

ADMINISTRATIVE MEMORANDUM

SUBJECT Guidelines for Interpreting General Statute
126-5(c1)(8): Instructional and Research Staff
Exempt from the State Personnel Act

NUMBER 364
DATE October 28, 1996

North Carolina General Statute 126-5 (c1) [State Personnel Act] provides that the following employees are exempt from the provisions of this statute:

(8) Instructional and research staff, physicians, and dentists of the University of North Carolina.

The Office of State Personnel and the University of North Carolina have agreed that the attached Guidelines (Appendix A) shall govern the interpretation and application of the terms "instructional" and "research" as used in Section 126-5 (c1) (8) of the North Carolina General Statutes.

Application of the Guidelines

The Guidelines are effective immediately. However, their application to specific positions (both existing and proposed) will, in some cases, be dependent upon the completion of the student services study that was begun in 1993. The following is the sequence of events with regard to application of the Guidelines:

1. **Training:** The Office of State Personnel will conduct a training workshop for human resources officers and academic (or other) officers with responsibility for EPA non-faculty positions on each campus. The purpose of the training will be to discuss the Guidelines and how they will be applied. *Each of the constituent institutions is required to send two representatives (one from Human Resources and one responsible for EPA non-faculty positions) to this meeting. It is suggested that larger institutions consider sending two representatives from each area.*
2. **Student Services Study:** This study was initiated by the Office of State Personnel in 1993. By 1995 the Phase I review (in which the areas of Admissions, Counseling Centers, Handicapped/Disability Services, Learning Assistance Programs, Financial Aid, and Alcohol/Other Drug Programs) was completed, but without any decisions regarding the status of the positions studied or the development of class concepts.

The Student Services Study Team will be reconvened. It will begin to apply the Guidelines to the positions reviewed in Phase I and, for those determined to be SPA, will develop class concepts, establish temporary classes, and review labor market data for the concepts. Before being adopted, the findings and recommendations of the study team will be discussed with the Student Services Study Advisory Committee, which will also provide labor market and other information pertinent to the study.

Phases II and III of the study will follow. In Phase II, the following areas will be reviewed: Student Unions, Commuter Student Programs/Services, Fraternity/Sorority Advising, Judicial Programs and Services, Recreation/Intramural Sports, Student Activities, Student Orientation Programs, Women's Programs, Student Media, Volunteer Student Programs, Leadership Programs, International Student Offices, and Minority Student Programs/Services. In Phase III, the following areas will be reviewed: Career Planning and Placement, Residence Life, Student Development Research and Evaluation, Vice Chancellor for Student Affairs Office/Administration, and Registration and Records.

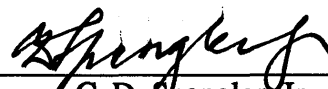
As the remaining two phases of the study are completed, determinations will be made regarding the status of the positions studied, based on an application of the Guidelines. The concepts for the temporary classifications developed in Phase I will be revised to include additional roles (where feasible), new temporary class concepts developed as necessary, and labor market data reviewed. After Phase III is completed, permanent classes will be established and applied to all of the affected SPA positions.

3. Options for employees whose positions change in status as a result of the application of the Guidelines: As page two of the Guidelines makes clear, "[t]he incumbent of a position that is subject to . . . a change in status shall have the option of requiring that the change not be made for the duration of his or her continued occupancy of the position." Procedures for the exercise of that option are included in the Guidelines. The form to be used to implement this option is included as Appendix B. A framework for the information to be provided to employees concerning differences between SPA and EPA status will be provided at the training session sponsored by the Office of State Personnel. Constituent institutions must add any information that is unique to their respective institutions, especially as it relates to EPA status.

Institutions shall maintain a list of all positions whose change in status has been temporarily suspended owing to election by the incumbent to retain his or her current status. Once the incumbent vacates such a position, the change in status required by application of the Guidelines shall be effective immediately.

In those instances where there are several like positions in a department, it is possible that current or future employees with the same or similar responsibilities may have a different status. Special note should be made of these positions on the list referred to above. While this condition persists in a specific department, new employees whose status would be different from fellow colleagues occupying the same or similar positions should be informed in advance of the reason for this situation.

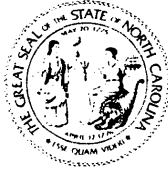
4. Future determination of position status: Once the appropriate representatives of the constituent institutions have completed the training workshop and demonstrated ability to apply the Guidelines, they will apply the Guidelines themselves to determine the status of new positions or existing positions (except for those whose status depends on the outcomes of the student services study). These determinations must be made jointly by the human resources officer and a designated officer responsible for EPA positions. When questions arise concerning application of the Guidelines, they should be referred to the designated official in the Office of Academic Affairs at General Administration. That official will consult with the Office of State Personnel as appropriate. During the first year of implementation, General Administration and the Office of State Personnel (Position Management) should be informed of any applications of the Guidelines that result in a change in status from SPA to EPA.
5. Monitoring of the application of the Guidelines: In order to ensure consistency and equity in the application of the Guidelines, the Office of State Personnel will follow up with periodic reviews at constituent institutions.
6. Accounting for the Status of EPA Non-Faculty Positions: At a future date, General Administration will provide instructions to institutional research officers of the constituent institutions on the manner in which information should be recorded on personnel data files regarding those positions whose EPA status derives from their instructional and research responsibilities.


