

November 2, 2017 at 1:45 p.m.
Center for School Leadership Development, Room 119
Chapel Hill, North Carolina

AGENDA

OPEN SESSION

- A-1. [Approval of Minutes of September 7, 2017](#)Steve Long
- A-2. [Duties and Authorities of Boards of Trustees](#).....Steve Long
- A-3. [Board of Governors Staff](#)Steve Long
- A-4. [Policy on Free Speech and Free Expression](#).....Steve Long
- A-5. [Report Deregulation – Updates to the UNC Policy Manual](#) Tom Shanahan
- A-6. [NCSSM Board of Trustees](#)..... Andrea Poole

CLOSED SESSION

- A-7. Approval of Minutes of September 7, 2017Steve Long
- A-8. Legal Briefing Tom Shanahan

OPEN SESSION

- A-9. Other Business
- A-10. Adjourn

DRAFT MINUTES

9/7/2017

University of North Carolina General Administration
Center for School Leadership Development, Room 119
Chapel Hill, North Carolina

This meeting of the Committee on University Governance was presided over by Chair Steve Long. The following committee members, constituting a quorum, were also present: Phil Byers, Frank Grainger, Ann Maxwell, David Powers, Randy Ramsey, and Bill Webb. The following additional board members were present: Darrell Allison, Tyler Hardin, and Jim Holmes.

Chancellors participating were David Belcher and Todd Roberts.

Staff members present included Andrea Poole, Tom Shanahan, and others from General Administration.

1. Call to Order and Approval of OPEN Session Minutes (Item A-1)

The Chair called the meeting to order at 1:45 p.m. on Thursday, September 7, 2017, and called for a motion to approve the open session minutes of July 13 and August 9, 2017.

MOTION: Resolved, that the Committee on University Governance approve the open session minutes of July 13 and August 9, 2017 with the amendment on previous minutes to reflect the discussion on the policy of the Board hiring staff (see Attachment)

Motion: Bill Webb

Motion carried

2. 2016-17 Annual Report (Item A-2)

Chair Long discussed the 2016-17 Annual Report for the Committee on University Governance.

MOTION: Resolved, that the Committee on University Governance approve Item A-2 and submit it to the full Board of Governors.

Motion: Frank Grainger

Motion carried

3. Resolution on Security Clearance (Item A-3)

Chair Long discussed the purpose and scope of the resolution to the committee.

MOTION: Resolved, that the Committee on University Governance approve Item A-3 and recommend it to the full Board of Governors for a vote through the consent agenda.

Motion: Bill Webb

Motion carried

4. Nominations to the Vidant Medical Center Board of Trustees (Item A-4)

Chair Long provided background information on the two nominations to the committee, as well as roles, responsibilities, and duties of the Vidant Medical Center Board of Trustees.

MOTION: Resolved, that the Committee on University Governance approve Item A-4 and recommend it to the full Board of Governors for a vote.

Motion: Frank Grainger

Motion carried

5. Nomination to the North Carolina Arboretum Board of Directors (Item A-5)

Chair Long provided background information on the nomination to the committee, as well as roles, responsibilities, and duties of the North Carolina Arboretum Board of Directors.

MOTION: Resolved, that the Committee on University Governance approve Item A-5 and recommend it to the full Board of Governors for a vote.

Motion: David Powers

Motion carried

6. Nominations to the NC Teaching Fellows Commission (Item A-6)

The Chair provided background information on the replacement nomination to the committee, as well as provided a reminder of the previously selected nominees to the NC Teaching Fellows Commission.

MOTION: Resolved, that the Committee on University Governance approve Item A-6 and recommend it to the full Board of Governors for a vote.

Motion: Frank Grainger

Motion carried

7. Discussion of Nominating Committees (Item A-7)

Chair Long called upon Andrea Poole to present research on constituent institutions' nominating committees, constituent institutions' boards of trustees committee structures, and on similar governing boards nationwide. Discussion followed on the findings.

MOTION: Resolved, that the Committee on University Governance table Item A-7 and provide an update to the full Board of Governors.

Motion: Bill Webb

Motion carried

8. Background on Report Deregulation (Item A-8)

Chair Long called upon Tom Shanahan to present an update on the Report Deregulation portion of the Policy Review Project. Discussion followed on the reporting requirements and the process which will occur moving forward.

9. Report Deregulation – Updates to the UNC Policy Manual (Item A-9)

Chair Long called upon Tom Shanahan to provide an overview on the existing reports and practices that UNC General Administration staff regularly updates. Discussion followed for committee members to review reports and make note of any amendments they would like to bring to the committee at the next scheduled meeting.

MOTION: Resolved, that the Committee on University Governance recommend that the full Board amend Section 502 B(1) and 502 C(2) of *The Code* and Section 1300.6 of the UNC Policy Manual to delete reporting requirements.

Motion: Phil Byers

Motion carried

10. Policy on Free Expression – Discussion (Item A-10)

Chair Long reviewed the Campus Free Speech legislation that became law on July 31, 2017, which indicates the Board of Governors must develop and adopt a policy on free expression that meets the requirements of the statute. Chair Long called upon Tom Shanahan to provide further information on free expression. Discussion followed and a decision to create a subcommittee consisting of Mr. Hardin, Chair Long, Mr. Powers, and Mr. Webb to work with UNC General Administration and campuses to draft policy that will be presented to the committee during the next scheduled meeting.

11. Intercollegiate Athletics Matters – Discussion of Reporting (Item A-11)

Chair Long discussed the current flow of information in place between the Board, the president, and campuses. Discussion followed and the committee concluded that a clear practice needs to be put in place on the flow of information. Chair Long and Tom Shanahan will confer with President Spellings and Chairman Bissette about developing a system for sharing important information with the Board in a timely manner.

12. Closed Session (Item A-12)

MOTION: Resolved, that the Committee on University Governance move into closed session to prevent the disclosure of information that is privileged or confidential under Article 7 of Chapter 126 of the North Carolina General Statutes, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with our attorney in order to protect the attorney-client privilege and in order to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases: Carcaño, et al. v. McCrory, et al. and Lewis v. President Spellings, et al. This is pursuant to Chapter 143-318.11(a)(1) and (3) of the North Carolina General Statutes.

Motion: Ann Maxwell

Motion carried

THE MEETING MOVED INTO CLOSED SESSION.

(The complete minutes of the closed session are recorded separately.)

MOTION: Resolved, that the Committee on University Governance return to open session.

Motion: Steve Long

Motion carried

THE MEETING RESUMED IN OPEN SESSION.

13. Other Business (Item A-13)

Chair Long called upon Andrea Poole to give an update on the November 1, 2017 Boards of Trustees Workshop, the Board of Governors Campus Liaisons, and the 2017-18 Committee on University Governance plan.

There being no further business, the meeting adjourned at 3:15p.m.

Ann Maxwell, Secretary

DRAFT MINUTES

July 13, 2017
University of North Carolina at Asheville
Sherrill Center, Room 407
Asheville, North Carolina

This meeting of the Committee on University Governance was presided over by Chair Steve Long. The following committee members, constituting a quorum, were also present: Phil Byers, Frank Grainger, Ann Maxwell, David Powers, Randy Ramsey, and Bill Webb.

Chancellors participating were David Belcher, Robin Cummings, and Todd Roberts.

