

May 15, 2020

Michael Allen (sent via email: allenmc201@potsdam.edu)
Delta Kappa Theta

PERSONAL AND CONFIDENTIAL

Dear Michael:

This letter is to inform you of the decision regarding your appeal dated April 15, 2020.

Your appeal was received and presented to me on April 21, 2020. Per the “Student Conduct Appeals” Section 3. B in the SUNY Potsdam *Student Community Rights and Responsibilities*, I have been designated by the Chief Student Affairs Officer, Eric Duchscherer, to hear your appeal.

As the designee assigned to review this appeal, I am responsible for (1) determining if the appeal was submitted in a timely manner and (2) if such appeal meets the grounds as stated by the policy.

Your appeal was submitted in a timely manner.

You have appealed the original decision of the Student Conduct Hearing Board. The Notice of Appeal Form you submitted and the accompanying document indicate your appeal is based on alleged procedural errors.

The first procedural error cited in the appeal states:

“In characterizing Delta Kappa Theta as a “banned organization,” the Hearing Board failed to adhere to the Student Code of Conduct which states that “[i]t should be understood that all rules of the Board of Trustees of SUNY, and all local, *state and federal laws* apply on the SUNY Potsdam campus.” (Student Code of Conduct, Community Rights and Responsibilities, p.4 [emphasis added].) The Student Code of Conduct further states that “SUNY Potsdam has a special obligation to protect the First Amendment rights of free speech and assembly. *These rights are guaranteed by the United States and New York Constitutions*” (Student Code of Conduct, p. 42 [emphasis added].)”

Please note that the statement above fails to state a procedural error. Notwithstanding the foregoing, in designating Delta Kappa Theta as a “banned organization” under the Student Code of Conduct, the College has not violated the organization’s First Amendment rights, including those of free speech, assembly, and association. The College has the ability to regulate the conduct of student organizations that are bound by the Student Code of Conduct due to their formal recognition from the College.

The College must take action to address dangerous conduct taking place in its community. Delta Kappa Theta has repeatedly engaged in conduct that has endangered the student body of SUNY Potsdam, and as such, the College has appropriately decided to permanently derecognize such organization, consistent with the SUNY Potsdam Student Code of Conduct.

The College requires that recognized organizations comport with the Student Code of Conduct. Delta Kappa Theta has consistently violated code provisions and disregarded conduct outcomes, including in the instant case, and the College maintained appropriate jurisdiction over the conduct of Delta Kappa Theta.

Therefore, it is my finding that this claim is without merit.

The next procedural error cited in the appeal states:

“As an additional procedural error, the order indicates that “all activities of Delta Kappa Theta must cease immediately.” Delta Kappa Theta is a NYS not-for-profit corporation. The jurisdiction to bring proceedings against a NYS not-for-profit corporation lies solely with the NYS attorney general. *See* N.Y. Not-for-Profit Corp. Law § 112 (McKinney). Therefore, the order oversteps jurisdiction in imposing a sanction that the Hearing Board and SUNY Potsdam has no authority to issue. Without jurisdiction, the Hearing Board committed another procedural error.”

The policy violation in question occurred during the Fall 2019 semester. Delta Kappa Theta was appropriately under the jurisdiction of SUNY Potsdam at the time the policy violation (compliance) occurred. The violation was determined to have occurred in October 2019, long before Delta Kappa Theta submitted its “Fraternity Recognition Surrender Letter” (March 27, 2020). Moreover, the “Student Conduct Procedure” section 2. F. (which also applied to organizations) states “*A student who withdraws from the institution prior to the outcome of a pending conduct case should understand that the investigation may continue without the student’s participation and the student can still be found responsible for the violation.*” Thus, SUNY Potsdam maintains jurisdiction over Delta Kappa Theta due to when the violation occurred, and I find this claim to be without merit.

