joining with one or more persons*. Some leaders of campus strikes, the report argued, had been wrongly accused of ‘disruption-through-intimidation.’ Similarly, students who had joined in “marches, demonstration and confrontations” – but who had not engaged in clearly disruptive activities—faced conviction under the ‘joining’ language of the 1968 definition.⁸

The goal of drafting a new rule in section 51.03 and 51.05 (now 3335-11-02) was to ensure that students were not facing a definition of disruption whose language could be stretched to punish non-disruptive activity. There was general agreement that this could be achieved by defining disruption narrowly, through a list of specific prohibitions.⁹ As the 1971 committee report to Faculty Council put it: “If the University is to protect the right of students to demonstrate, it must write a disruption rule which distinguishes, as clearly as is humanly possible, between demonstration and disruption.”¹⁰

	Perceived Problem	How did Faculty Rule Address the problem?
A.	DEFINITION: 3335-11-02—Disruption	
1.	Previous definition of disruption in Faculty Rules was unworkable—too vague. “Justice seemed erratic.”	New definition provided greater clarity so that everyone would know what constituted disruption.

Committee on Student Affairs presents proposed changes of the University Disruption Rules.” *Faculty Council Minutes*, May 20th 1970.

⁸ See *Report of the Committee on the Disruption Hearings*, 17 May 1971, p. 6.

⁹ See *Report of the Committee on the Disruption Hearings*, 17 May 1971, p. 17-18.

¹⁰ See *Report of the Committee on the Disruption Hearings*, 17 May 1971, p. 6.

B. Modified Hearing Procedure [3335-11-02.1]

Many in the University community also believed that OSU needed to overhaul its *procedures* for prosecuting disruption. Both students and faculty held “deeply felt objections to the judicial process which had been in process since the early events of March [1970].”¹¹ Procedures were widely believed to be biased due to the perceived lack of independence of disciplinary authorities from the administration.¹² Moreover, to the extent that the university had rules governing due process in place, it had chosen to ignore them.¹³

The Council on Student Affairs was therefore tasked by Faculty Council with drafting new rules related to due process for students accused of disruption, and in doing so was asked to consider the recommendations made by the 1968 Committee on University Rights and Responsibilities.¹⁴ CSA proposed the Hearing Process outlined in today’s Faculty Rule 3335-11-02.1. The main goals (summarized in the table below) were to provide as much due process as possible; to provide speedy resolution of cases to those charged with misconduct/disruption; and to ensure a disciplinary system which guaranteed a substantial measure of “judicial independence” from the University administration.

¹¹ Committee of Inquiry to the Faculty Council, *Report on the Spring Events at Ohio State*, 10 November 1970, p. 105.

¹² “[T]he existing procedures were believed to be arbitrary...because there was no student or faculty participation in the decision to create this office or establish procedures.” Committee of Inquiry to the Faculty Council, *Report on the Spring Events at Ohio State*, 10 November 1970, p. 155.

¹³ In 1970, the University Discipline Committee had temporarily suspended 50 students without hearings and then put the burden of proof on the student to persuade the Disciplinary Committee that the suspension should be rescinded, and granted less time to students prepare for hearings than were required by Rule, among other procedural errors. See Peter Simmons Memo to Faculty Council: *The Management of Campus Justice*, 28 May 1970; and undated 1970 letter from Peter Simmons in his capacity as OSU-AAUP Vice President to Vice President John T. Mount.

¹⁴ See especially pages 32-36 of that committee’s report.