Staff members present included Andrea Poole, Tom Shanahan, and others from General Administration.

1. Call to Order

The Chair called the meeting to order at 2:30 p.m. on Thursday, July 13, 2017.

2. Update on Ongoing Committee Work (Item A-1)

Chair Long recognized Andrea Poole, Senior Associate Vice President and Secretary of the University, to review the ongoing work of the committee, including the Boards of Trustees Workshop scheduled for November 1 in Chapel Hill.

3. Discussion of 2017 – 2018 Plan of Work (Item A-2)

The committee discussed areas to explore in 2017 – 2018, including: learning more about how other systems handle officer nominations and whether or not a nominating committee would make sense for the Board, reviewing the trustees' roles and responsibilities as outlined in *The Code* and discussing the role of the trustee with various stakeholders, considering a policy on Free Expression as required in the Campus Free Expression Act (House Bill 527), building on the work of CARMC to gain efficiencies by eliminating unnecessary reports from policy and code, the policy of the Board hiring staff, and discussing ways to ensure timely communication of areas of risk or potential concern between the Board, General Administration, and the constituent institutions.

There being no further business, the meeting adjourned at 3:32 p.m.

Ann Maxwell, Secretary

AGENDA ITEM

A-2. Duties and Authorities of Boards of TrusteesSteve Long

Situation: The Committee on University Governance has requested a review of the duties and authorities of the boards of trustees.

Background: By statute, each constituent institution of the University has a board of trustees that serves both as an advisor to the Board of Governors on matters pertaining to its institution and as advisor to the chancellor concerning the management and development of the institution. The powers and duties of the boards of trustees are defined and delegated by the Board of Governors, consistent with state law. These delegations are codified in *The Code*, including Appendix I, and throughout the UNC Policy Manual.

Assessment: The duties and authorities of institutional boards of trustees, as delegated by the Board of Governors, cover various University functions, such as strategic planning, human capital, property and construction, and student services. The board of trustees' role in each function has also been defined by the Board of Governors. For most institutional decisions, a board of trustees' role is to provide advice and oversight. For certain other functions, the Board of Governors has delegated the authority to govern through establishment of institutional policies, which are consistent with Board policies, and to approve institutional decisions.

Action: This item is for information only.

Duties and Authorities of Boards of Trustees

| Duty/Authority | Description | Original Authority | Advice & Oversight | Action or Approval | Policy Creation |
|--|--|--------------------|--------------------|--------------------|-----------------|
| University Strategy | | | | | |
| Advise the Board of Governors and the chancellor (NCGS §116-33; Code Section 403A) | By statute, and affirmed by the Board of Governors, the BOT serves as advisor to the BOG and the chancellor on matters pertaining to its institution. | NCGS 116-33 | X | | |
| Ensure the institution complies with the mission assigned and the strategic plan adopted by the Board of Governors. [Appendix 1 (II)] | The Board of Governors has tasked the BOT with ensuring the constituent institution's compliance with the educational, research, and public service roles assigned to it by the BOG. | NCGS 116-11(2)-(3) | X | | |
| Executive Staffing | | | | | |
| Provide input to assessment of the chancellor (Policy 200.4) | The BOG has established that every four years the president and the BOT shall conduct a comprehensive review of the chancellor's performance that will include major campus constituencies such as faculty, students, and staff. | NCGS 116-11(2) | X | | |
| Establish chancellor search committee and budget, in consultation with the president, and recommend three candidates to the president. (Appendix 1 (I)(D); Policy 200.8) | By statute, and as affirmed the by the BOG, the BOT shall establish, in consultation with the president, a search committee to fill a vacancy in the chancellorship. The chair of the BOT, in consultation with the president, shall establish a budget and identify staff for the committee. By statute, and as affirmed by the BOG, the BOT shall recommend an unranked slate of three names for consideration by the president in designating a nominee for the chancellorship for approval by the BOG, or return the slate to the search committee for further action. | NCGS 116-11(4) | | X | |
| Personnel and Human Resources | | | | | |
| Adopt personnel policies [Appendix 1(I)(C)] | The BOG has provided that the BOT may adopt personnel policies, not otherwise prescribed by state law, the University Code, or policies of the BOG, for personnel in all categories of university employment. | NCGS 116-11(2) | | | X |
| <i>Special responsibility constituent institutions with management flexibility:</i> Approve employment actions for EHRA positions [Appendix 1 (I)(A)(1)] | The BOG has provided that the BOT of special responsibility constituent institutions with management flexibility may appoint, promote, and set the compensation for all EHRA positions consistent with the policies and salary ranges set by the BOG and the regulations and guidelines established by the president. | NCGS 116-30.1 | | X | |
| Approve employment actions for EHRA employees (Appendix 1 (I)(A)(2)(b); Regulation 300.2.4[R]) | The BOG has delegated to the BOT the authority to approve chancellor's appointment, promotion and compensation recommendations for EHRA employees other than tenured faculty and senior administrative positions. | NCGS 116-11(2) | | X | |
| Pass regulations concerning the discharge or suspension of EHRA employees, including rights of appeal (Appendix 1 (I)(B); Policy 300.2.1) | The Board of Governors has provided the BOT authority to create regulations, consistent with applicable policies of the BOG, to govern all discharges or suspensions of faculty members and administrative personnel, other than those subject to the State Personnel Act, effectuated by the chancellor. | NCGS 116-11(2) | | | |

Duties and Authorities of Boards of Trustees

| Duty/Authority | Description | Original Authority | Advice & Oversight | Action or Approval | Policy Creation |
|--|--|--------------------|--------------------|--------------------|-----------------|
| Hear faculty grievance appeals (Policy 101.3.2; Code Section 607) | The BOG has established that a faculty member may appeal to the BOT if neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the faculty grievance committee in favor of the aggrieved faculty member. | NCGS 116-11(2) | | X | |
| Create policy governing separation and/or retreat to a faculty position (Policy 300.1.6) | The BOG has directed that the BOT establish a policy governing separation and/or retreat of administrators. | NCGS 116-11(2) | | | X |
| Make certain appointments and fix compensation (Policy 600.3.4) | The BOG has delegated to the BOT authority to approve the following employment actions for faculty, EHRA non-faculty Tier 2 Senior Academic and Administrative Officers (SAAO Tier 2), and EHRA non-faculty instructional, research, and public service (IRPS) employees: 1) permanent and temporary appointments and salaries; 2) promotion, including faculty rank changes but excluding tenure; and 3) permanent and temporary salary increases or stipends | NCGS 116-11(2) | | X | |
| Adopt political activities policy (Policy 300.5.1) | The BOG has directed that the BOT adopt policies governing political activities of employees. | NCGS 116-11(2) | | | X |
| Approve certain petitions for candidacy and officeholding (Policy 300.5.2) | The BOG has delegated to the BOT responsibility to resolve petitions for candidacy and officeholding by University employees other than senior academic and administrative officers, with the exception of petitions concerning candidacy for the General Assembly. | NCGS 116-11(2) | | X | |
| Avoid and adjudicate dual memberships and conflicts of interest (Policy 200.1) | The BOG has directed that each BOT chairman shall designate a standing committee to determine whether a potential conflict is a permissible or impermissible activity and to make recommended findings as to whether this policy has been violated. | NCGS 116-11(2) | | X | |

