STUDENT ADVISORY MEMORANDUM 95-2

June 16, 1995

To: College Presidents

From: Vice Chancellor Robert E. Diaz

Re: Procedures to be Followed in Cases of Academic Dishonesty

I. "Academic" versus "Disciplinary" Violations

Where a public institution of higher education takes action to sanction a student, it must meet the due process requirements of the fourteenth amendment to the Constitution. In determining what process is due in such cases, the courts have distinguished between cases in which students are being sanctioned for "academic" reasons and those in which students are being sanctioned for violating a valid rule of conduct ("disciplinary" reasons).

In the case where an institution seeks to impose sanctions for failure to meet academic standards, such as a student's dismissal for poor academic and/or clinical performance, the courts have generally deferred to the expertise of the educators making the decision. Because the decision is one involving professional judgment, extensive fact-finding procedures are not required; only minimal procedures are required to ensure that the matter was considered rationally and in good faith. Sanctions for disciplinary violations, on the other hand, usually involve questions of fact that do not require academic expertise. As a result, courts have required substantial due process protections, including a hearing. The Student Disciplinary Procedures set forth in Article 15 of the Bylaws meet the constitutional requirement of due process in such cases.
In determining whether a violation is "academic" or "disciplinary", the analysis of the court in *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973), is instructive. There, the court held that a nursing student who had been expelled from a state college after allegedly failing to submit a required physical exam report, failing to inform the college of her previous attendance at another nursing school and failing to attend classes regularly, was entitled to a due process hearing. In determining that the matter was more akin to a disciplinary violation than an "academic violation", the court noted:

Like the traditional disciplinary case, the determination of whether plaintiff did or did not comply with the school regulations is a question of fact. Most importantly, in determining this factual question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved, but rather disputed facts concerning whether plaintiff did or did not comply with certain school regulations. These issues adapt themselves readily to determination by a fair and impartial "due process" hearing.

II. The Classification of Allegations of Cheating and Plagiarism

There have been several court decisions addressing the due process requirements for students charged with cheating. A number of courts that have considered the matter have held that allegations of cheating were "disciplinary" in nature and that students alleged to have cheated were entitled to the higher level of due process afforded in disciplinary cases. The reasoning of these courts was that (1) allegations of cheating involve factual questions rather than evaluative determinations by professionals; and (2) such allegations are more stigmatizing than allegations of poor academic performance and may have a greater impact on a student’s future.

However, at least one court categorized a student’s cheating on an exam as "clearly an academic matter." Although there is not unanimity of opinion on the question, we agree with the analyses of the courts that have found allegations of cheating to be disciplinary in nature because they do not involve scholastic standards, but rather involve factual determinations that are properly resolved through a due process hearing.

The case of plagiarism is somewhat more complicated. At least one court has held that an allegation of plagiarism was an academic offense. In that case, which involved the suspension of a student for submitting a term paper quoting from uncited sources, the court reasoned that the student was alleged to have committed "academic
fraud" which involved the application of "academic standards" by school authorities.

A review of court decisions indicates that plagiarism may be either academic or disciplinary depending on the nature of the allegation. Whether a student did in fact plagiarize from another source involves primarily questions of fact. However, the primary issue in a plagiarism case may be whether the ideas expressed by a student were original or were the ideas of another, or other questions involving a knowledge of the subject matter. In such cases, the matter is more properly characterized as "academic."

III. Processes to be Followed in Resolving Allegations of Cheating and Plagiarism

In light of the foregoing discussion, allegations of cheating should be referred to the Chief Student Affairs Officer to be handled under the Student Disciplinary Procedures in Article 15 of the Bylaws.

With regard to allegations of plagiarism, it is our recommendation that the matter be referred to the Chief Academic Officer to determine whether the matter involves an academic question (i.e., because it is based on the expertise of scholars in the field) or a disciplinary matter (i.e., because it involves a factual question as to whether the student complied with rules of conduct.). In the event that the Chief Academic Officer determines that the matter is academic, the college’s regular procedures in terms of grading and appeals should be followed. If the Chief Academic Officer determines that the matter is disciplinary, the matter should be handled as a disciplinary violation under Article 15 of the Bylaws.

It should be stressed that issues of cheating or plagiarism cannot be treated as both "academic" and "disciplinary" at the same time because it raises the potential for inconsistent judgments, for example, a student receiving an "F" in a course and then being found "not guilty" after a hearing before a Faculty-Student Disciplinary Committee.

The above scenario actually took place in one case, in which a student at a college received a "zero" on an examination based on the instructor’s belief that he cheated. The matter was also referred to the school’s Honor Board, who found the student not guilty. When the student sought to have the zero removed in light of the Honor Board’s finding, the school refused, arguing that the matter was one of "grades", which was delegated to the faculty. The court disagreed and ordered the school to remove the grade. The court stated:
... this is not an instance of discretionary grading, and the cases relating to academic standards and sanctions for academic deficiencies are not apposite. This is a disciplinary matter, rather than an academic one, a distinction of great significance.

Having sent the matter to the Honor Board, the court held, the school was required to comply with the Board's decision.

To avoid the above problem, we would advise that, in disciplinary cases, a student's grade be held in abeyance pending the outcome of the disciplinary process. If the student is found "guilty", the faculty member may then reflect the result in the grade.

The Office of Legal Affairs will be happy to review the colleges academic grade appeal procedures to ensure that they meet all legal and university requirements. You may forward your procedures to the office to my attention.

c:  Chief Academic Officers & Provosts
    Chief Administrators for Student Development
    Legal Affairs Designees