



The University of North Carolina

GENERAL ADMINISTRATION

POST OFFICE BOX 2688, CHAPEL HILL, NC 27515-2688

ALAN R. MABE, *Senior Vice President for Academic Affairs*

Telephone: (919) 962-4614 Fax: (919) 962-0120 E-mail: mabe@northcarolina.edu

Constituent Universities
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University

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Elizabeth City
State University

Fayetteville State
University

North Carolina
Agricultural and
Technical State
University

North Carolina
Central University

North Carolina
State University
at Raleigh

University of
North Carolina
at Asheville

University of
North Carolina
at Chapel Hill

University of
North Carolina
at Charlotte

University of
North Carolina
at Greensboro

University of
North Carolina
at Pembroke

University of
North Carolina
at Wilmington

University of
North Carolina
School of the Arts

Western Carolina
University

Winston-Salem
State University

Constituent High School
North Carolina
School of Science
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MEMORANDUM

TO: Members, Committee on Educational Planning, Policies, and Programs

FROM: Alan Mabe

DATE: September 8, 2009

SUBJECT: The UNC Study Commission to Review Student Codes of Conduct as They Relate to Hate Crimes

As you will remember the Study Commission was established after an incident on the North Carolina State Campus. The Commission reported its findings at the end of March.

The Study Commission considered two charges:

(1) Whether a University-wide policy addressing hate crimes and acts of violence and intimidation should be recommended to the UNC Board of Governors for adoption; and (2) the development of a University-wide requirement for diversity orientation for all first-time students.

The main task for the September meeting is to review the Report of the Study Commission as a background for consideration at future Committee meetings whether new or revised policies addressing hate crimes and acts of violence or intimidation should be recommended for adoption by the Board of Governors. The Study Commission was chaired by Dr. Harold Martin who cannot be present for the Committee meeting due to a meeting of WSSU's Board of Trustees. He will, however, be available by conference call to provide comments and answer questions. Laura Lugar our General Counsel will summarize the work of the Commission and comment on the recommendations (pp. 2 -3) regarding the First Charge. The next steps would be to formulate policy or policy revisions based on the seven recommendations regarding the First Charge for further Committee consideration.

The Study Commission did not make specific recommendation about the Second Charge, but after reviewing the variety of programs available across UNC campuses did recommend that the President consider another task force to address the Second Charge.

MEMORANDUM

March 31, 2009

TO: President Erskine Bowles

FROM: The UNC Study Commission to Review Student Codes of Conduct as They Relate to Hate Crimes

RE: Final report and recommendations

I. INTRODUCTION AND BACKGROUND

The UNC Study Commission to Review Student Codes of Conduct as They Relate to Hate Crimes, which you appointed in November 2008, has completed its work. In keeping with your charge, the Commission carefully considered:

1. whether a University-wide policy addressing hate crimes and acts of violence and intimidation should be recommended to the UNC Board of Governors for adoption; and
2. the development of a University-wide requirement for diversity orientation for all first-time students.

At its organizational meeting held on December 17, 2008, the Commission broadly outlined its work to include:

- an understanding of the pertinent facts surrounding the NCSU incident which gave rise to the Commission;
- a clear understanding of the law as it relates to freedom of speech, hate speech, hate crimes, unlawful harassment, and unlawful threats or acts of violence or intimidation;
- a review of existing campus policies and student codes of conduct – particularly as they apply to hate crimes, unlawful harassment, and unlawful threats of violence, or acts of intimidation – for effectiveness and consistency with state and federal laws/policies on hate crimes;
- a review of other state university system codes of conduct;
- an understanding of the campus judicial system and how violations of the student code of conduct are investigated and resolved;
- a review of existing orientation programs on diversity and multiculturalism currently provided on the campuses; and
- an opportunity to hear from concerned citizens and students, faculty, staff, and administrators on the campuses, about the work of the Commission and perspectives about free speech, hate crimes, and other unlawful conduct, and their relationship to student code violations motivated by hate against others.

Toward that end, the Commission held seven public meetings, including a widely publicized public forum held at the Spangler Center in Chapel Hill. UNC General Counsel Laura Luger and Raleigh attorney Hugh Stevens briefed the Commission on relevant criminal statutes, free speech/free expression protections afforded by the First Amendment, and other related legal considerations. Dr. William Barber II, state president of the North Carolina Conference of the NAACP and Alan McSurely, chair of the NC NAACP's Legal Redress Committee, were invited to address the Commission and share differing perspectives at a separate meeting. The Commission carefully reviewed and discussed all relevant UNC policies and campus student codes of conduct, as well as other state university system codes of conduct.

During the course of its work, Commission members also reviewed written materials and heard presentations from campus officials on the campus judicial system, how violations of the student codes of conduct are investigated and resolved, and how various UNC campuses work to promote diversity and build civil campus environments that foster appreciation and respect for different backgrounds and points of view. In addition, the Commission established a dedicated email address, study_commission@northcarolina.edu, to receive feedback from concerned citizens and students, faculty, staff, and administrators on the campuses. Copies of all meeting minutes, background and resource materials, staff presentations, written statements submitted by speakers at the public forum, and all email and other correspondence submitted to the Commission for consideration may be found in appendices 1-13.

II. FINDINGS AND RECOMMENDATIONS

A. The Commission's First Charge: To advise President Bowles on whether a University-wide policy addressing hate crimes and acts of violence or intimidation should be recommended to the UNC Board of Governors for adoption.