Admissions

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| Establish admissions policies and hear admissions appeals [Appendix 1 (VIII)] | Subject to such enrollment levels and minimum criteria for admission established by the Board of Governors, the BOG has delegated to the BOT responsibility to establish admissions policies and resolve individual admission questions for all schools and divisions within the institution. The BOG has also delegated to the BOT responsibility to hear appeals concerning individual admission cases. | NCGS 116-11(8a) | | | X |
| Establish minimum requirements for undergraduate admission (Policy 700.1.1) | The BOG has provided that any constituent institution may set admissions requirements that exceed minimums established by the BOG upon the approval of the BOT. | NCGS 116-11(8a) | | | X |

Duties and Authorities of Boards of Trustees

| Duty/Authority | Description | Original Authority | Advice & Oversight | Action or Approval | Policy Creation |
|----------------|-------------|--------------------|--------------------|--------------------|-----------------|
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Student Services

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| Oversee services offered to students [Appendix 1 (XI)] | The BOG has delegated to the BOT responsibility to determine the type, level, and extent of student services (ex: health care, athletic programs, and counseling). | NCGS 116-11(2) | X | | |
| Recommend student fees (Appendix 1 (IX)(E); Policy 1000.1) | The BOG has delegated to the BOT responsibility to recommend to the president the amounts to be charged for application, athletics, health services, student activities, educational and technology, retirement of debt incurred for capital improvements projects, course, and special fees. | NCGS 116-11(7) | X | | |
| Oversee intercollegiate athletics (Policy 1100.1; Regulation 1100.1.1[R]) | The BOG has provided that BOT receive annual reports on student-athlete exceptions to the institution's undergraduate admissions criteria; financial indicators; annual institutional budget for intercollegiate athletics, including major sources of revenue and expenses; and audits of all foundations, clubs, and associations established primarily to raise money on behalf of constituent institutions. | NCGS 116-11(2) | X | | |
| Approve head coach and athletic director contracts (Policy 1100.3) | The BOG has directed that the BOT approve contracts of employment between an institution and a head athletic coach or an athletic director for a term longer than one year. | NCGS 116-11(2) | | X | |

Capital

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| Prepare and maintain campus master plan [Appendix 1 (VI)] | The BOG has delegated to the BOT responsibility for preparing and maintaining a master plan for the physical development of the institution, consistent with the total academic and service mission of the institution as defined and approved by the BOG. | NCGS 116-11(2); NCGS 116-13.1(a)(1) | | X | |
| Approve plans for capital construction projects (Appendix 1 (VI)) | The BOG has delegated to the BOT responsibility, subject to policies of the BOG and all legal requirements relative to the construction of state-owned buildings, for the following matters concerning campus capital construction projects, which have been approved by the BOG and authorized by the state of NC: 1) the selection of architects or engineers for buildings and improvements requiring such professional services; 2) the approval of building sites; 3) the approval of plans and specifications; and 4) the final acceptance of all completed buildings and projects. | NCGS 116-11(2) | | X | |
| Acquire or dispose of real property at certain thresholds [Appendix 1 (VI)] | The BOG has delegated to the BOT authority to authorize a proposal to acquire or dispose of an interest in real property that is valued at less than \$50,000 and proceed to obtain the necessary approvals from appropriate state officials and agencies, without first obtaining the approval of the BOG. | NCGS 116-11(2); NCGS 116-31.12 | | X | |

Finance and Budget

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| Advise chancellor on budget administration [Appendix 1 (V)] | The BOG has provided that the BOT shall advise the chancellor with respect to the development of budget estimates for the institution and with respect to the execution and administration of the budget of the constituent institution, as approved by the General Assembly and the BOG. | NCGS 116-11(9) | X | | |
| Create and maintain endowment funds (Policy 600.2.1) | By statute, and affirmed by the BOG, the BOT shall establish and maintain an endowment fund for the constituent institution. | N.C.G.S. § 116-36 | X | | |

Duties and Authorities of Boards of Trustees

| Duty/Authority | Description | Original Authority | Advice & Oversight | Action or Approval | Policy Creation |
|---|---|------------------------|--------------------|--------------------|-----------------|
| Extension | | | | | |
| Approve centers and institutes policies (Regulation 400.5[R]) | The BOG has directed that the BOT approve campus level policies on centers and institutes and authorize establishment and discontinuation of institutional centers and institutes, consistent with these regulations and the directions of the president or the BOG. The BOG has provided that the BOT may delegate to the chancellor the authority to approve the discontinuation of institutional centers and institutes. | NCGS 116-11(2) | | X | X |
| Adopt patent and copyright policies (Policy 500.2) | The BOG has directed that the BOT adopt patent procedures, which shall be reviewed and approved by the President prior to approval by the BOT. | NCGS 116-11(2) | | | X |
| Campus Safety | | | | | |
| Adopt policies on Illegal drugs (Policy 1300.1) | The BOG has directed that the BOT adopt a policy on illegal drugs applicable to all students, faculty, and staff. | NCGS 116-11(2) | | | X |
| Adopt policies of vehicles on campus (Guideline 1300.5) | The BOG has directed that the BOT enact ordinances for the registration of vehicles on campus. | N.C.G.S. § 116-44.4(f) | | | X |

AGENDA ITEM

A-3. Board of Governors Staff.....Steve Long

Situation: The Committee on University Governance has requested a review of other system governing boards' staffing.

Background: S.L. 2017-57, the 2017 Appropriations Act, amended G.S. 116-11 to permit the Board of Governors to hire staff members deemed necessary by the Board to report directly to the Board.

Assessment: Of the 13 systems reviewed, most governing boards did not have staff other than the chief executive reporting directly to it and the overall governance varies among the systems, including delegated authorities of the board. The attached document summarizes the findings.

Action: This item is for information only.

| State | Board Name | Number of <u>Voting</u> Members | Staff Reporting Directly to the Board other than Chief Executive? | Type of Position | Reporting to? |
|----------------|--|---------------------------------------|--|---|--|
| Arizona | Arizona Board of Regents | 11 | No | | |
| California | University of California Board of Regents | 26 | Yes | (1) the Secretary and Chief of Staff; (2) the General Counsel of the University; (3) the Chief Compliance and Audit Officer; and (4) the Chief Investment Officer | The Secretary reports only to the board. The GC, Chief Audit Officer, and Chief Investment Officer report both to the board and to the president. |
| California | The California State University Board of Trustees | 24 | Dual | General Counsel and Chief Audit Officer has solid line. | General Counsel has dotted line to Board, Chief Audit Officer has solid line. |
| Florida | State University System of Florida Board of Governors | 17 | No | | |
| Georgia | Board of Regents University System of Georgia | 19 | No | | |
| New York | State University of New York Board of Trustees | 16 | No | | Note: The secretary and other senior officers are appointed by the Board, and serve at its pleasure, but report to the President. |
| North Carolina | University of North Carolina Board of Governors | 28 | Dual | <p>The Secretary position is established by the BOG in the Code and has specific responsibilities to the BOG, while also serving as part of the president's staff. The Chief Audit Officer and the General Counsel have traditionally been understood to have professional responsibilities both to the BOG and the president.</p> <p>Note: State law provides that the senior staff of the system office and the constituent institutions are appointed by the BOG on the president's recommendation. The BOG has delegated its appointing authority to the president, in the case of the system office.</p> | |
| Pennsylvania | Pennsylvania's State System of Higher Education Board of Governors | 20 | No | | |
| Tennessee | Tennessee Board of Regents | 17 | No | | |
| Tennessee | University of Tennessee Board of Trustees | 23 | Dual | General Counsel and Executive Director of Audit & Compliance have dual reporting lines | General Counsel reports directly to the Board of Trustees and the President. Executive Director of Audit and Compliance reports directly to the Audit & Compliance Committee of the Board, with a dotted line relationship to the CFO. |