C. D. Spangler, Jr.

APPENDIX A

Guidelines for Interpreting General Statutes 126-5(c1) (8): Instructional and Research Staff Exempt from the State Personnel Act

1996



STATE OF NORTH CAROLINA
OFFICE OF STATE PERSONNEL
116 WEST JONES STREET
RALEIGH 27603-8004

JAMES B. HUNT JR.
GOVERNOR

RONALD G. PENNY
STATE PERSONNEL DIRECTOR

The Office of State Personnel and the University of North Carolina Office of General Administration agree that the attached "Guidelines" shall govern the interpretation and application of the terms "instructional" and "research" as used in Section 126-5(c1)(8) of the North Carolina General Statutes.

For the Office of State Personnel

For the University of North Carolina

A handwritten signature in dark ink, appearing to be "R. G. Penny", written over a horizontal line.

Ronald G. Penny, Director

A handwritten signature in dark ink, appearing to be "C. D. Spangler, Jr.", written over a horizontal line.

C. D. Spangler, Jr., President

9/23/96

Date

9/19/96

Date

Directors Office
Commission Staff
Administrative Services

733-7108
733-7112
733-7934

Employee Assistance
Employee & Mgmt. Tng. Div.
Employee Risk Control

733-9545
733-2474
733-6316

Employee Service
Employment Practices
Equal Opportunity Svcs.

733-7112
733-7922
733-0205

Performance Management
Position Management
Temporary Solutions

733-7108
733-3182
733-7927

An Equal Opportunity Employer

Application of the Guidelines for interpreting General Statute 126-5(c1)(8) may require a prospective change in the status of a position from EPA (exempt from the State Personnel Act) to SPA (subject to the State Personnel Act), or vice versa. The incumbent of a position that is subject to such a change in status shall have the option of requiring that the change not be made for the duration of his or her continued occupancy of the position.

The option may be exercised within 15 business days after the employee receives written notice from the employer that the position is subject to a change in status. Exercise of the option must be confirmed in a writing cosigned by the employee and the employer, on a form jointly approved for such purposes by the Office of State Personnel and The University of North Carolina. The form shall include a certification that the affected employee either (1) asked for an received or (2) was apprised of but declined the opportunity to receive from a staff representative designated by the employer a written summary of conclusions concerning differences, if any, between SPA and EPA status of the position with respect to:

- a. methods of calculating compensation;
- b. both statutory-mandated and other employer-provided benefits; and
- c. policies and procedures governing nondisciplinary termination of employment; discharge, suspension, demotion or other disciplinary action; and the consideration/resolution of grievances, all as of the effective date of the signed choice of option.

Once such an option has been chosen, it may not be rescinded thereafter except by mutual written agreement of the employee and the employer. An incumbent who has chosen the option to maintain the status quo thereafter may not be removed involuntarily from the position for the purpose of effecting a change in the status of the position. However, when the incumbent who chose that option thereafter vacates the position through resignation, retirement, or discharge for cause, the change in status required by application of the Guidelines shall be effective immediately.

GUIDELINES

INTERPRETATION OF G.S. 126-5 (c1) (8)

1. Instructional*

Positions qualifying for designation as 'Instructional' are characterized by the following:

- a. The duties must be associated with the regular academic and educational experiences provided by the University, or be uniquely supportive of those academic and educational experiences, and must involve significant and independent interaction with participants in the University's instructional and educational program.
- b. The position must require that a substantial proportion of the work commitment is devoted to instructional activities or to the direction of educational/academic support activities.
- c. The position requires the exercise of discretion in determining the nature and content of the instructional or educational activities assigned and evaluating their effectiveness.
- d. The position requires possession of a post-baccalaureate degree or equivalent independent experience in comparable instructional or educational activities.

The following roles represent these characteristics:

Instructing	Positions whose primary purpose is to determine course content, teach and evaluate enrolled students in courses for academic credit.
Academic Advising	Positions whose primary purpose is to advise students on academic matters such as selection of a major area of study, course selection, and academic performance.