The Commission voted unanimously at its February 26, 2009, meeting to recommend that a University-wide policy be developed addressing hate crimes and acts of violence or intimidation. The Commission, by majority vote, further agreed that the recommendation should include the following list of elements of best practice that should be considered in crafting such a policy:

1. University Code Section 608 (2) provides: "All students shall be responsible for conducting themselves in a manner that helps to enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected." This broad value statement reflects the University's commitment to multiculturalism and diversity. The policy should refer to this Code Section and endorse the basic values inherent therein. [See also for reference UNCG basic outline of values: honesty, trust, fairness, respect, responsibility; and ECU Racial and Ethnic Harassment Policy for broad policy statements, among others.]
2. A specific statement on the University's commitment to constitutionally guaranteed rights of free speech and expression, and an acknowledgement that where speech and expression are involved in assessing student conduct, all of the facts and circumstances

will be carefully reviewed so as to protect free speech rights consistent with the University's right to regulate time, place and manner. [see California System Policy on Speech and Advocacy 30.30: "The time, place, and manner of exercising the constitutionally protected rights of free expression, speech, assembly, and worship are subject to campus regulations"]

3. A specific prohibition of criminal conduct that would be characterized as a "hate crime" under federal or state law, as those laws may change from time to time. Student codes should include language that defines the conduct that is illegal based upon specific statutes or laws, rather than a prohibition of "hate crimes" per se. We discourage the use of the term "hate crimes" in a policy.
4. A specific prohibition against the infliction or threat of bodily harm that meets the legal definition [*see, e.g.*, NC State 14.1.12: Intentionally or recklessly causing physical harm to any person while on University premises or at University-sponsored activities, or intentionally or recklessly causing other persons on University property or at University-sponsored activities to believe that you mean to harm them such that the legal standard is satisfied, or intentionally or recklessly causing any act that creates a substantial risk of bodily harm to any person who is on University property or at University sponsored activities.]
5. A specific prohibition against behavior that meets the legal definition of harassment leading to a hostile environment [*see, e.g.*, NC State code, 14.1.8: Harassment is behavior that a) is directed toward a particular person or persons; b) is unwelcome and severe and pervasive, and c) violates criminal law or civil rights law or other campus regulations on harassment, or that unreasonably interferes with the target person's employment, academic pursuits, or participation in University sponsored activities.]
6. A specific statement that the student conduct code may be violated when a student violates any of its provisions, any campus or University policies, and any federal, state, or local law.
7. All student conduct codes should be modified consistent with the new policy.

B. The Commission's Second Charge: To consider the development of a University-wide requirement for diversity orientation for all first-time students.

In addressing its second charge, the Commission sought assistance from the UNC Vice Chancellors for Student Affairs in identifying representative examples of campus offerings on diversity and building a civil campus environment that fosters appreciation and respect for differences. During its February 9, 2009, meeting, the Commission heard from student affairs administrators from three campuses [Fayetteville State University, UNC Greensboro, and UNC Wilmington], who shared presentations highlighting diversity orientation initiatives on their respective campuses. The Commission also took into consideration comments made by individuals who shared their viewpoints at the public forum, concerns expressed by Dr. Barber and Mr. McSurely on behalf of the NC NAACP, correspondence received via U.S. and electronic mail, and other resources that have been made available on this subject. Special thanks are offered to student affairs

officers on the Commission who shared their perspectives and to FSU Chancellor James Anderson for sharing his book, *Driving Change Through Diversity and Globalization*.

Based upon all of the information available to it, the Commission finds as follows:

- UNC encompasses 17 extraordinary, unique and diverse campus communities. Diversity appears to be essential to the richness of campus life at each and every institution.
- Building upon a strong commitment to multiculturalism and celebrating diversity appears to contribute to stronger academic, working, and living environments and to help prepare students and other members of the campus communities to be globally competitive citizens.
- A wide range of programs related to diversity currently exists across UNC, and those programs differ greatly in quality, depth, reach, effectiveness, and approach.
- We believe strongly that the programs overall could benefit from consideration of uniform objectives and, perhaps, standards for the campuses.
- Numerous speakers have suggested that the Commission consider campus working environments, as well as diversity programming targeted to the student body. Though beyond the scope of the Commission's charge, we concur that successful programs should probably blend the student experience with the overall culture of the campus community.

It is evident, however, from our own high-level review that the issues surrounding the effective delivery of diversity-related programming and education requires greater study than this Commission can accomplish within its scope of responsibility and charge. Therefore, the Commission respectfully recommends the establishment of a Presidential task force with the necessary expertise drawn from within the University to plan, study and implement a comprehensive analysis of best practices in building strong, appropriate and effective campus cultures. This Commission's groundwork provides a strong foundation for the continued study that could be accomplished by a properly constituted task force. Several Commission members have volunteered to assist in this effort, and some continuity in study would be beneficial and could result in some efficiencies. It is further recommended that the Presidential task force expand its scope to consider the entire campus community, rather than just the student academic and residential context.

III. CONCLUSION

President Bowles, we wish to thank you for bringing these important, yet emotionally charged, issues to the forefront for candid discussion and review. We appreciate your creating a panel that was broadly representative of our 17 campuses—and then offering us unfettered opportunity to listen and learn from one another, to help identify best practices on our own campuses and across the nation, and to make related policy recommendations. Our final recommendations reflect careful consideration of the relevant legal and academic issues, as well as the varied perspectives and input we received from concerned citizens and students, faculty, staff, and administrators across the University.

