

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL DRS35142-MK-68B*

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

Sponsors: Senators Krawiec, Ballard, and Sawyer (Primary Sponsors).

Referred to:

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

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

4 "Part 8. Student Disciplinary Proceedings.

5 "§ 116-44.20. Disciplinary proceedings; adoption of campus policies.

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

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

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

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

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

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

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

34 "§ 116-44.21. Disciplinary proceedings; hearings; right to counsel for students and
35 organizations.

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

43 (1) If the constituent institution has implemented a "Student Honor Court" which
44 is fully staffed by students to address such violations.

45 (2) For for any allegation of "academic dishonesty" as defined by the constituent
46 institution.

47 (b) Any student organization officially recognized by a constituent institution that is
48 accused of a violation of the disciplinary or conduct rules of the constituent institution shall have
49 the right to be represented, at the organization's expense, by a licensed attorney or nonattorney
50 advocate who may fully participate during any disciplinary procedure or other procedure adopted
51 and used by the constituent institution regarding the alleged violation. However, a student

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

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

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