Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings

The purpose of this policy is to establish legally supportable, fair, effective and efficient procedures for student disciplinary proceedings. The minimum standards for these proceedings are set out below. These minimum standards exceed the requirements of due process and therefore complying with requirements will also result in providing due process.

I. Elements of Policy

The two kinds of standards that must be followed are procedural standards and substantive standards.

II. Procedural

The procedural standards require notice and an opportunity for a hearing. The formality of these provisions will vary depending on the seriousness of the offense. (See Sections V and VI, below.)

III. Substantive

Substantive standards require that the decision reached be neither arbitrary nor capricious. Generally this means that there is some evidence to support the decision reached.

IV. Code of Student Conduct

Each constituent institution must adopt a code of student conduct that: (a) is applicable to all students; (b) defines what conduct is prohibited; and (c) specifies the types of sanctions that may be imposed for each category of prohibited conduct. Ranges of violations and ranges of sanctions are permissible. Progressive sanctions for multiple violations are also legitimate. A periodic review of the code should be undertaken to ensure it remains in compliance with applicable laws, policies and regulations.

V. Requirements for Minor Violations

A minor violation is one for which the possible sanctions are less than suspension and expulsion.

A. Procedural Requirements:

1. A constituent institution may receive and, in its discretion, investigate reports of incidents of student misconduct. A student may be accused of a violation of the code of student conduct only by a designated university official with a formal charge initiating a disciplinary proceeding. A determination to initiate a disciplinary proceeding accusing a student of a violation of the code of student conduct should be made by a designated university official within a reasonable period of time after the constituent institution receives the report.

2. If a charge is to be pursued, it is then referred to a hearing official or body. The student must be notified in writing of the alleged violation(s), the referral and the hearing date. The hearing should not be scheduled for at least five (5) calendar days after the student receives the notice, unless the student agrees to an earlier hearing date. A committee member or the hearing official who has a conflict with, bias about or interest in the case should recuse himself. If the committee member or the hearing official refuses to recuse himself, a designated university official shall make the recusal decision.
3. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with Section IV, above. The waiver and acceptance must be in writing and signed by the student.

4. If a hearing is held, it may occur as a meeting between the hearing committee/official and the student. It will be a closed meeting. The institution shall assure that students have the capability to present their evidence and defenses at the meeting or hearing. Witness testimony and documents may be received from both the designated university official and the student, who will both be present during all of the evidentiary presentation. At the end of the hearing, the committee/official will determine whether the designated university official has shown by a preponderance of the evidence that the student committed the offense charged. This determination must be based solely on the evidence presented at the hearing or meeting. The committee/official will also determine the appropriate sanction within the ranges specified in the definitions in Section IV, above.

5. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed forty-five (45) calendar days after the date of the hearing. The final administrative decision must be transmitted to the student in writing within ten (10) calendar days of the date the decision is made, and it must contain a brief summary of the evidence upon which the decision is based.

6. Appeal rights must be specified in the decision letter. At least one level of administrative appeal must be permitted and the time in which to appeal and the permitted grounds for the appeal must be articulated. Further appellate opportunities shall be governed by the Code [502 D(3)] of the University of North Carolina.

B. Substantive Requirements: In each case there must be sufficient evidence supporting the decision and the sanction.

VI. Serious Violations

A serious violation is one for which the possible sanctions include suspension or expulsion.

A. Procedural Requirements:

1. A constituent institution may receive and, in its discretion, investigate reports of incidents of student misconduct. A student may be accused of a violation of the code of student conduct only by a designated university official with a formal charge initiating a disciplinary proceeding. A determination to initiate a disciplinary proceeding accusing a student of a violation of the code of student conduct should be made by a designated university official within a reasonable period of time after the constituent institution receives the report.

2. Written notice to the student must be provided if a decision is made to issue a formal charge against the student. The notice should specify the offense(s) charged, the possible sanctions, and a brief recitation of the factual allegations supporting the charge. For all charged offenses which could result in expulsion, the notice must include this possibility and must specify that expulsion precludes matriculation at any UNC constituent institution.
3. A formal charge is then referred to a hearing official or body. The student must be notified in writing of the referral. This notice may include a hearing date. The hearing date may not be scheduled for at least ten (10) calendar days after the student receives notice of the referral, unless the student agrees to an earlier hearing date. Reasonable extensions of time for either party to prepare for the hearing should be allowed.