	Perceived Problem	How did Faculty Rule Address the problem?
B.	MODIFIED HEARING PROCEDURE: 3335-11-02.1—Hearing Officers and Panels	
1.	Lack of adequate due process for student protestors.	Created new procedural rules to ensure fairness and protect individual rights: “Maximum protection to student faced with a disciplinary hearing.” ¹⁵
2.	Slow disciplinary process —too many cases to be heard by a single panel.	Possibility of multiple panels (as opposed to a single University Discipline Committee) would speed up the process.
3.	Perception that discipline officers were “the administration’s men.” ¹⁶	Disciplinary system independent from the administration: <ul style="list-style-type: none"> • <i>Important role for shared governance:</i> Rules to be drafted and reviewed by an elected group of faculty and students. • <i>Independently Appointed Panels</i>— comprised of faculty, students and staff—to hear cases where maximum penalty was suspension, dismissal or expulsion. Admin does not appoint panels. Appointment by lot (random assignment) meant to spread the load of hearing cases. • <i>Autonomy of Hearing Officers from the administration</i>—because selected with the help of an elected student-faculty committee (CSA).

¹⁵ James Blue, “Forum: Rights and Responsibilities,” *The Lantern*, 16 January 1969.

¹⁶ Committee of Inquiry to Faculty Council, *The Spring Events at Ohio State*. 10 November 1970, p. 155, 159.

	Perceived Problem	How did Faculty Rule Address the problem?
4.	Importance of ensuring that “the university is not itself in violation of the law.”	Hire qualified Hearing Officers who had legal training.
5.	Those in charge of discipline had insufficient training in due process concerns and insufficient access to evidence to bring appropriate charges.	University investment in investigative capabilities to “secure and present sufficient evidence” before bringing charges.

C. Sole versus Concurrent Jurisdiction [3335-11-02.2]

Section 02.2 of Faculty Rule 3335-11 governs the jurisdiction of criminal courts versus the University around cases of disruption. This section originally emerged from a broader conversation about how to best address “disruption” on campus after the events of 1968-1970. Should we leave all disciplinary measures to the courts, or should we try to address disruption *within* the University? Advocates for the first approach argued that because all possible offenses were already covered by statute, there was no need for university jurisdiction. Moreover, reliance upon the civil courts would ensure equal treatment for all, with the felicitous side effect of insulating the University administration from blame for any outcomes. This position, however, was sharply disputed by those who favored addressing violence and disruption through university processes.¹⁷

After a period of debate, the consensus position that emerged was the latter: the University should exercise jurisdiction over disruption. Rather than a student facing both public prosecution *and* university disciplinary sanctions—concurrent jurisdiction—the idea was for the University to assert sole jurisdiction over cases of disruption as much as possible, making “every effort to avoid sending such cases to municipal and state courts.”¹⁸ If a case did go to the criminal courts,

¹⁷ For an overview of this debate, including a discussion of whether the university should rely on injunctions to address campus disruption, see Committee of Inquiry, 1970, p. 156-162

¹⁸ See *Report of the Committee on the Disruption Hearings*, 17 May 1971, p. 2.

the University should “ordinarily accept a court case as the final disposition of the matter.”¹⁹ It would not pursue additional university charges.²⁰

There were several reasons for this approach. At a philosophical level, there was a shared belief that the university’s existing approach to governing student behavior, based on *in loco parentis*, was no longer desirable. Instead, many argued, the university should withdraw from the regulation of student conduct outside of its need to effectively deliver on its core educational mission. “It is a minimal desideratum that the academic community not simply duplicate the rules and sanctions of society nor attempt to equate itself with society. The University needs a definite code that holds closely to its special educational interests and purpose.”²¹

After Kent State, there emerged other more pragmatic reasons for OSU’s preference for sole rather than concurrent jurisdiction. These included the desire to spare students the cost and stress of criminal prosecutions and to limit the degree to which university procedures might result in self-incrimination in criminal courts (see summary in table below). But one additional motivation deserves special explication: the desire to protect members of the university community from prosecution under Ohio House Bill 1219.

Over the course of 1970, as the University community was debating how to define disruption and what a fair disciplinary process should look like, there had emerged a new complication: legislation coming from the Statehouse. House Bill 1219—colloquially known as the Ohio Campus Disorder Act, signed into law by then Governor James A. Rhodes—required

¹⁹ *Report and Recommendations of the University Committee on Rights and Responsibilities*, 1970, p. 20.