| State | Board Name | Number of <u>Voting</u> Members | Staff Reporting Directly to the Board other than Chief Executive? | Type of Position | Reporting to? |
|-----------|---|---------------------------------------|--|---|---|
| Texas | The University of Texas System Board of Regents | 9 | Yes | (1) General Counsel; (2) Secretary, appointed by the GC; (3) Executive Director for Board Services, appointed by the GC; (4) UT System Audit. | General counsel reports to Board of Regents and supervises the board office and the UT System Audit Office. GC appoints the Secretary to the Board and the Executive Director for Board Services, as well associate counsels. |
| Texas | The Texas A&M System Board of Regents | 9 | Yes | (1) Executive Director of the Board; and (2) Chief Audit Officer report directly to the Board; and (3) the General Counsel has "special responsibilities" to the Board. | |
| Wisconsin | Board of Regents University of Wisconsin System | 18 | Yes | (1) Executive Director & Secretary; (2) General Counsel; (3) Chief audit officer | (1) Executive Director & Secretary reports to board; (2) General Counsel reports to board and to president; (3) Chief audit officer reports to board and president. |

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| Total with staff reporting to board other than chief executive: | 4 |
| Total with dual reporting staff: | 3 |
| Total with no staff reporting to board other than chief executive: | 6 |
| Total system boards reviewed: | 13 |

AGENDA ITEM

A-4. Policy on Free Speech and Free ExpressionSteve Long

Situation: The North Carolina General Assembly has passed legislation related to restoring and preserving campus free speech (the “campus free speech act” or “act”), which became law (S.L. 2017-96) on July 31, 2017. The act requires the Board of Governors to develop and adopt a policy on free speech and free expression that incorporates the relevant statutory provisions. This policy will be in addition to other policies and protections already recognized by the University through *The Code* and the UNC Policy Manual.

Background: The act applies to the University of North Carolina and its constituent institutions. The Board of Governors must adopt a policy on free speech and free expression that includes at least the following provisions:

- Recognition of the primary educational mission of the constituent institutions and the commitment to the fullest degree of intellectual freedom and free expression;
- The role of the institution with respect to free expression in public policy controversies;
- The First Amendment protections of and limits on the freedom of students and faculty to discuss issues on campus;
- Access to campuses for purposes of free speech and expression;
- Assuring that there is a range of disciplinary sanctions for any student or employee who substantially disrupts the functioning of his/her constituent institution or substantially interferes with the protected free expression rights of others; and
- Providing certain procedural safeguards for any student disciplinary cases involving expressive speech or conduct.

The act includes other requirements as well. Each constituent institution must provide information about its free expression policies to incoming first-year students. The Board must also develop a policy that requires each constituent institution to designate an officer, office, or department with responsibilities for ensuring compliance with the law and Board policy and for answering any related questions or concerns. All responsible officers will receive training in ensuring compliance with the act.

The Governance Subcommittee on the Free Expression Policy has met on both October 11, 2017 and October 25, 2017 to discuss the policy. Members of the subcommittee also have met with the Association of Student Governments, the

Staff Assembly, and the Faculty Assembly to solicit their input. The draft policy incorporates feedback from these groups.

Assessment:

The committee will consider the attached draft policy on free speech and free expression for recommendation to the Board for approval.

Action:

This item requires a vote by the committee, with a vote by the full Board of Governors through the consent agenda at the next meeting.

Free Speech and Free Expression Within the University of North Carolina

I. Purpose

Consistent with Article 36 of Chapter 116 of the North Carolina General Statutes, the Board of Governors adopts this policy to support and assist the constituent institutions of the University of North Carolina¹ in their continuing efforts to embrace the free speech and free expression rights of the members of their campus communities, and balance those rights with protections against unlawful activity. This policy supplements other University policies, regulations, and guidelines related to free speech and free expression.²

II. Statement of Commitment

As the nation's first public university, the University of North Carolina affirms its long-standing commitment to free speech and free expression for its students, faculty members, staff employees, and visitors under the First Amendment of the U.S. Constitution and Article 1, Section 14 of the North Carolina Constitution. The University and its constituent institutions protect and promote these freedoms, consistent with First Amendment jurisprudence.

The University's mission includes the transmission and advancement of knowledge and understanding, the pursuit of which is dependent upon the ability of our faculty and students to remain free to inquire, to study and to evaluate, to gain new maturity and understanding.³ The University supports and encourages 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.⁴ The University has explicitly stated that faculty and students of the University share 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.⁵ Academic freedom has indeed been acknowledged by the Supreme Court as "of transcendent value to all of us" and "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."⁶ Through its policies, the University has expressly established that no employment decision or academic decision shall be based on the exercise of these constitutional rights.⁷

The General Assembly has recognized the University's commitment to upholding free speech and free expression, and has reinforced the importance of these rights as well.⁸ Through N.C.G.S. § 116-300, the General Assembly has affirmed that the primary function of the University of North Carolina and each of its constituent institutions is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, each constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression. It is not the proper role

¹ Because of the additional protections afforded to K-12 institutions under the First Amendment, the policy does not apply to the North Carolina School for Science and Math or to the University of North Carolina School of the Arts for its high school students or to any lab schools operated by a constituent institution. Even so, these institutions are expected to comply with Article 36 of Chapter 116 to the extent there is not a conflict with relevant First Amendment jurisprudence applicable to K-12 institutions.

² See, e.g., Sections 101.3.1, 300.1.1, 300.2.1, 700.4.2 of the UNC Policy Manual. See also Sections 601, 604, and 608 of *The Code*.

³ See *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

⁴ Section 600(1) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

⁵ Section 600(3) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

⁶ *Keyishian v. Board of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

⁷ See Sections 101.3.1, 300.1.1, 300.2.1, 700.4.2 of the UNC Policy Manual. See also Sections 601, 604, and 608 of *The Code*.

⁸ Article 36 of Chapter 116 of the North Carolina General Statutes.

of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

III. University's Role in Public Policy Controversies

The University's role in supporting and encouraging freedom of inquiry requires assuring opportunities for differing views regarding many issues in multiple areas of study, research, and debate, including current political and social issues. The constituent institutions serve an essential role in encouraging and broadly protecting the freedom of thought and expression. In support of the essential role universities hold, the constituent institutions may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.

IV. Free Expression at UNC Constituent Institutions, Including Access to Campus

Students, staff and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of viewpoint- and content-neutral restrictions on time, place, and manner of expression that are necessary to achieve a significant institutional interest. The constituent institutions must assure that any such restrictions are clear, published, and provide ample alternative means of expression.

Students, staff and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is lawful and does not materially and substantially disrupt the functioning of the constituent institution, subject to the requirements of this policy. A "material and substantial disruption" encompasses any or all of the following:

- A. Any action that qualifies as disorderly conduct under N.C.G.S. § 14-288.4;
- B. Any action that qualifies as a disruption under N.C.G.S. § 143-318.17;
- C. Any action in violation of a chancellor's designation of a curfew period pursuant to N.C.G.S. § 116-212;
- D. Any action that results in the individual receiving a trespass notice from law enforcement.

