

Constituent Universities

Appalachian
State University

East Carolina
University

Elizabeth City
State University

Fayetteville State
University

North Carolina
Agricultural and
Technical State
University

North Carolina
Central University

North Carolina
State University
at Raleigh

University of
North Carolina
at Asheville

University of
North Carolina
at Chapel Hill

University of
North Carolina
at Charlotte

University of
North Carolina
at Greensboro

University of
North Carolina
at Pembroke

University of
North Carolina
at Wilmington

University of
North Carolina
School of the Arts

Western Carolina
University

Winston-Salem
State University

Constituent High School

North Carolina
School of Science
and Mathematics

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MEMORANDUM

TO: Joint Legislative Education Oversight Committee
Senate Education Appropriations Subcommittee
House Education Appropriations Subcommittee

FROM: Thomas W. Ross



DATE: May 1, 2014

RE: Combined Report of the University of North Carolina Regarding the
Implementation of North Carolina General Statute § 116-40.11 For The
Period of August 2013 to March 2014

On behalf of the Board of Governors of the University of North Carolina, I am pleased to submit the attached combined report to the Joint Legislative Education Oversight Committee and the House and Senate Education Appropriations Subcommittees, pursuant to House Bill 74 (2013). The Board of Governors has delegated to the President the authority to submit this report under UNC Policy 200.6.

Please let me know if you have any questions.

**Combined Report of the University of North Carolina
Regarding the Implementation of North Carolina General Statute § 116-40.11
For the Period of August 2013 to March 2014**

May 1, 2014

I. Introduction

Since the enactment of House Bill 74 (Session Law 2013-413) in August 2013, the University and its constituent institutions have tracked “the number and type of disciplinary proceedings impacted by [N.C. Gen. Stat. § 116-40.11], as well as the number of cases in which a student or student organization [was] represented by an attorney or nonattorney advocate,” as required by N.C. Session Law 2013-413, section 6.(d).

For the period from August 2013 through March 2014, UNC constituent institutions reported to UNC General Administration **5,945** total student disciplinary or conduct proceedings where a student or student organization could have elected to be represented by a licensed attorney or a non-attorney advocate.¹

Students or student organizations were actually represented by a licensed attorney or non-attorney advocate in **119** student disciplinary or conduct proceedings. This participation represents 2% of the student disciplinary or conduct proceedings covered by the statute. Of the 119 cases in which licensed attorneys or non-attorney advocates actually participated, **117** of those cases involved individual students, and **2** involved student organizations. Sixty-one (**61**) of those cases involved licensed attorneys, and **58** involved non-attorney advocates.

Summary of the Data Regarding Licensed Attorneys and Non-Attorney Advocates in Disciplinary and Conduct Proceedings at UNC Constituent Institutions

August 2013 – March 2014

Total Number of Enrolled Students (Fall 2013)	221,070
Total Number of Disciplinary/Conduct Cases:	5,945
Total Disciplinary/Conduct Cases with Representation:	119
Cases with Licensed Attorney Representation:	61
Cases with Non-attorney Advocate Representation:.....	58
Student Cases with Representation:	117
Student Organization Cases with Representation:	2

¹ The data cover disciplinary and conduct cases over a partial academic year, from August 2013 until March 2014. The data do not capture the entire disciplinary and conduct caseload for an entire academic or calendar year, and, therefore, represents, at most, 80-90% of the constituent institutions’ annual disciplinary and conduct caseload. Moreover, depending on the nature of a specific constituent institution’s disciplinary or conduct procedures, the data may or may not reflect preliminary or other informal proceedings that may be a part of some campuses’ procedures prior to or in lieu of a formal hearing. Finally, the data only reflect sanctions that were actually imposed, if any. The data do not reflect whether the institution proposed or pursued particular sanctions.

II. Background

In August 2013, the North Carolina General Assembly passed and ratified House Bill 74 (N.C. Session Law 2013-413). Section 6.(c) of the bill amended Chapter 116 of the General Statutes to add N.C. Gen. Stat. § 116-40.11. The new section establishes the right of a student or a student organization to be represented by a licensed attorney or a non-attorney advocate during certain campus-based disciplinary proceedings. More specifically, the statute states:

(a) Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student shall not have the right to be represented by a licensed attorney or nonattorney advocate in either of the following circumstances:

- (1) If the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.
- (2) For any allegation of "academic dishonesty" as defined by the constituent institution.

(b) Any student organization officially recognized by a constituent institution that is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the organization's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student organization shall not have the right to be represented by a licensed attorney or nonattorney advocate if the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(c) Nothing in this section shall be construed to create a right to be represented at a disciplinary proceeding at public expense.

