

**INTERPRETIVE GUIDANCE FOR NORTH CAROLINA GENERAL STATUTES
SECTION 116-40.11: DISCIPLINARY PROCEEDINGS;
RIGHT TO COUNSEL FOR STUDENTS AND ORGANIZATIONS**

August 14, 2013

I. PURPOSE

This Interpretive Guidance from the Division of Legal Affairs at UNC-General Administration provides information regarding 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 counsel and non-attorney advocates on behalf of students and Student Organizations in disciplinary proceedings. Each UNC constituent institution may establish its own specific rules and procedures for administering section 116-40.11 in a manner that is consistent with this Interpretive Guidance and the provisions of Section 700.4.1 of the UNC Policy Manual. This Interpretive Guidance will remain in effect until such time as it is withdrawn, modified or superseded by policies, regulations or guidelines established by the Board of Governors or by the President.

II. DEFINITIONS

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

- A. Accused of a Violation** – Occurs when a designated university official brings a formal charge against a student or Student Organization to initiate a Disciplinary Procedure as described in paragraph V.A. and VI.A. of section 700.4.1. (entitled, “Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings”) of the UNC Policy Manual.¹
- B. Disciplinary or Conduct Rules** – The Code of Student Conduct of a constituent institution described in paragraph IV. of section 700.4.1. of the UNC Policy Manual.
- C. Disciplinary 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 has violated Disciplinary or Conduct Rules.
- D. Student Honor Court** – A Disciplinary Procedure board or panel that is composed entirely of students who make the determination regarding whether a student or Student Organization has violated a UNC constituent institution’s Disciplinary or Conduct Rules.

¹ Section 700.4.1. is available online at <http://www.northcarolina.edu/policy/index.php?pg=dl&id=457&format=pdf&inline=1>.

- E. Student Organization(s)** – A student group that has been officially recognized or sponsored by a UNC constituent institution.

III. GUIDANCE

A. Background Information Regarding Disciplinary Procedures at UNC Constituent Institutions

Disciplinary 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 Procedures may result in the imposition of sanctions in appropriate cases, the primary objectives of Disciplinary Procedures are to uphold honor, integrity, and personal responsibility and to promote student learning, safety, health, and wellbeing.

This emphasis upon student education and growth as the primary objectives of the Disciplinary Procedures distinguish these processes from criminal or civil legal proceedings.² Consistent with these student learning and development objectives, Disciplinary 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.

B. Disciplinary Procedures in which Licensed Attorneys and Non-Attorney Advocates May Fully Participate

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 a licensed attorney or a non-attorney advocate during any Disciplinary 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 a licensed attorney or non-attorney advocate represent a student or Student Organization applies when a student or Student Organization was Accused of a Violation on or after [insert date section 116-40.11 becomes effective].

When scheduling Disciplinary Procedures, UNC constituent institutions will make reasonable efforts to accommodate a licensed attorney or non-attorney 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 may take priority when determining the date and time for a Disciplinary Procedure.

² For example, Disciplinary Procedures are not subject to the federal Rules of Evidence or the 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 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.

Nothing in this Interpretive Guidance shall be construed to create a right to be represented during a Disciplinary Procedure at public expense.

C. Requirements to Serve as a Licensed Attorney or Non-Attorney Advocate During a UNC Constituent Institution’s Disciplinary Procedure

In order for a licensed attorney or non-attorney advocate to represent a student or Student Organization in a Disciplinary Procedure, the student or Student Organization must provide the office of the UNC constituent institution that administers the Disciplinary Procedure with the three (3) documents described below. These three (3) documents must be submitted within the timeframe established by the UNC constituent institution.

1. Notice of Representation

Students and Student Organizations that plan to have a licensed attorney or non-attorney advocate represent them during a Disciplinary Procedure must notify the office of the UNC constituent institution that administers the Disciplinary Procedure in writing of the attorney’s or advocate’s planned participation in a Disciplinary Procedure. This notice must specify:

1. The identity of the licensed attorney or non-attorney advocate;
2. Whether the individual is a licensed attorney or a non-attorney advocate; and
3. An address, telephone number, and email address where the licensed attorney or non-attorney advocate can be reached.

2. FERPA Authorization

In order for a licensed attorney or a non-attorney advocate to represent a student or Student Organization during a Disciplinary Procedure or to speak with an official of a UNC constituent institution regarding the student or the members of a Student Organization, the student 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).³ Even if a student executes a valid FERPA consent authorizing the licensed attorney or non-attorney 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 a licensed attorney or non-attorney advocate.

3. Certification by Licensed Attorney or Non-Attorney Advocate

Students or Student Organizations that plan to have a licensed attorney or non-attorney advocate represent them during a Disciplinary Procedure must submit a certification form signed by the

³ The office of the UNC constituent institution that administers the Disciplinary Procedure can supply students with an approved authorization form that meets the elements of a valid consent in accordance with FERPA.

licensed attorney or non-attorney advocate stating that the licensed attorney or non-attorney advocate has read in their entirety and understood the following documents:

1. The applicable Disciplinary or Conduct Rules;
2. Any additional rules, policies, or guidelines that a UNC constituent institution has enacted for its Disciplinary Procedure consistent with this Interpretive Guidance and
3. Section 700.4.1. of the UNC Policy Manual.

D. Participation of Licensed Attorneys or Non-Attorney Advocates in Disciplinary Procedures

Consistent with this Interpretive Guidance and the rules, policies, or guidelines governing a UNC constituent institution's Disciplinary Procedure, licensed attorneys or non-attorney advocates may fully participate in Disciplinary Procedures only to the extent afforded to the student or Student Organization they represent. Additionally, licensed attorneys and non-attorney advocates may not delay, disrupt, or otherwise interfere with a Disciplinary Procedure.

An attorney or other individual representing the UNC constituent institution may participate in Disciplinary Procedures in which a licensed attorney or non-attorney advocate represents a student or a Student Organization.