Dear Ms. McDonald:

The Office of University Counsel received your request for a formal opinion concerning the proposal of drafting a policy allowing for the drug testing of students, as a component of the student conduct process. You inquire as to whether Coastal Carolina University is authorized to adopt such a policy without being in violation of state or federal laws, and whether there are certain parameters in place to regulate the use of student drug testing.

The Office of University Counsel has reviewed state and federal law and has not found a provision preventing Coastal Carolina University from adopting a policy allowing the drug testing of students within the student conduct process.

The Fourth Circuit’s analysis in the area of drug testing begins with the question of whether urinalysis is considered a “search” for Fourth Amendment purposes. The Fourth Amendment guarantees the privacy, dignity, and security of persons against certain capricious and evasive acts by officers of the government. Undeniably, it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has recognized as reasonable and as such, these intrusions are deemed “searches” under the Fourth Amendment. See Carroll v. City of Westminster, 233 F.3d 208 (4th Cir. Md. 2000). However, the Fourth Amendment does not proscribe all searches and seizures, but only those that are unreasonable.

In determining the reasonability of implementing a drug testing policy for students enrolled at Coastal Carolina University who find themselves within the student conduct process, the University must judge by balancing the drug test’s intrusion on the individual’s Fourth Amendment interest against the promotion of legitimate governmental interests. Id.; Stigile v. Clinton, 110 F.3d 801, 803 (D.C. Cir. 1997). Additionally, the Supreme Court noted that to be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing and exceptions to the requirement have been upheld in limited circumstances such as, special needs beyond the normal need for law enforcement. Moreover, the search will be upheld only where the government’s interests in conducting the search are “substantial” enough to override the individual’s privacy interest, Chandler v. Miller, 117 S. Ct.
1295, 1303. However, See Bd. of Educ. v. Earls, 536 U.S. 822 (U.S. 2002), where The United States Supreme Court held the board of education’s drug testing policy constitutional, even though the policy failed to address an established problem and did not show individualized suspicion of drug use because it reasonably served the board’s legitimate interest in detecting and preventing drug use among students.

Furthermore, the Office of University Counsel has reviewed state and federal law and has not found a provision placing certain parameters to regulate the use of student drug testing. There are however, both state and federal laws placing parameters of drug prevention programs, such as drug testing, within the workplace.

§41-1-15 of the South Carolina Code establishes that an “employer may establish a drug prevention program in the workplace and such program should include (1) a substance abuse policy statement that balances the employer’s respect for individuals with the need to maintain a safe, productive, and drug-free environment; (2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier; (3) all interviews, reports, statements, memoranda and test results received by the employer through a substance abuse testing program are confidential communications but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding; (4) Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to such test results shall keep all information confidential.”

Additionally, §41 U.S.C. 81, the Drug-Free Workplace Act of 1988, requires all federal grantees to agree that they will provide a drug-free workplace as a precondition of receiving a contract or grant from a federal agency. The Act requires organizations to provide a drug-free workplace by: (1) publishing and furnishing a policy statement to employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy; (2) establish a drug-free awareness program to make employees aware of the dangers of drug abuse in the workplace, the policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (3) notify employees that as a condition of employment, the employee must abide by the policy and notify the employer within five calendar days if he or she is convicted of a criminal drug violation in the workplace; (4) notify the contracting or granting agency within 10 days after receiving notice that the employee has been convicted of a violation in the workplace; (5) impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee convicted of a reportable workplace drug conviction; and (6) make an ongoing, good faith effort to maintain a drug free workplace by meeting the requirements of the Act.

While Sections of the South Carolina Code nor Drug-Free Workplace Act of 1988 mention students, but instead apply to the employer, employee, and the workplace, the Office of University Counsel believes that such provisions could be used as guidelines to put parameters in
place if the University looks into further implementing a drug testing component of the student conduct process. Such parameters could be made to mirror the restrictions addressed above in both the federal and state statutes to include but not be limited to; (1) forming a policy statement, (2) notification to all students that drug testing would be a component of the student conduct process, and (3) communications by and between the drug testing center and the University are of a confidential nature.

Additionally, in reviewing policies and procedures of institutions Coastal Carolina University recognizes as peer and aspirants, it seems some form of drug screening, both random screenings and scheduled testing are used within student conduct processes. Such institutions include Appalachian State University, University of North Carolina at Wilmington, and the University of South Carolina. While Appalachian State University and the University of North Carolina at Wilmington’s policies do not address drug testing centers or the cost of such screenings, the University of South Carolina has students visit only off-campus drug testing venues and all fees incurred from the drug test must be assumed by the student. See Policy Manual: Appalachian State University – Drugs & Alcohol, Section 4.4.3(2), available at http://policy.appstate.edu/Drugs_and_Alcohol; UNCW Policy on Illegal Drugs, Policy 04.110(V)(2)(b), available at http://uncw.edu/odos/documents/SubstanceAbuseHandbook-current.pdf; and University Sanctions: Random Drug Testing, available at https://www.sa.sc.edu/osc/sanctions/.

In conclusion, it is the opinion of University Counsel, that although drug testing is deemed a search under the Fourth Amendment, the search would be reasonable because of the University’s legitimate interest in the need to maintain a safe, productive, and drug-free academic environment. As a result, Coastal Carolina University is authorized to create a policy allowing for the drug testing of students within the student conduct process should the institution decide to implement such, because the University’s use of the drug testing as a component of the student conduct process would give rise to the needed individual suspicion of drug use.

Sincerely,

Katherine M. Brooks
Associate University Counsel
Coastal Carolina University