²⁰ Importantly, although there was a strong preference for the university to assert sole jurisdiction, there was recognition that in some instances concurrent jurisdiction might be desirable. For example, the 1968 Committee on Rights and Responsibilities recommended that “the University explicitly retain the option of concurrent jurisdiction in cases of bombing or arson damage, of aggravated assault, or of assault with intent to kill on campus.” Similarly, the option of concurrent jurisdiction should be retained for cases of “violation of public laws when such violations appear to contradict professional standards for licensing or certification.” For lesser cases of campus disruption, however-- for example, blocking building egress or even occupying a building—the university should exercise sole jurisdiction, and avoid sending students to the criminal courts. *Report and Recommendations of the University Committee on Rights and Responsibilities*, 1970, p. 20.

²¹ The principle of not subjecting students to simultaneous criminal and university disciplinary proceedings was first articulated in the September 1968 *Report and Recommendations of the University Committee on Rights and Responsibilities* (pp. 21-24). In the subsequent two years, as campus discontent heated up, little progress was made in implementing this committee’s recommendations. After Kent State, however, this conversation was re-ignited. In June 1970, CSA not only outlined the Hearing Process outlined in the previous section, but also crafted new language discouraging concurrent jurisdiction in most cases of disruption. Their original language was in fact broader than what is in our current rule, in that it was not limited to disruption. Due to HB 1219, however, this language was altered in November 1971 (Faculty Council vote) and February 1972 (BOT vote).

universities to discipline students accused/convicted of certain violent crimes. For a series of 31 ‘trigger’ crimes such as murder, assault, rape, but also campus disruption—which was redefined very broadly—there was now a legal requirement of concurrent jurisdiction. If any student or university employee was arrested for/convicted of campus disruption, H.B. 1219 set up a hearing procedure *outside* of the university structure which mandated that universities take immediate action to suspend (upon arrest) or dismiss (upon conviction) the accused students/employees.²²

Faculty Rule 3335-11-02 and especially -022 were specifically designed to protect the OSU community from HB 1219 through the intentional creation of an alternative disciplinary channel. Here, it is worth directly quoting the *Report of the Committee on the Disruption Hearings*, presented to Faculty Council in May 1971.

But first a word about the relationship between the disruption rules of the University and House Bill 1219. House Bill 1219, which is now part of the Ohio Revised Code, has preempted the field of disruption. It has made disruption a criminal offense, has established procedures for the suspension of those found guilty of it by a referee named by the Board of Regents, and has provided for automatic dismissal of any student found guilty of disruption in a municipal or state court. Thus the University has little room in which to operate. Yet it has some room. The arrest of a student sets the machinery of House Bill 1219 in motion. But a student may be charged with violation of the University’s disruption rules, without being arrested. In this case the University’s disciplinary procedures would come into play. ... Indeed, the University now has such rules (51.03, 51.05 and 29.275); but we believe, having reviewed their operation last summer and autumn, that they can be improved. To this end, we make the following recommendations.

- 1. We recommend that the University, wherever possible, assert jurisdiction over cases of disruption and make every effort to avoid sending such cases to municipal and state courts.*
- 2. We recommend that the Vice President for Administrative Operations, in cooperation with campus police, seek to discover ways, without bringing criminal charges, to apprehend, identify, and charge students who violate the University’s disruption rules.*

In sum, 3335-11-022’s emphasis on sole jurisdiction represented a strategy for avoiding what was widely regarded as an “unfortunate interference of State authorities into university

²² See ORC 3345.22-23. For contemporary views, see “Fact Sheet on Disciplinary Procedures- Autumn 1970”, USG Records, OSU University Archives UA.RG.44.33.0003; Paul A. Scott (1972), “H.B. 1219: A Case Study,” *Akron Law Review* 5(1,4): 93-116; and R. Michael Kerr, “Campus disruption law widens Jan. 1,” *The Columbus Dispatch*, 16 Aug 1973.

matters.”²³ The University, by being careful about how jurisdiction over disruption charges were handled, would work to keep its own house in order. In this way, it was believed, we could deliver more just outcomes to our students.

