



TRANSMITTAL LETTER

The University of North Carolina
General Administration

Transmittal Number 90
May 9, 2014

THIS LETTER TRANSMITS CHANGES TO THE
UNC POLICY MANUAL

[700.4.1.1\[R\]](#)

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

This regulation formalizes the interpretive guidance that was issued in response to the statutory change last August (2013) and was approved by the President on April 30, 2014.

Please contact UNC General Administration Legal Affairs Division at 919-962-4588 or the Academic Affairs Division at 919-843-5389, if you have any questions.

**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.