Section 6.(d) of House Bill 74 required each constituent institution to track the number and type of disciplinary proceedings impacted by the new provision, as well as the number of cases in which a student or student organization is represented by an attorney or nonattorney advocate.

III. UNC System Policy and Guidance Regarding Attorney and Non-attorney Advocates

As general background, the Board of Governors has long assigned responsibility for student discipline to the chancellors of the individual UNC constituent institutions, with some overarching guidance provided by the University related to due process (including appeals) and possible sanctions.

Each UNC constituent institution has developed its own Student Code of Conduct and disciplinary procedures to reflect the unique values and experiences of that institution. For this reason, while all institutions are subject to the same standards of due process for students in disciplinary matters, there has not necessarily been a uniform approach or definitions for campus-based conduct rules or procedures.

The new statutory provisions have presented an opportunity to have fuller discussions with the constituent institutions about student disciplinary matters and expand on our common expectations. Consistent with the statutory requirements described above, the Board of Governors of the University of North Carolina amended the University's policies regarding student conduct and discipline to provide for the full participation of licensed attorneys and non-attorney advocates. These policy changes were in place and in effect the same day the statute was signed into law. In addition, during July and August 2013, UNC General Administration developed and shared initial interpretive guidance regarding N.C. Gen. Stat. § 116-40.11 in order to assist the constituent institutions with the statute's implementation on their campuses.

As a result of the direction by the Board of Governors, all of the University's seventeen constituent institutions revised their respective codes of student conduct to allow students and student organizations to be represented by a licensed attorney or a non-attorney advocate during certain campus-based disciplinary or conduct proceedings. UNC constituent institutions also adopted campus-specific procedures, and, in some cases, provided additional information and outreach to students accused of violations, in order to facilitate the effective involvement of licensed attorneys and non-attorney advocates in those proceedings.

In the months since the implementation of the new law, UNC General Administration and campus staff have continued to monitor and adjust campus student conduct processes in order to properly administer the requirements of the new law. Based on that experience, and consistent with the statute and the Board of Governors' policy, the President recently adopted a system-wide regulation that clarifies and standardizes administrative requirements for implementation of the statute.² Those requirements include:

- Notice procedures to ensure that students are aware of the right to be represented by a licensed attorney or a non-attorney advocate;
- Clarification of the circumstances under which students may be represented or accompanied by a licensed attorney or a non-attorney advocate;
- Definition and clarification of key terms, including "Accused of a Violation", "Student Honor Court", and "Academic Dishonesty";
- The disciplinary and conduct procedures in which licensed attorneys and non-attorney advocates may fully participate;
- The administrative requirements that must be fulfilled in order to serve as a licensed attorney or a non-attorney advocate during a constituent institution's disciplinary or conduct procedure;
- The nature of participation of licensed attorneys and non-attorney advocates in disciplinary or conduct procedures;

² A copy of the regulation is attached as Appendix 1.

- Affirming the need for training for students, student organizations, and institutional staff on these provisions of the statute and University policies; and
- Ongoing monitoring of these proceedings.

IV. Conclusion and Next Steps

The constituent institutions of the University are committed to implementing and properly administering N.C. Gen. Stat. § 116-40.11 in the context of student disciplinary and conduct processes that are fundamentally fair and consistent with due process requirements. During this start-up period, our implementation has faced some challenges, particularly with respect to two areas. First, because of the institution-focused tradition of student discipline, we continue to work on developing a common understanding of important administrative terms to apply to campus codes of conduct and disciplinary proceedings while recognizing the unique environment and culture of each UNC constituent institution. We have regular conversations with the student affairs administrators on the campuses about their experiences administering student disciplinary proceedings consistent with the new law, and are working with them to identify best practices and opportunities for ongoing improvement. Second, we continue to educate stakeholders on the clear and important distinctions between campus conduct proceedings and formal civil or criminal legal proceedings. Campus disciplinary procedures and codes of student conduct are intended to address violations in a manner that prioritizes students' development and education. The primary objectives are both to uphold honor, integrity, and personal responsibility, and also to promote student learning, safety, health, and well-being. Campus conduct proceedings are not criminal in nature. Moreover, the procedures utilized by constituent institutions to adjudicate student disciplinary matters are neither designed nor intended to mimic the adversarial processes associated with formal civil and criminal courtroom proceedings.