The passage quoted above highlights the need to protect *students* from the unwelcome intrusion of HB 1219 into university disciplinary procedures. But note that H.B. 1219’s sanctions were not limited to students; they could also be applied to faculty and staff accused of campus disruption. Probably for this reason, OSU’s Faculty Rule 3335-11-02 defining disruption applies the definition to all members of the campus community—student and employees alike. It also clearly states that staff and faculty who engage in disruption can be referred for internal disciplinary procedures under relevant university rules. Again, the purpose appears to have been protective. Rather than arrest and charge employees accused of disruption in criminal courts (which could trigger automatic loss of employment under a 1219 process), the University could choose to utilize its own disciplinary process. The University would still have recourse to suspension and dismissal as possible sanctions but these would not be mandated.

²³ Committee of Inquiry, 1970, p. 155.

	Perceived Problem	How did Faculty Rule Address the problem?
C.	SOLE vs CONCURRENT JURISDICTION: 3335-11-02.2—Pending Criminal Law Suit	
1.	Philosophical objection: “University should distinguish its responsibilities for student conduct from the social control functions of the wider community.” ²⁴	Embracing of sole jurisdiction represented an effort to keep the university’s disciplinary efforts focused on protecting academic citizenship rather than engaging in <i>in loco parentis</i> and/or duplicating the efforts of the criminal court system.
2.	Criminal process is not good for students. Court proceedings take too long to complete, impose high costs on students, are inequitable, and offer few opportunities for restorative remedies. ²⁵ Concurrent jurisdiction is unfair: Students facing criminal charges argued it was unfair to go through the burden of a criminal process and then receive a punishment from the University. ²⁶	University would assert sole jurisdiction over disruption cases: The University Court system created in 1971 was designed to “handle all possible disruption cases and <i>make every effort to avoid sending such cases to municipal and state courts.</i> ” This, it was hoped, would result in speedier resolution of cases and open the door for less punitive remedies.
3.	Protect students from double jeopardy —because “a prior hearing might prejudice the student’s standing in civil courts.” ²⁷	Avoid concurrent jurisdiction. General approach is for university to take jurisdiction. But, if courts <i>are</i> involved, the University would generally refrain from exercising jurisdiction. This would help students avoid self-incrimination.
4.	Risk of excessively harsh sanctions after passage of HB 1219.	Use the university disciplinary process to protect students from 1219’s excessively punitive sanctions (automatic suspension and dismissal).

²⁴ CSA proposal for Rule 51.03, 1 June 1970.

²⁵ Committee of Inquiry, November 1970.

²⁶ *Report of the Committee on the Disruption Hearings*, 17 May 1971, p. 8.

²⁷ *Report and Recommendations*, 1968, p. 22.

Concluding Thoughts

This memo has laid out the historical motivations for the various sections of Faculty Rule 3335-11 relating to disruption, highlighting how our disruption rule emerged from the crucible of campus protests of the late 1960s, and the backlash against those protests. As OSU's shared governance partners consider how best to align 3335-11 (Faculty Rule) and 3335-23 (Code of Conduct), it is worth asking which elements of the Faculty Rule are worth keeping.

Questions to consider:

- Which of the Rule's fundamental commitments still resonate today? How can we best preserve the spirit of this rule?
 - o Here it might be helpful to distinguish between core principles vs mechanisms for achieving those principles.

- What are the pros and cons of the 'sole jurisdiction' philosophy in the present environment? Is protecting the university community from 1219 processes still a concern? If so, how might this work in practice?
 - o The 1971 Faculty Council report makes a distinction between "arrest" and "apprehend." Is this a valid distinction? If so, who makes this determination?
 - o Similar question about how charges are filed—especially when we invite outside police forces onto campus.
 - o Also: any shift toward sole jurisdiction cannot be accomplished by rule alone. It would require a willingness on the part of the administration and/or campus police to not press criminal charges against students accused of disruption and to instead refer them only to the University Conduct Board.²⁸

