

In Conduct, Be The Intervention

Submitted By: Adam Ross Nelson, JD

This article started as a guide for understanding the *preponderance of evidence (poe)* and how to decide “difficult or unclear cases.” Writing about *poe* specifically for an audience of educators and applying a residence-hall hypothetical exposes some flaws; the analysis reaches a result that is legalistically sufficient but educationally inadequate. Instead then, here is a contrarian argument in favor of, as best we can, resisting any retention of, or move towards, legalistic ideas and principles in student conduct work.

Despite *poe*'s flaws, Stoner and Lowery advocated “using a ‘more likely than not’ or “preponderance of the evidence [*poe*]” standard for disciplinary decision making.”¹ The University of North Carolina Board of Governors *Policy Manual* §§700.4.1.V.A.5 & 13 (currently under revision) require constituent institutions to utilize the *poe*². When evaluating incidents with Title IX implications, the department of education requires application and use of the *poe*³.

Consider the following hypothetical residence hall scenario:

During a routine safety inspection, hall staff entered all rooms in a residence hall to visually survey for any safety hazards. In John and Danish's room, staff found a case of beer in the middle of the floor.

Neither student accepts responsibility. Both students disclaim knowledge of the beer. Neither student has a history in the conduct system. Both students were away from the room at the time of inspection. Neither student reports having returned to the room that day since breakfast. Both students report always locking their door. Neither student is of legal drinking age. There is no additional information to show the beer could belong to one or the other student.

Simple logic limits the number of explanations for what happened in John and Danish's room. Either, 1) John brought the alcohol and put it there, 2) Danish brought the alcohol and put it there, or 3) both acted to put the alcohol there. Uneasily, 4) there is a possibility that another person with access to the room, may have brought and placed the alcohol there. How will staff know who is responsible for underage possession in this case? Is it fair to mark both students responsible, neither student responsible, or perhaps some other result?

So, then, what is a *preponderance*? *Black's Law Dictionary* (8th Edition) defines this standard as:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force;

Consider a bus full of twenty academic deans who witnessed an event and twenty known felons previously convicted of perjury. Same number of witnesses but the deans likely have greater “convincing force” than the twenty convicted felons. *Black's* continues:

*Superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.*⁴

The information available need not be *definitively convincing*, the information need only *incline* the decision maker. *Black's* helpfully articulates *poe* with reference to available witnesses. Since there are no witnesses in John and Danish's case, at least not any disinterested third-party witnesses, the hall coordinator must seek the use of a different articulation.

Consider an old-fashioned two-sided counter-balancing 'scale' as an alternate, yet useful, tool for understanding *poe*. Visually, imagine placing the available information on both sides of the scale; one side contains the information weighing in favor of responsibility and the other contains information weighing against responsibility.

If the weight of the information in favor of responsibility tips the scale ever so slightly then the student is responsible. The student is responsible even if there is considerable information weighing against responsibility. What matters is that there is enough information to tip the balance in favor, by any amount, of responsibility.

In John and Danish's case there is information weighing in favor of responsibility: the beer was in their room. However, there is also information weighing against responsibility: the room is a shared space and the other person occupying the room could be responsible instead.

So, to continue, if the scale remains balanced in the middle or if it tips in the direction of information weighing against responsibility, under *poe*, the student is not responsible. From a legalistic *poe* application, with one fact weighing in favor of responsibility (beer in their room) and arguably an equally convincing fact weighing against responsibility (shared space) then neither student can be responsible.

Legalistically, neither will be responsible, even though, logically, one or both of the two must be responsible. This rigid application of *poe* means neither student will have an opportunity to benefit from the educational interventions available to anyone a school marks responsible for an alcohol policy violation.

Fine, to avoid betraying Stoner, Lowery, UNC Board of Governors, the Department of Education and others – in all their infinite wisdoms – mark the students not responsible to spare them an unfavorable mark on their records. While this result is legalistically sufficient it is educationally inadequate.

To reach an educationally beneficial result, hall staff must look beyond the legalistic and jurisprudential *poe* constraints. Hall staff will need to meet with John and Danish - possibly more than once. Hall staff should learn about both students, learn about their friends in the hall, learn about their weekends, learn about their families, and learn about their classes. The most diligent will find the two in the dining hall for casual chats in passing.

A less-than-subtle approach would include getting the two students special invitations to hall events and programming. For better or worse, that beer put these students on hall staff's list of students to know. In short, hall staff will need to be the intervention instead of merely being the one who assigns the intervention.

Works Cited:

¹Stoner, E. N., and John Wesley Lowery. "Navigating past the spirit of insubordination": A twenty-first century model student conduct code with a model hearing script." *Journal of College and University Law* 31.1 (2004): 1-78.

²Available online: <http://www.northcarolina.edu/policy/index.php?pg=vs&id=s457>

³Russlynn, A. (2011). *Dear colleague letter*. Retrieved from OFFICE FOR CIVIL RIGHTS website: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> p10.

⁴Black, H. C., & Garner, B. A. (1999). *Black's law dictionary* (Vol. 196, No. 3). West Publishing Company.



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A reflection of new professional transitioning from one strong region to the next.

Submitted by: Deona L. Hatley

Professional development, networking and active involvement became the guiding factor for my transition into a new home, new role and overall new environment. As a new professional entering into the field of Student Affairs in Higher Education, leaving the GLACUHO region after my tenure as an undergraduate and graduate student was bittersweet. I thoroughly enjoyed my time at the University of Illinois in Champaign-Urbana for undergrad and Ball State University for grad school. However, I was ecstatic to embark on this new journey after accepting a Residence Coordinator position at Duke University and becoming a Blue Devil!

Several of my Duke colleagues are involved in NCHO and SEAHO and spoke highly about both organizations. Therefore, after attending the NCHO conference and meeting several professionals in North Carolina, I looked for opportunities to learn more about both organizations and how I could get involved within them.

Initially, I applied for NCHO's SEAHO scholarship, and after being awarded the scholarship, my commitment to maximizing the SEAHO experience as a first time delegate, deepened and I knew I wanted to share this experience with my fellow colleagues as well.

While attending a conference like SEAHO can be overwhelming, I tried to utilize several of the leadership opportunities SEAHO offered, in order to help me navigate the conference at a more comfortable speed for me.

For instance, I presented on the topic, "STAY TRUE: Creating a job search process unique for you," with a colleague of mine from the University of Florida. Our presentation was originally put on the alternate list but we did not lose hope and to our surprise, our proposal was accepted shortly before the conference. In addition to presenting, I signed up to be a Volunteer, Moderator, Pro/Am, and participate in the PPP track. Due to my interest in professional development, as well as serving as resource for graduate students and new professionals who would like to do the same, I even expressed interest in joining the Graduate Issues and Involvement Committee.

While participating in all of these opportunities made me feel at home during the SEAHO conference, my overall highlights included: the new delegate orientation, serving as a Pro and also an AM, attending several great presentations, meeting a host of awesome welcoming new and veteran professionals in the region and of course sightseeing in downtown Atlanta. Taking the time to reflect back on my first SEAHO experience made me appreciate the existing opportunities but even more grateful that I was not afraid to put myself out there and take advantage of them.

As we continue to develop our students, faculty and staff in the field of student affairs in higher education, I encourage you to ask yourself, what you have done for your professional development lately? Whether the answer in your campus, city, state, region and nationally or internationally...it is up to you to take advantage of it and I kindly encourage you to do so.