The experience of UNC constituent institutions since August 2013, supported by the data collected by the University and reported above, show that the use of attorneys and non-attorney advocates has not been widespread. Students and student organizations chose to be represented by a licensed attorney or a non-attorney advocate in only 119 cases out of 5,945 total cases (only 2% of the cases).³ This statistic could reflect that campuses often work with students to informally resolve concerns consistent with their objectives to uphold personal responsibility and promote student learning. Moreover, anecdotal evidence from several institutions suggests the outcome in cases involving the participation of a licensed attorney or a non-attorney advocate does not substantially differ from cases not involving the participation of a licensed attorney or a non-attorney advocate. We will continue to monitor and assess data associated with these proceedings to gain a better understanding of the circumstances in which a licensed attorney or non-attorney advocate is being used.

Consistent with the above, the University expects to focus its efforts on some specific administrative issues during the 2014-2015 academic year. First, in recognition of the institutions' obligations under federal law to protect students' education records, the University will continue to

³ Note that the total number of disciplinary cases (5,945) also represents approximately 2% of the total student enrollment (221,070) at the 17 constituent institutions as of Fall 2013.

provide information to attorneys and non-attorney advocates about the requirements to participate in campus-based processes. These requirements will be designed to balance both federal and State law obligations, and may include a requirement to promptly provide notice of representation, a FERPA authorization⁴, and a certification that the attorney or non-attorney advocate has read and understands the constituent institution's applicable student disciplinary and conduct rules and the UNC system's applicable student disciplinary and conduct policies, regulations, and guidance.

Second, the University will continue to work with its Student Affairs administrators across the system to assure that there are effective and consistent practices related to this right to a licensed attorney or non-attorney advocate in place at each institution. This process is part of a broader effort to thoughtfully and effectively address concerns about student safety on campuses and develop meaningful information about students' overall educational experiences, and will dovetail with the important work of the University's system-wide Campus Security Initiative which has taken place over the past year. As some examples, the University is planning system-wide training opportunities for student affairs administrators and others on issues related to campus safety and the Clery Act, identifying programs that will help students address alcohol abuse and rehabilitation efforts, and developing additional metrics that will help provide clear information about our campus environments. This type of training, programming, and research will impact both possible individual disciplinary issues and broader campus safety concerns.

Finally, the University will continue communicating with its students and student affairs professionals about the difference between "discipline or conduct" violations that allow the student to have a licensed attorney or a non-attorney advocate present for the constituent institution's procedure and "academic dishonesty" violations that do not permit representation. A definition of "academic dishonesty" has been included in the University's guidelines and regulations, although constituent institutions may adopt their own definitions not inconsistent with those adopted by the University.

As a result of these ongoing efforts and outreach, the University expects to see a clearer understanding by all parties involved, including constituent institutions and their students, about the rights and responsibilities associated with the University's student discipline and conduct proceedings. Our ongoing goal is to continue to provide an internal process that effectively and informally addresses conduct-related concerns, reflects community values and university policies, provides for the respect and consideration of all participants, and affords appropriate opportunities for attorneys and non-attorney advocates to participate consistent with the law.

⁴ FERPA (Family Education Rights and Privacy Act) is the federal law that protects the privacy of student education records at educational institutions that received funds through the U.S. Department of Education. FERPA generally provides that a student must consent to having his/her education records shared with a third party. For example, a FERPA authorization would enable a UNC constituent institution to share a student's educational records with his or her attorney or non-attorney advocate during a campus-based disciplinary proceeding without violating federal law and the student's right to privacy.

APPENDIX 1

The University of North Carolina

Regulation Applicable to Student Disciplinary or Conduct Procedures:

Right to an Attorney or Non-Attorney Advocate for Students and Student Organizations

**Regulation Applicable to Student Disciplinary or Conduct Procedures:
Right to an Attorney or Non-Attorney Advocate for Students and Student Organizations**

I. Purpose

This regulation clarifies how the constituent institutions of The University of North Carolina (hereinafter, “UNC constituent institutions”) will interpret and administer the requirements of North Carolina General Statutes Section 116-40.11 (hereinafter, “Section 116-40.11”) regarding the participation of licensed attorneys and non-attorney advocates (collectively, “Advocates”) on behalf of students and Student Organizations in campus Disciplinary or Conduct Procedures, as defined herein.¹ Nothing in this regulation shall be construed to create a right for any student or Student Organization to be represented during a Disciplinary or Conduct Procedure at public expense.

