

3. Proposed Policy Changes: Revisions to non-discrimination provisions in *The Code* and the UNC Policy Manual
- Warwick Arden & William Fleming

Situation: Recent federal and state action require us to update the protected categories covered under the Equal Opportunity sections in *The Code* and the UNC Policy Manual.

Background: President Obama issued an executive order earlier this year that is applicable to federal contractors and requires contractors to refrain from discrimination on the basis of sexual orientation and gender identity, which means that all federal contractors must revise their EO/AA related statements to include sexual orientation and gender identity. Similar guidance affirming protection for sexual orientation and gender identity has been issued by the federal Department of Labor (Office of Federal Contract Compliance Programs) and the Department of Education (Office for Civil Rights). A separate federal law protects genetic information, so we have also updated our list of protected statuses to include this status. Additionally, in 2013, the State of North Carolina removed “creed” from the list of protected statuses, so we have removed this status.

Assessment: The attached proposed revisions codify the above-listed changes in Section 103 of *The Code*, while updating all other EO references elsewhere in the UNC Policy Manual and *The Code* to consistently refer back to Section 103 rather than separately listing EO protected categories (see Section 604 of *The Code*, Appointment, Nonreappointment and requirements of notice and review for tenure track faculty; 700.4.2, Policy on Student Conduct; 300.2.14, Nonsalary and Deferred Compensation). By doing this, future changes to our EO language will require a change only to Section 103 of *The Code*. The changes themselves are motivated by federal and/or state regulatory or legislative action.

Action: This item requires a vote.

CHAPTER I - ESTABLISHMENT, INCORPORATION AND COMPOSITION OF THE
UNIVERSITY OF NORTH CAROLINA

.....

SECTION 103. EQUALITY OF OPPORTUNITY IN THE UNIVERSITY.

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.

CHAPTER VI- ACADEMIC FREEDOM AND TENURE

.....

SECTION 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW FOR TENURE TRACK FACULTY.^{12.1}

604 A. Notice of Reappointment or Nonreappointment.

(1) The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given.^{12.2} For full-time faculty at the rank of instructor, assistant professor, associate professor, or professor, the minimum requirement for timely notice shall be as follows:

(a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires; and

(b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and

(c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of nonreappointment will oblige the chancellor thereafter to offer a terminal appointment of one academic year.

604 B. Impermissible Reasons for Nonreappointment.

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) any of the protected statuses included in Section 103 of *The Code*, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See Policy 101.3.1 II.B. for details.

.....

^{12.1}Because of the unique character and mission of the University of North Carolina School of the Arts and of the North Carolina School of Science and mathematics, regular faculty holding fixed-term contracts at those institutions are entitled to the rights afforded in this Section.

^{12.2}Faculty at North Carolina School of Science and Mathematics shall be given notice no later than January 15 during the first year of continuous regular service and no later than December 15 during the second or any subsequent year of continuous regular service.

Non-Salary and Deferred Compensation

A. Non-salary compensation

1. Irrespective of the campus' status regarding management flexibility in personnel, all constituent institutions and the General Administration shall have a policy concerning the granting of non-salary compensation for all personnel exempt from the State Personnel Act except for the chancellor and the president. The policy shall either provide specified non-salary compensation to a defined category of employees uniformly or shall require approval by the board of trustees or Board of Governors upon recommendation by the chancellor or president, respectively, regarding non-salary compensation granted to an individual employee before non-salary compensation is provided.

Each policy that provides specified non-salary compensation to a defined category of employees shall set out what types of non-salary compensation the campus or General Administration will provide, and the criteria for awarding such compensation. The awarding of non-salary compensation may be based on any reason or reasons considered relevant to attracting or retaining a faculty and staff of the highest possible quality. Decisions concerning non-salary compensation shall not be based in whole or in part upon any of the protected statuses included in Section 103 of *The Code*.

2. The funding source for non-salary compensation shall not be State funds, and non-salary compensation may be provided directly by an associated foundation if permitted by policy. An exception permitting non-salary compensation to be funded from State funds may be approved by a board of trustees or the Board of Governors only when permitted by the Office of State Budget and Management. Any club membership for an employee or the granting of special campus services or benefits must be job related, and the club must have a policy prohibiting discrimination against groups protected by federal and North Carolina law. Non-salary compensation shall be appropriately reported to federal and state tax agencies.

The hiring approval process may include payment of moving expenses in accordance with authority from the Office of State Budget and Management. The decision of whether to include payment of moving expenses in an employment offer may be delegated no lower than the Provost/Vice Chancellor level or Vice President level.

3. Provision of housing, when occupancy of the housing is required as a part of the job, reimbursement of professional- or work-related travel, and the provision of equipment to perform the work of the position, even if used at home, including computers, cellular phones, personal data assistants (PDA), pagers and similar work related items, are permissible and are not considered "non-salary compensation" as used in this Policy.

B. Delayed or Deferred Salary/Compensation

The State of North Carolina and the University of North Carolina offer employees options for deferred compensation and insurance. Unless expressly approved by the Board of Governors, constituent institutions and the General Administration may not provide any other employer-paid options for deferred compensation or other delayed compensation to its employees.

For purposes of this policy, delayed and deferred salary or compensation shall be broadly defined to include, but are not limited to, any employer payment or contribution paid 1) directly to an employee, 2) to the employee's account or plan, or 3) to a person acting in a capacity similar to a trustee for the employee, which is paid later than the regular or next subsequent payment

cycle, except for an error that is promptly corrected upon discovery. Delayed and deferred salary/compensation also includes traditional 457 deferred compensation plans, any retirement plans or accounts, annuities, and life insurance accumulating any cash value. Delayed and deferred compensation also include both tax qualified and non-qualified plans, and any other similar form of payment, whether tax sheltered or not.

