

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 305

Short Title: Amend Law Regarding University Discipline. (Public)

Sponsors: Representatives Setzer, Howard, Saine, and D. Hall (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Education - Universities, if favorable, Judiciary, if favorable, Rules, Calendar, and
Operations of the House

March 11, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH DUE PROCESS SAFEGUARDS FOR STUDENTS FACING
3 UNIVERSITY DISCIPLINARY PROCEEDINGS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 116-11 is amended by adding a new subdivision to read:

6 "**§ 116-11. Powers and duties generally.**

7 The powers and duties of the Board of Governors shall include the following:

8 ...

9 (13c) The Board of Governors shall adopt mandatory, systemwide policies
10 governing the due process rights afforded to students by a constituent
11 institution during disciplinary investigations and disciplinary hearings. At a
12 minimum, the policies shall include all of the following with regard to
13 allegations of sexual misconduct by a student:

14 a. The accused student shall be promptly provided adequate notice
15 including details of the allegations, details of any alleged violation of
16 the Student Code of Conduct, and copies of all evidence at a
17 meaningful time and in a meaningful manner. The accused student
18 shall also be advised of the right to consult legal counsel, the right to
19 be advised and accompanied by legal counsel at all stages of the
20 investigation and hearings, and the right to appeal any findings or
21 conclusions of misconduct.

22 b. The parties to the investigation shall be permitted to conduct
23 questioning and cross-examination of witnesses in order to establish
24 the veracity of witnesses, parties, and documents.

25 c. The individual conducting the investigation shall not also serve as a
26 finder of fact in a subsequent hearing, and the constituent institution
27 shall take steps to ensure that both the investigation and any hearing
28 are conducted in an impartial manner.

29 d. All findings of fact and conclusions during both the investigation and
30 any hearing shall be written, sufficiently detailed to permit meaningful
31 review on appeal, and both the complainant and the accused student
32 shall be provided copies within a specified time frame.

33 e. The standard of proof of responsibility for proving sexual misconduct
34 shall not be less than clear and convincing evidence.



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...."

SECTION 2. G.S. 116-40.11 is recodified as G.S. 116-44.21 and included in Part 8 of Article 1 of Chapter 116 of the General Statutes as created in Section 3 of this act.

SECTION 3. Article 1 of Chapter 116 is amended by adding a new Part to read:

"Part 8. Student Disciplinary Proceedings.

§ 116-44.20. Disciplinary proceedings; adoption of campus policies.

(a) Each constituent institution of The University of North Carolina shall adopt policies (University policies) to govern the conduct of students and to establish adequate due process procedures to be followed by university officials and students when conducting disciplinary proceedings against students. The policies must comply with the policies adopted by the Board of Governors under G.S. 116-11(13c), the provisions of this Article, and the constitutions, statutes, and regulations of the United States and the State of North Carolina.

(b) University policies adopted under subsection (a) of this section shall include or provide for the development of a Code of Student Conduct (Code of Conduct). The Code of Conduct must notify students of the standards of behavior expected of them, conduct that may subject a student to discipline, and the range of disciplinary measures that may be used in response to violations of the Code of Conduct.

(c) University policies may authorize suspension, but not expulsion, of a student for conduct not occurring on campus, provided the student's conduct otherwise violates the Code of Conduct and the conduct has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the constituent institution or the safety of individuals in the educational environment.

(d) No university policy shall allow a student to be long-term suspended or expelled without first providing a hearing in which the student has been guaranteed due process rights as required by this Article.

(e) University policies shall not impose mandatory suspensions or expulsions for specific violations unless otherwise provided by State or federal law.

(f) University policies shall minimize the use of long-term suspension and expulsion by restricting the availability of long-term suspension or expulsion to those violations deemed to be serious violations of the Code of Conduct that either threaten the future safety of students, staff, or school visitors, or threaten to substantially disrupt the educational environment.

(g) University policies shall include the hearing notification procedures and due process procedures to be followed by university officials and students for cases involving a disciplinary outcome that may result in suspension or expulsion, which shall be consistent with this Article.

§ 116-44.21. Disciplinary proceedings; hearings; right to counsel for students and organizations.

(a) ~~Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules~~ Student Code of Conduct 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 shall be permitted to fully participate during any disciplinary procedure hearing 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~~ 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

1 and used by the constituent institution regarding the alleged violation. However, a student
2 organization shall not have the right to be represented by a licensed attorney or nonattorney
3 advocate if the constituent institution has implemented a "Student Honor Court" which is fully
4 staffed by students to address such violations.

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

7 **SECTION 4.** This act becomes effective October 1, 2019, and applies to
8 investigations and proceedings initiated on or after that date.