Academic Preparation and Enhancement	Positions whose primary purpose is to improve academic preparation through such means as tutoring and supplemental instruction or to direct programs designed to enhance the educational experience of enrolled students or of targeted secondary school students to help prepare them for post-secondary education.
Co-Operative Education	Positions whose primary purpose is to develop co-operative education experiences for students with employers, monitoring progress, and evaluating student performance with direct impact on grade assignment.
Laboratory Management	Positions whose primary purpose is to manage practical experience/research laboratories and that participate in selection of experiments, protocols, and procedures which best support the instructional or research goals and in evaluating progress towards those goals.
Instructional Consulting	Positions whose primary purpose is to assist, advise, and critique faculty and other instructional staff on instructional matters such as course content, curriculum structure, and instructional technique.
Continuing Education	Positions whose primary purpose is to design and deliver courses, seminars, etc., extending the benefit of the institution's regular academic and research activities to participants.
Coaching	Positions whose primary purpose is to coach student athletes for teams sponsored by the institution.
Academic Standards	Positions whose primary purpose is to develop and/or administer academic standards and curricula for degree granting programs.

Student and Academic Support Services	Positions whose primary purpose is to direct the development and administration of campus-wide programs that directly serve students and/or faculty, require integration with the academic programs, affect the quality of the educational experience, and affect the image that students and parents have of the institution.
Professional Librarians	Positions whose primary purpose is to support instructional and research activities by advising students and faculty on the selection and effective use of library resource materials and by working with faculty on instructional and research matters such as collection development.
Counselors	Positions requiring credentialed professionals whose primary purpose is to: provide clinical and developmental counseling or psychological services to students to enhance their psychological growth, emotional well-being, and learning potential; and, advise academic and academic support program directors of special needs, trends, and suggested program revisions based on the interaction with the student population.

* Positions directing staff that qualify as 'Instructional' also qualify as 'Instructional'.

2. Research*

Positions qualifying for designation as 'Research' are characterized by the following:

- a. The position must require substantial independence in creative or research efforts and in the interpretation and dissemination of research results.
- b. The duties must be integral with the University's instructional or research activities and represent an extension of the regular academic and education experience provided by the University.
- c. The position must require that a substantial portion of the total work commitment is devoted to those research activities.
- d. The position requires possession of a post-baccalaureate degree or a comparable record of independent research productivity.

The following represent these characteristics:

Academic Research	Positions whose primary purpose is to serve as principal investigators or in a similar capacity for primary or secondary research projects that may advance or enhance a field of academic learning.
Research Administration	Positions whose primary purpose is to direct staff serving as principal investigators assigned to research projects; or positions that serve as directors of sponsored research including determining if project proposals are consistent with the institution's academic and research policy, advising staff on the development of project proposals, and negotiating with sponsoring agencies particularly as it relates to terms and conditions that affect academic freedom and ownership of the product.

Institutional Research	Positions whose primary purpose is to direct staff in the collection of data and information concerning students, faculty, facilities, and related items used for reporting and directly supports the institution's planning and assessment processes.
Academic Computing	Positions whose primary purpose is to direct staff in providing electronic data processing services that directly support the institution's academic and research missions.
Community Service	Positions whose primary purpose is to direct staff in the development and administration of programs which focus the academic resources and research products of the institution on the resolution of community and regional issues and foster the incorporation of these issues in the institution's academic research programs.

* Positions directing staff that qualify as 'Research' also qualify as 'Research'.

APPENDIX B

Implementation of Employee's Option to Maintain Current Status

On ___(date)___, I received notice that the status of the employment position I now occupy, ___[specify]___, is subject to change from ___[SPA/EPA] to ___[EPA/SPA]. I understand that I have the option of requiring that the present ___[EPA or SPA] status of the position not be changed during my continued occupancy of the position. I understand that if I decide to exercise the option of preserving the present status of the position, that decision is binding on me for as long as I occupy the position, unless my employer and I subsequently agree otherwise in writing.

I have (1)___ asked for and received or (2)___ declined the opportunity to receive from a staff representative designated by my employer a written summary of any differences in terms and conditions of employment applicable to the position, depending upon whether its status is SPA or EPA. [If option (1) is checked, the written summary is set forth in writing in an attachment to this form and should be reviewed before the employee signs at the appropriate space indicated; if option (2) is checked, the employee may proceed to the appropriate signature line. In either case, the instrument must be co-signed by the employee's immediate supervisor or by the next higher level administrative officer.]

The attachment indicates differences, if any, between EPA and SPA status with respect to:

- a. Methods of calculating compensation;
- b. Leave entitlement;
- c. Entitlement to participate in statutory-mandated and other employer-sponsored payroll-deducted benefits; and
- d. Policies and procedures governing nondisciplinary termination of employment; discharge, suspension, demotion or other disciplinary action; and the consideration and disposition of grievances.

I ___do wish to exercise my option of retaining the ___[SPA or EPA] status of the employment position I now occupy.

I ___do not wish to exercise my option of retaining the ___[SPA or EPA] status of the employment position I now occupy.

Employee signature

Date

Witnessed by employer

Date