- Another important issue: Faculty Rule 3335-11-02 is located in the chapter on Student Affairs but clearly affects *all* members of the university community.
 - o Why? Because the definition of disruption applies to faculty and staff. Moreover, the rule states that staff and faculty can be referred to disciplinary processes for violations of the disruption rule.
 - o Is the definition of disruption adequate? Does disruption need to be addressed in the 04 rule for faculty? (Maybe not, could be covered in track 4—but it seems

²⁸ In the 1970s, there were discussions around whether campus police officers were acting strategically in charging students, in order to activate 1219 processes. See David Pontius, "Debate surrounds riot bill," *The Lantern*, 6 February 1974.

odd for “college investigating committees” to have jurisdiction when there’s not necessarily anything college-specific about disruption).

- Do civil service positions require different protections than regular staff?

Appendix I: Revision History

Faculty Council passed the language now contained in 3335-11 in December 1971. This Rule change was approved by the Board of Trustees by unanimous voice vote at their February 4th, 1972 meeting. Although the numbering and the location of Faculty Rules 3335-11-021 and -022 have changed since 1972, the language itself remains unchanged.²⁹ What has changed is the associated language in the Student Code of Conduct.

Appendix II: Relationship between the Code of Conduct and Faculty Rules.

- The first Code went live in 1971-1972. It was motivated by the same spirit as the disruption rule, part of a broader effort of the university to assert for itself jurisdiction over academic citizenship. “We recommend that the University develop a Code, the purpose of which is to protect and maintain its educational activities.”
- Between 1971 and 1980, the *Student Code of Rights and Responsibilities* explicitly included “disruption” as a form of misconduct in Section 5.01 (B) and highlighted that it required a separate hearing process—as did academic misconduct, 1219 triggers, and violations of the Open Housing Policy. It also contained specific language on noise disruption, which was drafted by a shared governance Committee on Free Expression.
- Codes from this period included the entirety of the Faculty Rules text on “Disruption,” “Procedures for Hearing Officers and Panels”, “Pending Criminal Law Suit”, and “HB 1219” in the Appendices.
- In the 1979 review process, CSA worked to shorten and simplify the Code, renaming it the *Code of Student Conduct* in 1981. At that point, the appendices were removed, but a new section (3335-25-02) explicitly referred the reader to the Faculty Rules on “Disruption” and “Pending Criminal Law Suits”, as shown below.

²⁹ 3335-11-02 was originally Faculty Rule 51.03; 3335-11-021 was originally Faculty Rule 29.275 and 3335-11-022 was originally Faculty Rule 2.276. The entirety of the Faculty Rules were renumbered in 1978, to make them compliant with a statewide effort to reorganize Ohio’s various administrative codes. At this point, 51.03 was changed to 3335-11-02. 29.275 and 29.276 were renumbered as 3335-5-55 and 3335-5-56 (under the section on Senate committees). The latter two sections were moved from chapter 5 to chapter 11 of the Rules in 1986.

Old Code Section 3335-25-02 on Disruption. Rule 3335-11-02 of the Administrative Code provides for disciplinary action to be taken when a person commits conduct that is intended to disrupt or prevent university authorized activities. This includes such conduct as obstruction of lawful movement on campus, occupation of buildings, employment or threat of force, interferences with teaching, research or administration, damage to equipment or property, or successful solicitations of such actions. The rule does not prohibit peaceful dissent or demonstration. Rule 3335-11-021 of the Administrative Code provides for the appointment of hearing officers for these cases. Moreover, under rule 3335-11-022 of the Administrative Code, whenever a criminal court exercises jurisdiction over acts which allegedly constitute disruption by university rules, the university will not exercise jurisdiction, except in extraordinary cases of clear and present danger. (Rules 3335-11-02, 3335-11-021, and 3335-11-022 of the Administrative Code are available from the office of student life or college offices).

- Section 3335-25-02 was removed in the 2001 overhaul of the Code. It was at this time that the language permitting concurrent jurisdiction was added to the Code (under 3335-23-02, Jurisdiction). Language about the requirement to obey civil authority, and to not engage in riotous behavior, was added to the Code in 2003.

