Just Enough Legal Stuff
For New Faculty

UNCSA

INSTITUTIONAL INTEGRITY
JUST BE A GOOD PERSON
The UNCSA Community

Students
The UNCSA Community

Administration
The UNCSA Community

Staff
The UNCSA Community

Faculty
The Dark Side
(Administration)

Being an administrator at a university is like being the captain of a ship that has mutinied.

Except, the crew refuses to leave the ship, and they still expect you to steer.*

*I am faculty too.
Legal Affairs
Board of Trustees and University Secretary
Title IX Compliance
Clery Compliance
Ombuds
Internal Audit
State Ethics Liaison
Enterprise Risk Management
General Counsel

One Client: The Institution

GC Does not Represent Individuals

Defense of State Employees Act
Chief Compliance Officer and Director of Title IX

- Valerie Thelen
- Title IX
- Investigations
- Reports
- Clery Act
- Regulatory Compliance
Sources of Authority

- **U.S. Constitution**
- Federal Laws and Regulations
- North Carolina General Statutes and Administrative Code
- UNC Board of Governors Code and Policy Manual
- UNCSA Board of Trustees and Chancellor Policy Manual
- UNCSA Handbooks, Bulletins, Art School “Policies”
- Completely Wrong Anecdotal Nonsense
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Subjects For Today

• Contracting Authority
• Public Records and Meetings
• FERPA
• Discrimination
• Title IX and Harrassment
• Clery
• ADA
• Intellectual Property Policies
• First Amendment
• Due Process
• Reporting
Contracting Authority

Faculty does not have authority to bind UNCSA

Contract is void; or,

The Chancellor becomes personally liable (a bad career move)
The Open Meetings Act

It is the public policy of North Carolina that the hearings, deliberations, and actions of Public Bodies be conducted openly.

N.C.G.S. 143-318.9
Public Records

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people.

N.C.G.S. 132.1

Before you hit send, consider how it will look on the front page of the newspaper.
FERPA
UNCSA Policy #803

Family Educational Rights & Privacy Act protects the confidentiality of student education records and provides 5 rights:

• Inspect student’s own records

• Prevent disclosure of student’s own records

• Amend and append records

• Notification of rights

• File a complaint with US DOE
Student Education Records

• Personal information
• Grades
• Schedules
• Disability status
• Academic standing
• Computer display screen
• Registrar documents
• Class lists
• SSN
• Email
• Notes
• Photographs
FERPA Release Or Disclosure

If 18 or enrolled in college, written consent from the student is required to release or disclose – even to the student’s parents.

UNCSA internal access only for legitimate use.

Directory Information may be disclosed.
UNCSA Directory Information
Student May Opt Out

• Student’s name
• Parents’ names
• Addresses
• Telephone listings
• Date and place of birth
• Major field of study
• Class level
• Dates of attendance

• Participation in officially recognized activities
• Performance brochures
• Degrees and awards received
• The most recent previous educational agency or institution attended by the student
• e-mail address
• Full or part-time status
Admission to, employment by, and promotion in the University of North Carolina and all of its constituent institutions shall be on the basis of merit, and there shall be no unlawful discrimination against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic information, or veteran status.
Americans With Disabilities Act

A physical or mental impairment that substantially limits one or more major life activities

Distinguish disability from conduct
Americans With Disabilities Act

Unlawful to discriminate on the basis of a disability

Coordinate with Learning Resources & ADA Coordinator
  • Assistive technology
  • Attendance
  • Note takers
  • Testing accommodations

Reasonable Accommodations is a term of art
UNCSA prohibits discrimination on the basis of sex, as mandated by Title IX of the Education Amendments of 1972 (Title IX), and as part of its commitment to a community free of discrimination, harassment, and violence.

UNCSA will not tolerate sexual harassment, misconduct, or violence at any time or under any circumstances.
The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or Clery Act

• Disclose crimes that have occurred on campus

• Records are available for public review

• Failure to accurately report crimes may result in censure and fines

• Campus Security Authority

• Serious Crimes

• Report everything you would consider a crime
Intellectual Property Rights

Patents
Trade Secrets
Trademarks
Copyrights
The Fundamental Perspective

To Promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries

United States Constitution, Article I, Section 8, Clause 8
Only one thing is impossible for God: to find any sense in any copyright law on the planet.

Mark Twain, Notebooks
How To Secure A Copyright

Secured *automatically* when the work is fixed for the first time in a tangible form
UNC Copyright Ownership Policy

The Policy is organized by UNCSA status:

- Faculty/EPA Employee
- EPA/Non-Faculty Employees
- Staff
- Independent Contractors
- Students
Limitations of Copyright Protection

No rights specified for:
• Directors
• Designers
• Sound Designers
• Lighting Designers
• Costume Designers
• Stage Managers
• Actors
• Cinematographers
• Engineers

• Contracts and Collective Bargaining Agreements
• The Dramatist Guild Bill of Rights
• Written description or record of work can be protected
Copyright Rights

Use of Copyrighted Works

Fair Use

- copy
- distribute
- derivative works (book→movie)

- commentary
- parody
- limited educational use

- read a book
- see a movie
- Watch Sox at Fenway
- Borrow book from library
Fair Use – 17 USC §107

The fair use of a copyrighted work for purposes such as:

• Criticism
• Comment
• News Reporting
• Teaching
• Scholarship
• Research

Is not an infringement of copyright
Fair Use Factors

1. The **purpose and character** of the use

2. The **nature** of the work

3. The **amount and substantiality** of the portion used

4. The effect of the use upon the **potential market**
Good Faith Defense, Section 504(c)(2)

For individuals at educational non-profit organizations who have made reasonable efforts in their judgment that their use of a work constitutes fair use
First Amendment – Speech

Free Speech includes most forms of expression, but not:

- Classroom disruption
- Fighting words
- Obscenity
- Harassment

NC Law and BOG Policy restricts UNCSA from taking a position on political issues.

- Provides penalties for disruptions
- Requires UNCSA to allow offensive speech
First Amendment – Speech

Senior UNCSA leaders have additional restrictions on speech

Cannot use State resources for political advocacy, only for informational purposes
First Amendment – Religion

Right to practice religion, provided true tenants and beliefs
  • I respect Darth Cthulhuism, but probably won’t accommodate it

Reasonable accommodations
  • Absence policies
  • Clothing
Due Process

UNCSA has established due process procedures for violations of rules and policies

Notice and opportunity to be heard

Cannot act arbitrarily, capriciously, or with malice

Don’t invent your own procedures or sanctions
Reporting

Go to your Dean, Provost, Chief Compliance Officer, or General Counsel if you are told about or witness:

- Sexual Assault
- Crime
- Harassment
- Violence
- Threat to Persons or Campus
- Child Pornography