Access to campus for purposes of free speech and expression shall be consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums. Consistent with First Amendment jurisprudence, including any reasonable time, place, and manner restrictions adopted by a constituent institution, campuses of the constituent institutions are open to any speaker whom students, student groups, or members of the faculty have invited.

Even so, all real property on the campus of any constituent institution or UNC General Administration, including without limitation all campus grounds, buildings, facilities, stadiums, or other improvements, that is owned, leased, used, or otherwise controlled by the University or one of its constituent institutions ("University Property"), is dedicated for the specific purpose of furthering the educational, research, and/or service missions of the institution. Consistent with the First Amendment, many areas of University Property are not open for general public use. University Property is routinely utilized for institutional activities and events which can present safety and security issues for the institution. Therefore, all persons on University Property must abide by all applicable laws and regulations as well as policies of the constituent institution and the Board in order to further the missions of the institution and for the protection of the students, faculty members, staff employees and guests of the institution. Thus, a constituent institution may deny or condition entrance onto or into University Property or remove from the same, any person whose presence substantially interferes with or materially and substantially disrupts the institution's missions, including interfering with or disrupting the classroom environment, laboratory or research environments, or patient care environments, or any person who violates or refuses to comply with

any Board or institutional policy or applicable law or regulation. Under no circumstances shall University Property be utilized to carry out unlawful activity.

V. Speech and Expression Not Protected by Policy

Except as further limited by this policy, constituent institutions shall be allowed to restrict speech and expression for activity not protected by the First Amendment under State or federal law, including but not limited to all of the following:

- A. Expression that a court has deemed unprotected defamation.
- B. Unlawful harassment.
- C. True threats, which are defined as statements meant by the speaker to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.
- D. An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- E. An action that substantially disrupts the functioning of UNC General Administration, a constituent institution, or any other unit or entity of the University, or that substantially interferes with the protected free expression rights of others.
- F. Reasonable time, place, and manner restrictions on expressive activities, consistent with N.C.G.S. § 116-300(4).
- G. Speech that interferes with the treatment of patients.

VI. Dissemination of Information About Institutional Policies

A. Information for Students. All constituent institutions of the University of North Carolina shall include in any new student orientation programs a section describing their institutional policies regarding free speech and free expression consistent with this policy and with Article 36 of Chapter 116 of the North Carolina General Statutes. Any information provided also should include the name and contact information of the institutional officer, office, or department with responsibility for ensuring compliance with this policy and for answering any related questions or concerns.⁹

The constituent institutions are required to periodically provide this same information to all students, including returning undergraduate students, transfer students, and graduate and professional students.

B. Information for Faculty and Staff. All constituent institutions of the University of North Carolina are required to periodically provide to faculty and staff information describing their institutional policies regarding free speech and free expression consistent with this policy and with Article 36 of Chapter 116 of the North Carolina General Statutes. Any information provided should also include the name and contact information of the institutional officer, office or department with responsibility for ensuring compliance with this policy and for answering any related questions or concerns.

C. Information for Outside Parties. All constituent institutions of the University of North Carolina are encouraged to make available to outside parties information describing their institutional policies regarding free speech and free expression consistent with this policy and with

⁹ The additional duties of the identified responsible officer, office, or department are set forth in section VIII of this policy.

Article 36 of Chapter 116 of the North Carolina General Statutes. Any information provided should also include the name and contact information of the institutional officer, office, or department with responsibility for ensuring compliance with this policy and for answering any related questions or concerns.

VII. Consequences for Violation of Policy

The right to dissent is the complement of the right to participate in expressive activity, but these rights need not occupy the same forum at the same time. The constituent institutions are encouraged to work with students, faculty members, and staff employees to develop alternative approaches so as to minimize the possibility of disruptions and support the right to dissent.

A. **Disciplinary Sanctions.** Each constituent institution shall implement and enforce a range of disciplinary sanctions, up to and including dismissal or expulsion, for anyone under the jurisdiction of the constituent institution who substantially disrupts the functioning of the constituent institution or substantially interferes with the protected free expression rights of others.

A “substantial disruption” or “substantial interference” is any action that qualifies under Section IV of this policy. Such actions include protests and demonstrations that materially infringe upon the rights of others to engage in and listen to expressive activity when the expressive activity (1) has been scheduled pursuant to this policy or other relevant institutional policy, and (2) is located in a nonpublic forum. In determining whether an action is a “substantial disruption” or “substantial interference,” the constituent institution may consider the degree to which the disruptive activity impedes access to or from any scheduled institution events or the degree to which the activity impedes an audience’s ability to see and hear the expressive activity.

For example, when an expressive activity event is closed to the public, dissent by non-attendees should be limited to activity outside the event that does not impede access or departure from the meeting or substantially interfere with communication inside. When the event is open to the public, whether the dissenters’ actions constitute a substantial disruption or interference will depend upon whether the dissenter is inside or outside the event, and on whether the dissenter is acting before or after the speech event or during the event. However, it is a substantial disruption or interference for such dissent to interfere substantially with the free flow of traffic into or out of the event or to interfere substantially with the speaker’s expressive activity.

Anyone who substantially interferes with acceptable forms of dissent is also considered in violation of this policy in the same way as a dissenter who violates the rights of the speaker or the audience.

1. Any University student, faculty member, or staff employee who is found to have substantially disrupted the functioning of UNC General Administration, a constituent institution, or any other unit or entity of the University, or substantially interfered with the protected free expression rights of others shall be subject to a full range of disciplinary sanctions according to the appropriate disciplinary procedures for misconduct, including suspension, or, as appropriate, expulsion or dismissal. Any second finding of a substantial disruption or substantial interference shall presumptively result in at least a suspension as provided by the appropriate disciplinary procedures; however, the institution may impose a different sanction if warranted. Any third finding of a substantial disruption or substantial interference shall presumptively result in an expulsion of the student or dismissal from employment of the faculty member or staff employee; however, the institution may impose a different sanction if warranted.

2. Any guest or other individual on the campus who is alleged to have substantially disrupted the functioning of UNC General Administration or the constituent institution or substantially interfered with the protected free expression rights of others may be temporarily or permanently barred from all or part of the campus along with facing any other criminal charges, as determined by appropriate law enforcement authorities.

3. Any individual who disrupts a meeting of a public body, including University boards, may be temporarily or permanently barred from all or part of the campus or from future meetings of that public body, and/or may face criminal charges. If such individual is a student or faculty member or staff employee of the University, he or she shall also be subject to discipline according to the appropriate disciplinary procedures for misconduct by his or her constituent institution even if the disruption occurs at a meeting of a public body of a constituent institutions other than the institution which the individual is affiliated.¹⁰

B. Procedural Safeguards for Students Involved in Expressive Speech or Conduct Disciplinary Cases.¹¹ In all student disciplinary cases where disciplinary action is proposed for disrupting the functioning of UNC General Administration, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, students are entitled to a disciplinary hearing under published procedures and UNC Policy Manual, Section 700.4.1, including, at a minimum:

1. The right to receive advance written notice of the charges;
2. The right to review the evidence in support of the charges;
3. The right to confront witnesses against them;
4. The right to present a defense;
5. The right to call witnesses;
6. A decision by an impartial arbiter or panel;
7. The right of appeal; and
8. The right to active assistance of counsel, consistent with N.C. G.S. § 116-40.11.