UNC constituent institutions encourage character formation and development by asking students, as members of the University community, to uphold the highest standards of personal behavior and responsibility in all settings. Disciplinary or Conduct Procedures at UNC constituent institutions are designed to address violations of Disciplinary or Conduct Rules in a manner that prioritizes student development and education. While Disciplinary or Conduct Procedures may result in the imposition of sanctions in appropriate cases, the primary objectives of these procedures are to uphold the highest standards of honor, integrity, and personal responsibility; to encourage responsible choices concerning issues such as alcohol use, the treatment of others, and sexual behavior; and to promote student learning, safety, health, and well-being.

The emphasis upon student education and growth as the primary objectives of the Disciplinary or Conduct Procedures distinguish these campus-based processes from criminal or civil legal proceedings.² Campus Disciplinary or Conduct Procedures do not result in an adjudication of whether a crime has occurred; such determinations can be made only by the criminal justice system. Consistent with these student learning and development objectives, Disciplinary or Conduct Procedures at UNC constituent institutions remain non-adversarial; reflect community values, university policies, and Board of Governors standards; and provide for the respect and consideration of all participants.

Each UNC constituent institution shall establish its own specific rules and procedures for administering Section 116-40.11 in a manner that is consistent with the provisions of Section 700.4.1 of the UNC Policy Manual (entitled “Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings”) and this regulation.

II. Definitions

As used within this regulation, the following terms have the meanings provided below.

A. Academic Dishonesty – Any act that constitutes cheating, plagiarizing, or knowingly misrepresenting the source of information contained in work submitted by a student; or knowingly assisting another in cheating, plagiarizing, or a knowing misrepresentation. Examples of Academic Dishonesty include, but are not limited to: the use of another’s ideas or copying another’s work without proper citation or acknowledgment; the use of any material assistance, or collaboration that was prohibited or not authorized by an instructor in taking a test or preparing a

¹This regulation does not address any rights a student may have under federal law, regulations or policy guidance to have an Advocate or advisor present as part of any Disciplinary or Conduct Procedure at a UNC constituent institution.

²For example, Disciplinary or Conduct Procedures are not subject to the State or federal Rules of Evidence or the State or federal Rules of Civil Procedure, although each UNC constituent institution’s Disciplinary or Conduct Rules may specify applicable procedural rules, including rules that govern the introduction and admission of evidence or testimony, as well as rules governing any formal or informal exchange of witness lists or documents that may be used at a hearing. As a result, information that might be deemed “hearsay” or is otherwise inadmissible during a formal legal proceeding might be considered by the designated university administrator, board, or panel.

project or assignment to be submitted to an instructor; or fabricating or falsifying information or data.³

B. Accused of a Violation – Occurs when a designated university official brings a formal charge against a student or Student Organization to initiate a Disciplinary or Conduct Procedure as described in paragraphs V.A. and VI.A., of Section 700.4.1 of the UNC Policy Manual.

C. Disciplinary or Conduct Rules – The code of student conduct of a UNC constituent institution described in paragraph IV., of Section 700.4.1 of the UNC Policy Manual. Disciplinary or Conduct Rules do not include the rules or codes of a UNC constituent institution governing academic integrity, including professional or ethical standards associated with a particular program of study, or Academic Dishonesty.

D. Disciplinary or Conduct Procedure(s) – A hearing or other procedure during which a designated university official, board, or panel considers information and/or documentation in order to make a determination regarding whether a student or Student Organization may have violated Disciplinary or Conduct Rules.

E. Student Honor Court – A Disciplinary or Conduct Procedure board or panel that is composed entirely of students who address whether a student or Student Organization has violated a UNC constituent institution's Disciplinary or Conduct Rules.

F. Student Organization(s) – A student group that has been officially recognized or sponsored by a UNC constituent institution in accordance with the UNC constituent institution's student organization recognition policies.

III. Notice, Role, and Requirements of Advocates in Disciplinary or Conduct Procedures

A. Notice to Students and Student Organizations Accused of a Violation

Any student or Student Organization Accused of a Violation of a UNC constituent institution's Disciplinary or Conduct Rules shall be notified of the right to be represented by a licensed attorney or non-attorney advocate, if applicable. Such notice shall be transmitted in writing by the UNC constituent institution when the student or Student Organization is initially Accused of a Violation, as defined herein, or as soon as reasonably possible thereafter so that an Advocate may participate in any campus-based Disciplinary or Conduct Procedure as provided by this regulation.

B. Role of Advocates in Disciplinary or Conduct Procedures

In accordance with Section 116-40.11, students and Student Organizations at UNC constituent institutions who have been Accused of a Violation of an institution's Disciplinary or Conduct Rules may be represented by an Advocate during any Disciplinary or Conduct Procedure, except when the violation:

1. Will be heard by a Student Honor Court; or
2. Is an allegation of Academic Dishonesty, as defined by the UNC constituent institution.