In conclusion, I have determined that there were no procedural errors in this organizational conduct case. Therefore, this appeal claim was determined to have no merit and the record evidence showed that proper procedures were followed. Thus, the determination made by the Student Conduct Hearing Board outlined in the April 7, 2020 hearing outcome letter (Banned Organization) is upheld.

Additionally, the College has determined that modifications to the original sanction are appropriate and hereby grants the following reduced sanction.

“Banned Organization” is defined in the SUNY Potsdam Student Code of Conduct as “a group who met the definition of “organization,” but who has permanently lost

recognition by a college entity or by Student Government Association. Banned Organizations are not permitted to participate, as an organization, in SUNY Potsdam sponsored activities.”

The College is removing that the organization is a “banned organization” as defined by the SUNY Potsdam Student Code of Conduct. The College modifies this sanction to permanently remove the recognition of Delta Kappa Theta as of April 7, 2020. The College would remind Delta Kappa Theta that permanent loss of institutional recognition entails prohibition from:

- functioning as a fraternal organization at SUNY Potsdam;
- hosting fraternal gatherings at the off-campus residence at 53 Elm Street that has functioned as the Delta Kappa Theta fraternity house, or any other facility, from 6:00PM on Monday evening to 8:00AM Tuesday morning, from 6:00PM on Tuesday evening to 8:00AM Wednesday morning, from 6:00PM on Wednesday evening to 8:00AM Thursday morning, from 6:00PM on Thursday evening to 8:00AM Friday morning, from 12:00PM on Friday afternoon to 8:00AM Saturday morning, from 12:00PM on Saturday afternoon to 8:00AM Sunday morning, and from 12:00PM on Sunday afternoon to 8:00AM Monday morning;
- scheduling events on campus under the organizational name of Delta Kappa Theta, if such organization is accepting new members, offering and/or engaging in a new member education program, and operating under the aegis of a fraternal organization, such as “Greek organization” is defined in the SUNY Potsdam Student Code of Conduct;
- participating in College-related events on or off campus as a fraternal organization;
- offering a new member education program;
- using campus resources and spaces to promote Delta Kappa Theta in its current form that has led to its loss of recognition; and
- accepting any new members.

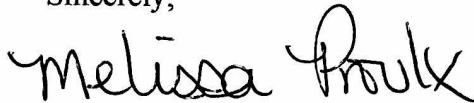
The College has recognized that the term “Banned Organization” has caused confusion, and is clarifying that Delta Kappa Theta is no longer recognized by the College as legitimate fraternal organization, with the above explanations of what conduct would constitute direct violations of the SUNY Potsdam Student Code of Conduct if such unrecognized organization continues to operate despite its revocation of recognition by the College. SUNY Potsdam has the ability to warn students of the dangers that your organization presents to the campus community, and will communicate such to the student body.

In order to clarify these sanctions, the College has attached an addendum that represents a brief history of incidents in which Delta Kappa Theta has consistently ignored and violated College policies and is a dangerous environment for students attending SUNY Potsdam. As such, the College has identified a compelling interest in keeping students safe from harm, in light of the continuous code

violations and the degree of seriousness of such violations. The College believes that its sanction is narrowly tailored to protect the student body of SUNY Potsdam from harm as shown below in the attached timeline and accounting of what has occurred within the organization.

In conclusion, I have determined that there were no procedural errors in this organizational conduct case. Therefore, this appeal claim was determined to have no merit and the record evidence showed that proper procedures were followed. However, the determination made by the Student Conduct Hearing Board outlined in the April 7, 2020 hearing outcome letter is modified for further clarity.

Sincerely,

A handwritten signature in black ink that reads "Melissa Proulx". The signature is written in a cursive, flowing style.

Melissa Proulx
Director of Human Resources

Cc: A. Adams, Coordinator of Greek Life
K. Barnes, Alumni Representative
D. Benko, Chapter President
E. Duchscherer, Interim Dean of Students
A. Hersker, Chapter Advisor
P. Meldrim, Director of Student Conduct
R. Policella, Associate Dean of Students