C. Procedural Safeguards for Faculty Members Involved in Expressive Speech or Conduct Disciplinary Cases. In all faculty disciplinary cases where a demotion, suspension, or dismissal is proposed for disrupting the functioning of UNC General Administration, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, faculty members are entitled to the procedural protections provided by Sections 603, 604, and 609 of *The Code*.

D. Procedural Safeguards for EHRA Non-Faculty Employees Involved in Expressive Speech or Conduct Disciplinary Cases.¹² In all EHRA non-faculty disciplinary cases where a demotion, suspension, or dismissal is proposed for disrupting the functioning of UNC General Administration, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, EHRA non-faculty employees are entitled to the procedural protections provided by Sections 300.1.1, 300.2.1 of the UNC Policy Manual and any additional protections established by the constituent institution's relevant disciplinary and grievance policies.

¹⁰ Any complaint about an outside disruption should be communicated to the relevant campus administrator or disciplinary panel for review by the Chair of the Board of Governors, the Chair of the Board of Trustees, or the presiding officer of the meeting, as appropriate. This expectation does not limit or supersede the constituent institution's ability to independently initiate any disciplinary review.

¹¹ See also Sections 700.4.1 and 700.4.1.1[R] of the UNC Policy Manual.

¹² Discontinuation of an at-will position is not considered disciplinary action under this policy, but may separately be covered by a constituent institution's grievance policy.

E. Procedural Safeguards for SHRA Employees Involved in Expressive Speech or Conduct Disciplinary Cases. In all SHRA employee disciplinary cases where a demotion, suspension or dismissal is proposed for disrupting the functioning UNC General Administration, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, SHRA employees are entitled to the procedural protections provided by the University SHRA Employee Grievance Policy and any State or campus disciplinary policies.

VIII. Designation and Duties of Responsible Officer and/or Office or Department

A. Designation. Each constituent institution must identify the officer(s), office, or department with responsibilities for ensuring compliance with this policy and Article 36 of Chapter 116 of the North Carolina General Statutes ("Responsible Officer" or "Responsible Officers"), and for answering any related questions or concerns from students, faculty members, staff employees, or others. The president or a chancellor of a constituent institution may choose to designate more than one Responsible Officer or to designate a Responsible Officer with Deputy Responsible Officers in other offices or departments as may best assist the constituent institution.

B. Training. Any officer(s) with these responsibilities will receive training on ensuring compliance. Such training will be developed and provided by the University of North Carolina School of Government.

C. Duties. Any officer(s) with these responsibilities shall be the primary point of contact for any student, faculty member, staff employee, or other individual's questions or concerns about compliance with the law or policy or to assist with interpretation of the law or policy. The Responsible Officer(s) shall also coordinate any additional campus-based training or educational opportunities for students, faculty members, staff employees, or others on issues related to free speech and free expression.

In addition, the Responsible Officer(s) and/or appropriate office or department also may be designated by the chancellor to be the primary point of contact for any institutional information requested by the UNC Board of Governors Committee on Free Expression to meet its annual reporting requirements, including information related to:

1. Any barriers to or disruptions of free expression within the constituent institution;
2. The administrative handling and discipline relating to these disruptions or barriers, consistent with the federal and state confidentiality protections for personnel information and student education records¹³;
3. Any substantial difficulties, controversies, or successes in meeting the requirements of this policy, as described in Section III, above; and
4. Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

Each chancellor or chancellor's designee shall notify the senior vice president and general counsel of the Responsible Officer(s) and/or appropriate office or department and provide prompt notification of any changes in this designation.

¹³ See 20 U.S.C. §1232g, 34 CFR Part 99, and Article 7 of Chapter 126 of the North Carolina General Statutes.

IX. Other Matters

- A. Effective Date. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.
- B. Relation to State Laws. The foregoing policies as adopted by the Board of Governors are meant to supplement, and do not purport to supplant or modify, those statutory enactments which may govern the activities of public officials.
- C. Regulations and Guidelines. These policies shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

AGENDA ITEM

A-5. Report Deregulation – Updates to the UNC Policy Manual Tom Shanahan

Situation: The UNC Policy Manual imposes reporting and data collection requirements on the University and its constituent institutions. While some of the reporting requirements are essential, many others have accumulated over a period of years and no longer provide information that is necessary for business and performance analysis. In addition, the reporting and data collection requirements are scattered throughout the policy manual, making it difficult for institutions to comply with the requirements in an effective and efficient manner.

Background: The president's staff has undertaken a thorough review of the UNC Policy Manual as part of a project overseen by the Committee on Audit, Risk Management, and Compliance (CAMRC). Some of the reporting requirements are outdated, have a compliance and regulatory focus, or are not designed to assist the Board with performance analysis. The Board recently revised its policy on reporting (UNC Policy 100.2) to provide that future data collection and reporting to the Board, University leadership, and the public should: (1) inform decision-making; (2) be relevant to strategic priorities/goals; (3) be cost effective compared to the reporting burden; (4) support risk management and risk mitigation; and (5) go to the appropriate level (president, chancellor, board of trustees, Board of Governors, or committee). Reporting requirements should also be centrally maintained by the president and easily accessible.

Assessment: The proposed policy revisions and updates to select UNC policies presented to the committee for review are designed to eliminate or streamline reporting requirements consistent with the Board's policy. A description of each policy or regulation that has been revised or is being presented to the committee for action is attached. Policies require action by the committee. Regulations and guidelines are presented for information only.

Action: This item requires a vote by the committee, with a vote by the full Board of Governors through the consent agenda at the next meeting.

Constituent Universities

Appalachian
State University

East Carolina
University

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
and Mathematics

Anti-Equity Opportunity/
Affirmative Action Employer

Legal Affairs

Phone: 919-962-4588

Fax: 919-962-0477

Summary of Draft Amendments to the UNC Policy Manual

UNC Policy Manual, Section 200.1 (5)(d)(ii). This section of the UNC Policy Manual establishes the Board of Governors restrictions regarding dual membership on governing boards and prohibitions on conflicts of interest. The Board has delegated to the president and chancellors of the constituent institutions the authority to review contracts entered by the University with a business entity in which a person governed by the policy has a substantial interest. The president or chancellor is authorized to determine whether the contract is permissible or impermissible based upon established criteria. The president's or chancellor's determination is required to be made in writing and is a public record. The policy currently requires that the president's or chancellors' contract approvals authorized by the policy be reported to a Board committee annually and that chancellor approvals be reported to the president on a quarterly basis.

The proposed change to this section removes these reporting requirements from the UNC Policy Manual. The existing reporting requirements would be replaced by a requirement to maintain a list of all approvals by the president or chancellors for the past three years that would be available for review upon request. This new requirement would be catalogued within a list of requirements maintained by the president.

UNC Policy Manual, Section 200.5(V). This section of the UNC Policy Manual authorizes the initiation and settlement of potential and pending litigation by the University. The Board of Governors has delegated to chancellors the authority to approve settlements of potential or pending litigation for solely monetary relief of amounts less than \$75,000, as well as nonmonetary settlements that affect only parties named or reasonably anticipated to be named in litigation. The proposed change to this section clarifies that settlements approved by the president or Committee on University Governance must be reported to the committee and the full Board during the Board's next meeting after finalization of the settlement.