The right to have an Advocate represent a student or Student Organization applies when a student or Student Organization is initially Accused of a Violation, as defined herein.

Consistent with this regulation and the rules, policies, and/or guidelines governing a UNC constituent institution's Disciplinary or Conduct Procedures, an Advocate may fully participate in such procedures to the extent and in the same manner afforded to the student or Student Organization he/she represents. An attorney or other individual representing the UNC

³The UNC constituent institutions may adopt their own definitions of Academic Dishonesty not inconsistent with this regulation. *See also* N.C.G.S. § 116-40.11(a)(2).

constituent institution may participate in Disciplinary or Conduct Procedures in which an Advocate represents a student or a Student Organization.

When scheduling Disciplinary or Conduct Procedures, UNC constituent institutions will make reasonable efforts to accommodate an Advocate; however, the availability of students or Student Organization members; witnesses; the designated administrator, panel members, or board members assigned to the matter; and other necessary participants as well as the expectation to promptly complete the Disciplinary or Conduct Procedure may, in the UNC constituent institution's discretion, take priority when determining the date and time for a Disciplinary or Conduct Procedure. Additionally, an Advocate may not delay, disrupt, or otherwise interfere with a Disciplinary or Conduct Procedure.

C. Requirements to Serve as an Advocate During a UNC Constituent Institution's Disciplinary or Conduct Procedure

In order for an Advocate to represent a student or Student Organization in a Disciplinary or Conduct Procedure, the student or Student Organization must provide the office of the UNC constituent institution that administers the Disciplinary or Conduct Procedure with the three (3) documents described below. These three (3) documents must be submitted within the timeframe established by the UNC constituent institution. If the required documents are not completed and submitted within the timeframe established by the UNC constituent institution, the institution may, in its discretion, determine an appropriate remedy, up to and including denying the participation of the Advocate in the Disciplinary or Conduct Procedure.

1. Notice of representation.

Students and Student Organizations that plan to have an Advocate represent them during a Disciplinary or Conduct Procedure must notify the office of the UNC constituent institution that administers the procedure in writing of the Advocate's planned participation in a Disciplinary or Conduct Procedure. This notice must specify:

- (a) The identity of the Advocate;
- (b) Whether the individual is a licensed attorney or a non-attorney advocate; and
- (c) An address, telephone number, and email address where the Advocate can be reached.

2. FERPA authorization

In order for an Advocate to represent a student or Student Organization during a Disciplinary or Conduct Procedure or to speak with an official of a UNC constituent institution regarding the student or the members of a Student Organization, the student(s) must complete and submit a written authorization that meets the requirements of a valid consent as specified by the Family Educational Rights and Privacy Act (FERPA).⁴ Even if a student executes a valid FERPA consent authorizing the Advocate to receive information or documents regarding the student, the UNC constituent institution may at all times correspond directly with the student or Student Organization. It is the student's or Student Organization's responsibility to communicate and share information with the Advocate.

⁴The office of the UNC constituent institution that administers the Disciplinary or Conduct Procedure can supply students with an approved authorization form that meets the elements of a valid consent in accordance with FERPA.

3. Certification by Advocate.

Students or Student Organizations that plan to have a licensed attorney or non-attorney advocate represent them during a Disciplinary or Conduct Procedure must submit a certification form signed by the Advocate stating that the Advocate has read in their entirety and understands the following documents:

- (a) The applicable Disciplinary or Conduct Rules;
- (b) Any additional rules, policies, or guidelines that a UNC constituent institution has enacted for its Disciplinary or Conduct Procedures, consistent with this regulation; and
- (c) Section 700.4.1 of the UNC Policy Manual and this associated regulation.

IV. Training on Disciplinary or Conduct Procedures

UNC constituent institutions shall develop and provide training for students, Student Organizations, and institutional staff to ensure that Disciplinary or Conduct Procedures are conducted in a manner that is consistent with the provisions of the UNC Policy Manual, this regulation, and any other rules, policies, or guidelines that the UNC constituent institution has enacted for its Disciplinary and Conduct Procedures.

V. Monitoring Disciplinary or Conduct Procedures

UNC constituent institutions shall monitor and track the number of cases affected by Section 116-40.11 and this regulation during the course of an academic year and other information as may be requested by the president or the president's designee. Such data shall be collected annually by each UNC constituent institution, and, upon request, shall be reported to the president or the president's designee.