This policy does not prohibit a campus from making any permitted employer contribution to the Optional Retirement Program or the Teachers' and State Employees' Retirement System.

C. Non-salary or deferred compensation of Chancellors and President

Other than a State provided car or a car of comparable value, a chancellor's or the president's residence as provided for in Policy 300.1.5, work related club memberships, reimbursement of moving expenses upon initial employment as a chancellor or president, and benefits uniformly provided to all employees exempt from the State Personnel Act, only the Board of Governors may approve non-salary or deferred compensation for a chancellor or the president. The funding source for non-salary compensation for a chancellor or the president, other than that specified in this paragraph, shall not be State funds, but an exception may be approved by the Board of Governors. Club memberships may never be paid using State funds.

D. Employees exempt from this policy

Members of faculty medical practice plans, such as physicians, dentists, and veterinarians, are exempt from this policy. Athletic directors and head coaches remain subject to Policy 1100.3 and its guideline, and are exempt from this policy.

E. Review and Approval

Campus policies on non-salary and delayed/deferred salary/compensation must be submitted as a part of the campus request for management flexibility to appoint and fix compensation. Campuses already granted management flexibility in personnel shall submit their policies to the General Administration for review. Subsequent changes to the policies must be submitted for review by the General Administration prior to submission to the campus Board of Trustees for approval. In some cases, policies with extensive revisions will be reconsidered by the Committee on Personnel and Tenure of the Board of Governors.

Policy on Student Conduct

I. Purpose

The Code of the University of North Carolina describes the University as an academic community “dedicated to the transmission and advancement of knowledge and understanding.” Pursuant to *The Code*, the Board of Governors is committed to supporting and encouraging “freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.” *The Code* also provides, “The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.”

These freedoms come with certain responsibilities. Faculty and students “share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.” Students, specifically, must conduct “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.”

Balancing these freedoms and responsibilities can be challenging. The Board of Governors is committed to preserving and protecting these freedoms, while recognizing that certain conduct which intentionally targets a person or identifiable group of persons based in whole or in part upon any of the protected statuses included in Section 103 of *The Code* may interfere with the University’s core mission of advancing knowledge and understanding. Accordingly, to support and assist the constituent institutions of the University of North Carolina in their continuing efforts to advance the University’s mission, the Board of Governors’ adopts this policy. This policy is not intended to expand the legal rights of any person or identifiable group of persons under state or federal law.

Every constituent institution has adopted a student code of conduct that establishes rules and regulations concerning student conduct and discipline. All such codes of conduct address criminal and unlawful conduct, as well as behaviors that violate University policies, rules or regulations. University Policy 700.4.1 sets forth the minimum procedural and substantive due process standards applicable to student disciplinary proceedings. This companion policy reflects recommendations received by the President on March 31, 2009, from the UNC Study Commission to Review Student Codes of Conduct Relating to Hate Crimes. It sets forth provisions for inclusion in all UNC campus student codes of conduct. These provisions are not exclusive. Student codes of conduct may include other provisions not inconsistent with these mandatory provisions. This policy also accommodates the different legal standards that may apply to the high school programs at the North Carolina School of Science and Mathematics and the UNC School of the Arts.

II. Mandatory Provisions

A. The following statements shall be included in all codes of student conduct:

1. The University embraces and strives to uphold the freedoms of expression and speech guaranteed by the First Amendment of the U.S. Constitution and the North Carolina Constitution. The University has the right under appropriate circumstances to regulate the time, place, and manner of exercising these and other constitutionally protected rights.
2. All students are responsible for conducting themselves in a manner that helps enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.
3. Violations of campus or University policies, rules or regulations, or federal, state, or local law may result in a violation of the student code of conduct and imposition of student discipline.

B. The following provisions addressing specific student conduct that could lead to disciplinary action shall be included:

1. No student shall threaten, coerce, harass or intimidate another person or identifiable group of persons, in a manner that is unlawful or in violation of a constitutionally valid University policy, while on University premises or at University-sponsored activities based in whole or in part upon any of the protected statuses included in Section 103 of *The Code*.

2. No student shall engage in unlawful harassment leading to a hostile environment. Unlawful harassment includes conduct that creates a hostile environment by meeting the following criteria: It is:

- a. Directed toward a particular person or persons;
- b. Based in whole or in part upon any of the protected statuses included in Section 103 of *The Code*;
- c. Unwelcome;
- d. Severe or pervasive;
- e. Objectively offensive; and
- f. So unreasonably interferes with the target person's employment, academic pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University's resources and opportunities.

3. In determining whether student conduct violates these provisions, all relevant facts and circumstances shall be considered. Care must be exercised in order to preserve freedoms of speech and expression, as articulated in current legal standards. Advice should be sought from campus attorneys, as appropriate.

III. Discipline

Disciplinary measures and/or penalties shall be in accordance with procedural and substantive due process safeguards applicable to disciplinary actions as required by Section 502D(3) of *The Code*, Policy 700.4.1, and applicable campus policies.

IV. Education and Advancement

University and campus attorneys, student affairs personnel, and campus law enforcement shall familiarize themselves and remain current regarding legal standards applicable to targeting individuals based in whole or in part upon any of the protected statuses included in Section 103 of *The Code* through

- A. Unlawful threats, or
- B. Unlawful harassment creating a hostile environment as defined in this policy.