Chancellors would be required to maintain a record of all settlements approved through their delegated authority pursuant to this policy. The record of settlements would be available for inspection upon request. The requirement to maintain a record of settlements available for review would be catalogued within a list of requirements maintained by the president.

200.1

Adopted 05/11/84

Amended 06/09/89

Amended 09/08/89

Amended 05/11/91

Amended 06/08/01

Amended 11/09/07

Amended 09/18/09

Amended / /17

Dual Memberships and Conflicts of Interest

The Board of Governors seeks at all times to be fair and impartial in carrying out its responsibilities and tries to avoid even the appearance of partiality or undue influence. To promote this objective the following guidelines are adopted as board policy and recommended to the members for their guidance:

1. Service on Foundation Boards or Boards of Visitors of Constituent Institutions

Members of the Board of Governors may, from time to time, be asked to serve simultaneously on a foundation board or a board of visitors or some similar board for one of the sixteen constituent institutions. No matter how conscientious or successful a member may be in maintaining impartiality among constituent institutions, service on such a board will undoubtedly be construed by some as showing favoritism. It is also felt that some institutions will feel pressure to name members of the Board of Governors to such boards if service on them becomes commonplace. For these reasons members of the Board of Governors are encouraged to decline any such service.

2. Service on Boards of Private Colleges and Universities

Members of the Board of Governors may be asked to serve simultaneously on the board of a private college or university in North Carolina. While such an invitation is always an honor, there are potential areas of conflict in such dual memberships. A member should satisfy himself or herself that dual service will not interfere with his or her obligations either to the University of North Carolina or to the private institution.

3. Inquiries Concerning Admissions and Job Openings

From time to time a member of the Board of Governors may wish to inquire, either directly or through an officer of the University, about a job opening in the University or about the admission of an individual to an institution or to a program. Sometimes a board member is asked to write a letter of recommendation on behalf of a candidate for a job or for admission. It is highly inappropriate to use one's position on the Board of Governors in an attempt to influence employment or admissions. It is not inappropriate, however, for a member to make inquiries or to write letters of recommendation on the member's personal or business stationery. It should always be clear that the board member is not seeking a favor and understands that the decision in all cases will be made strictly on the merits.

4. Appointments by the Board of Governors

In order to avoid any appearance of undue influence, the Board of Governors will not consider for membership on any board to which it makes appointments any person who is a spouse of a Board of Governors member, a brother or a sister or a lineal ancestor or descendant of a member, or the spouse of any such person. This policy shall not apply, however, to any person who may have been elected or appointed to any such board prior to the time the related person became a member of the Board of Governors. Nor shall the policy apply to any person who may already be serving on any such board at the time of the adoption of the policy. The Board of Governors will not consider for membership on any board to which it makes appointments any person who was a member of the Board of Governors at any time during the two-year period immediately preceding the effective date of the appointment. The boards to which this policy shall apply include the Boards of Trustees of the constituent institutions and all boards to which the Board of Governors make appointments.

5. Inappropriate Advantage Derived from Board Membership

a. **Purpose:** It is of critical importance that decisions made on behalf of the University by its governors, trustees, chief executive officers, and chief finance officers be in the best interest of the University and not be influenced by any potential financial gain to the decision-makers. Furthermore, to assure public confidence in the integrity of the University, it is important that the University not appear to be influenced by the personal financial interests of those in decision-making positions. The purpose of this policy is assure public confidence in the integrity of the University by preventing members of the governing boards and chief executive and finance officers of the University from using their positions, or appearing to use their positions, to influence the decisions of the University for their personal financial gain while at the same time allowing the University to take advantage of contracts that are advantageous to the citizens of North Carolina and to the University and also avoiding having service to the University be so restrictive that persons with substantial financial interests will be reluctant to serve.

b. Definitions

As used in this policy, the following terms have the following meanings:

- i. "Business entity" means a "business" as defined in GS §128A-3(2)¹ or a not for profit corporation.
- ii. "Person" means a member of the Board of Governors or of a Board of Trustees of a Constituent Institution, the President, the Vice President for Finance, a chancellor, or the chief finance officer of a constituent institution.
- iii. "Substantial interest" means any of the following:
 - 1. A "business with which associated" as that term is defined in GS § 138A-3(3)², except that ownership of more than \$10,000 in a publicly traded corporation by itself is not a substantial interest; or

¹G.S. 138A-3(2) defines a "business" as, "Any of the following organized for profit:

- a. Association.
- b. Business trust.
- c. Corporation.
- d. Enterprise.
- e. Joint venture.
- f. Organization.
- g. Partnership.
- h. Proprietorship.
- i. Vested trust.
- j. Every other business interest, including ownership or use of land for income.

²G.S. §138A-3(3) Business with which associated. – A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family does any of the following:

- a. Is an employee.
- b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
- c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
- d. Is a lobbyist registered under Chapter 120C of the General Statutes.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

- 1. The covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
- 2. The fund is publicly traded, or the fund's assets are widely diversified.

2. A “nonprofit corporation or organization with which associated” as that term is defined in G.S 138A-3(24)³, except that uncompensated service as a director, officer, or trustee of a not for profit corporation is not a substantial interest.

iv. “The University” as applied to members of the Board of Governors, the President, and the Vice President for Finance means the General Administration or any of the constituent institutions. “The University” as applied to members of the Boards of Trustees, a chancellor, or a chief finance officer of a constituent institution means the constituent institution on whose Board of Trustees the member serves or at which the chancellor or chief finance officer is employed.

c. Requirements

i. Each person must contemporaneously submit to the Vice President of Finance, each Statement of Economic Interests that the person files with the State Ethics Commission pursuant to G.S. S 138A-22. These disclosure statements are public records.

ii. Whenever a person has actual knowledge that a business entity in which the person has a substantial interest is attempting or planning to enter, is entering, or has entered into a contract with the University, the person must report the nature of the person's substantial interest and the nature of the contract to the chief finance office of the institution that is or would be a party to the contract. If the person is a chief finance officer, then the chief finance officer must make this report to the chancellor or to the President of the institution that is or would be a party to the contract. Reports required by this paragraph shall be in writing and will be public records retained by the respective chief finance officers.

iii. The University will not enter into a contract with a value of \$10,000 or more, or with expected payments of \$10,000 or more per year, with a business entity in which a person has a substantial interest, unless one of the exceptions in paragraph C (iv) applies. A person will not in any way

1. participate in making a contract;
2. attempt to cause or influence the University to make a contract, or
3. attempt to influence the contract specifications or contracting process concerning a contract between a business entity in which the person has a substantial interest and the University.

The Vice President for Finance and the respective chief finance officers of the constituent institutions are responsible for determining whether the University is entering into a contract with a value of \$10,000 or more with a business entity in which a person has a substantial interest.

iv. The restrictions on entering into a contract in paragraph c(iii) do not apply if the person with the substantial interest does not participate in making or administering the contract and:

1. The contract results from a competitive sealed bid or a competitive request for proposals with specifications and criteria;
2. The contract is for goods or services sold or provided to the general public at a uniform price or is for goods on state contract sold to state agencies at a uniform price, unless the contract is prohibited by state law;

³G.S. §138A-3(24) Nonprofit corporation or organization with which associated. – Any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under Chapter 120C of the General Statutes or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State.