4. If a hearing date is not set in the notice of the charge, written notice of the hearing date must be sent to be received by the student not less than five (5) calendar days before the proceeding is scheduled for hearing.

5. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with Section IV, above. The designated university official must determine that the waiver and acceptance is voluntary and that the charge and sanction have factual support. The waiver and acceptance must be in writing and signed by the student and the designated university official.

6. Prior to the hearing, the student must be given the opportunity to review any written evidence that will be used at the hearing and to obtain a list of witnesses.

7. A committee member or hearing official who has a conflict with, bias about or an interest in a case must recuse himself. If the committee member refuses to recuse himself, a designated university official will make the recusal decision. The student must also be given the opportunity to challenge a committee member or hearing official on these grounds. The decision on the challenge must be made by the committee or official within five (5) calendar days. If necessary, a substituted committee member or hearing official will be appointed.

8. The institution shall assure that students have the capability to present their evidence and defenses at the hearings. The method for assuring this capability may vary depending on the nature of the case and on the nature of the representation of the institution or the charging party. Each institution must have a policy delineating the participation or prohibition of attorneys and non-attorney advocates. Representation or assistance by attorneys or non-attorney advocates at the hearing is neither required nor encouraged.

9. The hearing will be closed to the public, unless a constituent institution’s policy provides otherwise.

10. A transcript or other verbatim record of the hearing (but not of the deliberations) will be prepared. The institution will be responsible for the costs of this record.

11. At the hearing, a designated university official must present sufficient witness and/or documentary evidence to establish the violation. The student must be given an opportunity to question this evidence, either by direct questions or inquiries transmitted through the committee or hearing official.

12. The student must be given the opportunity to present any witness or documentary evidence that he offers, provided that the evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other students.

13. At the conclusion of the evidence, the committee/official will determine whether the charging official has shown by a preponderance of the evidence, or by such higher standard as the institution may adopt, that the student committed the offense charged.
This determination must be based solely on the evidence presented at the hearing. The committee or official will also determine the appropriate sanction within the ranges specified in accordance with Section IV, above.

14. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed forty-five (45) calendar days after the hearing is completed. The final administrative decision must be transmitted in writing to the student within ten (10) calendar days of the date the decision is made and must contain a brief summary of the evidence upon which the decision is based.

15. A vice chancellor or his delegate must make the final administrative determination in all suspension cases. The delegation may be to a student committee or a student/employee committee.

16. The Chancellor or a vice chancellor must make the final administrative decision in all expulsion cases.

17. Appeal rights must be specified in the final decision letter. At least one level of institutional appeal must be permitted, and the time limits in which to appeal and the permitted grounds for appeal must be articulated.

18. Further appeals shall be governed by the Code of the University of North Carolina.

B. Substantive Requirements: In each case there must be sufficient evidence supporting the decision and the sanction.

VII. Special Cases

A. If the formal charge is also the subject of pending criminal charges, the institution must, at a minimum, allow an attorney advisor to accompany the student to the hearing.

B. Charges against multiple students involved in the same incident may be heard in a single case only if each student defendant consents to such a proceeding.

C. In cases of alleged sexual misconduct, both parties are entitled to the same opportunities to have others present during a disciplinary proceeding.¹

D. Victims of crimes of violence must be notified of the results of the disciplinary proceeding of the alleged assailant. “Results” means the name of the student assailant, the violation charged or committed, the essential findings supporting the conclusion that the violation was committed, the sanction if any is imposed, the duration of the sanction and the date the sanction was imposed.²

¹ The term “sexual misconduct” includes sexual assault, sexual battery, sexual coercion, rape, stalking, sexual violence and other forms of sexual misconduct. Furthermore, “both parties” refers specifically to the individual who claims to have been the victim of the sexual misconduct and the student who is alleged to have engaged in sexual misconduct.

² The disciplinary records of high school students at the North Carolina School of Science and Mathematics described in Sections VII.C.-D. of this policy may not be disclosed without appropriate consent. [CFR 99.31(a)(13)]
E. When a student with a disability is charged with an offense, the institution will assure that all requirements of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act are met.

*Effective Date:* This policy applies to all offenses committed on or after August 23, 2013.
Policy on Student Conduct

I. Purpose

The Code of the University of North Carolina describes the University as an academic community “dedicated to the transmission and advancement of knowledge and understanding.” Pursuant to The Code, the Board of Governors is committed to supporting and encouraging “freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.” The Code also provides, “The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.”

These freedoms come with certain responsibilities. Faculty and students “share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.” Students, specifically, must conduct “themselves in a manner that helps to enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.”

Balancing these freedoms and responsibilities can be challenging. The Board of Governors is committed to preserving and protecting these freedoms, while recognizing that certain conduct which intentionally targets a person or identifiable group of persons based upon the person’s or identifiable group’s race, color, religion, national origin, gender, sexual orientation, gender-identity, creed, disability, or veteran status may interfere with the University’s core mission of advancing knowledge and understanding. Accordingly, to support and assist the constituent institutions of the University of North Carolina in their continuing efforts to advance the University’s mission, the Board of Governors’ adopts this policy. This policy is not intended to expand the legal rights of any person or identifiable group of persons under state or federal law.

Every constituent institution has adopted a student code of conduct that establishes rules and regulations concerning student conduct and discipline. All such codes of conduct address criminal and unlawful conduct, as well as behaviors that violate University policies, rules or regulations. University Policy 700.4.1 sets forth the minimum procedural and substantive due process standards applicable to student disciplinary proceedings. This companion policy reflects recommendations received by the President on March 31, 2009, from the UNC Study Commission to Review Student Codes of Conduct Relating to Hate Crimes. It sets forth provisions for inclusion in all UNC campus student codes of conduct. These provisions are not exclusive. Student codes of conduct may include other provisions not inconsistent with these mandatory provisions. This policy also accommodates the different legal standards that may apply to the high school programs at the North Carolina School of Science and Mathematics and the UNC School of the Arts.

II. Mandatory Provisions

A. The following statements shall be included in all codes of student conduct:

1. The University embraces and strives to uphold the freedoms of expression and speech guaranteed by the First Amendment of the U.S. Constitution and the North Carolina Constitution. The University has the right under appropriate circumstances to regulate the time, place, and manner of exercising these and other constitutionally protected rights.

2. All students are responsible for conducting themselves in a manner that helps enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.
3. Violations of campus or University policies, rules or regulations, or federal, state, or local law may result in a violation of the student code of conduct and imposition of student discipline.

B. The following provisions addressing specific student conduct that could lead to disciplinary action shall be included:

1. No student shall threaten, coerce, harass or intimidate another person or identifiable group of persons, in a manner that is unlawful or in violation of a constitutionally valid University policy, while on University premises or at University-sponsored activities based upon the person’s race, color, religion, national origin, gender, sexual orientation, gender-identify, creed, disability, or veteran status.

2. No student shall engage in unlawful harassment leading to a hostile environment. Unlawful harassment includes conduct that creates a hostile environment by meeting the following criteria: It is:

   a. Directed toward a particular person or persons;
   b. Based upon the person’s race, color, religion, national origin, gender, sexual orientation, gender-identify, creed, disability, or veteran status;
   c. Unwelcome;
   d. Severe or pervasive;
   e. Objectively offensive; and
   f. So unreasonably interferes with the target person’s employment, academic pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University’s resources and opportunities.

3. In determining whether student conduct violates these provisions, all relevant facts and circumstances shall be considered. Care must be exercised in order to preserve freedoms of speech and expression, as articulated in current legal standards. Advice should be sought from campus attorneys, as appropriate.

III. Discipline

Disciplinary measures and/or penalties shall be in accordance with procedural and substantive due process safeguards applicable to disciplinary actions as required by Section 502D(3) of The Code, Policy 700.4.1, and applicable campus policies.

IV. Education and Advancement

University and campus attorneys, student affairs personnel, and campus law enforcement shall familiarize themselves and remain current regarding legal standards applicable to targeting individuals based upon race, color, religion, national origin, gender, sexual orientation, gender-identify, creed, disability, or veteran status through

A. Unlawful threats, or

B. Unlawful harassment creating a hostile environment as defined in this policy.