3. The contract is an employment contract with the dependent child or spouse of the President, the Vice President for Finance, a chancellor or chief finance officer or the dependent child of a member of the Board of Governors or a Board of Trustees and the employment is allowed under Section 300.4.2 of these policies;

4. The contract is with a bank or a public utility; or

5. The committee of the Board of Governors or of the relevant Board of Trustees designated pursuant to paragraph d(i) below finds that the contract is in the best interest of the University. Examples of when a contract might be in the best interest of the University include, but are not limited to, when it has financially advantageous terms, when the goods or services to be provided are demonstrated to be unique, or when the contract is a continuation of a contract that was in effect before the person with the substantial interest became affiliated with the University.

v. If a person is an employee or agent of a business entity, the person shall not attempt to influence the University to enter into a contract with the business entity that employs or retains the person.

vi. A person shall not attempt to influence the administration of or payments under a contract between the University and a business entity in which the person has a substantial interest or between the University and the person's employer.

vii. No person shall disclose or use confidential information or information concerning economic development or technology research or development which the person received in his capacity as a board member or employee of the University for the person's financial gain.

viii. No person shall accept a gift or favor from a business entity, or the principal in a business entity, which has entered into a contract with the University within the past year, who currently has a contract with the University, or who intends to attempt to enter into a contract with the University if the person:

1. has or will prepare plans, specifications, criteria or estimates for the contract;
2. awards, approves, negotiates, or administers the contract; or
3. inspects or supervises the contract.

This paragraph does not prohibit the receipt of advertising items of nominal value, awards such as plaques or trophies, food served at professional meetings or banquets, or gifts from family members or personal friends when it is clear that the friendship extends beyond the business relationship.

ix. A person shall not represent, as attorney, agent, or trustee, a third party who has an adverse relationship with the University. A person shall attempt to dissuade a firm or business entity in which the person has a substantial interest from engaging in representation adverse to the University.

d. Procedures

i. The Chairman of the Board of Governors and each Chairman of a Board of Trustees shall designate a standing committee to determine whether a potential conflict is a permissible or impermissible activity and to make recommended findings as to whether this policy has been violated.

ii. Potential conflicts:

1. Any person who receives a report of a potential conflict shall forward that report to the chief finance officer of the institution that is or would be a party to the contract.

2. If the person with the substantial interest claims or the chief finance officer believes that the contract is permissible pursuant to paragraph c(iv)(1), (2), (3), or (4) above, the determination of whether the contract is permissible or impermissible may be made by the respective President or chancellor, or the President or chancellor may request that the designated committee make the determination. Any determination by the President or a chancellor shall be in writing and shall be a public record. ~~The President and the chancellors shall report to the designated committee on an annual basis the contracts each has approved pursuant to this sub paragraph. In addition, each chancellor shall report to the President on a quarterly basis the contracts the chancellor has approved pursuant to this subparagraph.~~

3. If the person claims that the contract is permissible pursuant to paragraph c(iv)(5) above, because the contract is in the best interest of the University, or if a chancellor or the President refers a conflict question to the committee, then the designated committee shall determine whether the proposed contract is a permissible or impermissible activity under this policy and shall enter its determination in the minutes of its proceedings.

4. If the person who has the potential conflict is a member of the designated committee, the person shall not participate in the deliberations of the committee, other than to present the relevant facts to the committee, and shall abstain from voting.

iii. Allegations of conflict

1. If any person or any Senior Academic or Administrative Officer becomes aware or alleges that a person covered by this policy has violated this policy, the person shall report the alleged violation to the chancellor or President of the institution that is or would be a party to the contract.

2. The person who receives the allegation shall forward the allegation:

a. to the designated committee of the Board of Trustees or of the Board of Governors if the person alleged to have violated this policy is a member of that Board;

b. to the designated committee of the Board of Governors if the President is alleged to have violated this policy;

c. to the President if the person alleged to have violated this policy is a chancellor or the Vice President for Finance; or

d. to the respective chancellor if the person is a chief finance officer of that constituent institution.

3. If the person alleged to have violated the policy is the President or a member of a Board of Governors or of the Board of Trustees, then the designated committee will determine whether or not the policy has been violated. The chairperson of the designated committee will designate an individual to investigate the allegations and to make a report to the committee. After considering the report of the investigation and any response by the person alleged to have violated the policy, the committee shall make a determination as to whether the policy has been violated and, if so, a recommendation as to the appropriate sanction to the respective Board of Trustees or Board of Governors. The Board of Trustees or Board of Governors shall vote to affirm, reject, or modify the recommendation.

4. If the person who has the potential conflict is a member of the designated committee, the person shall not participate in the deliberations of the committee, other than to present the relevant facts and arguments to the committee on his own behalf, and shall abstain from voting.

5. A Board of Governors member, Board of Trustees member, or President who is alleged to have violated this policy is entitled to receive notice of the allegation, to be present to hear the report presented to the designated committee, and to inform the committee of any facts or arguments that demonstrate that he or she did not violate the policy.

6. If the Vice President for Finance, a chief finance officer or a chancellor is alleged to have violated this policy, that allegation will be investigated and acted upon in accordance with the procedures for disciplining, demoting, dismissing, or terminating the contract of employees of that position.

iv. The President will present this policy annually to the Board of Governors and will present it to new members at the beginning of their service. The chancellors will present this policy annually to their respective Boards of Trustees and will present it to new members at the beginning of their service.

e. Sanctions

i. If the Board of Governors or a Board of Trustees finds that one of its members has violated this policy, the Board may take one or more of the following actions:

1. Reprimand or censure the member;
2. Remove the person from any Board office the person holds or from any committee chairmanship or assignment; and
3. Report the violation to the entity that appointed the member.

ii. If the Board of Governors finds that the President has violated this policy, the Board of Governors may discipline, demote or dismiss the President, as it deems appropriate.

iii. If the President finds that the Vice President for Finance has violated this policy, the President may discipline, demote, or dismiss the Vice President, and shall report the violation and the action taken by the President to the Board of Governors.

iv. If the President finds that a chancellor has violated this policy, the President may discipline the chancellor and report the action taken to the Board of Governors and the relevant Board of Trustees, or the President may recommend to the Board of Governors that the employment of the chancellor be terminated and that the chancellor be demoted or dismissed.

v. If a chancellor finds that a chief finance officer has violated this policy, the chancellor may discipline, demote or dismiss the chief finance officer and shall report the violation and the action taken to the President and the Board of Trustees.

vi. Pursuant to North Carolina law, any contract between the University and an entity in which a person has a substantial interest which was entered into in violation of state laws governing conflicts of interest is void.

The provisions of Section 5 are effective July 1, 2001. Initial disclosure forms will be filed on or before October 1, 2001. The provisions of paragraph c(iii) will apply to all contracts entered into after January 1, 2002. The Statement of Economic Interest replaces all disclosure forms due to be filed on or after July 1, 2007; the initial Statement of Economic Interest for people employed or in office on January 1, 2008, must be submitted to the Vice President for Finance by April 15, 2008.

200.5

Adopted 08/14/98

Replaced 05/14/04

Amended 09/08/05

Amended 09/09/16

Amended / /17

Initiating and Settling Potential and Pending Litigation

By virtue of N.C.G.S. § 116-3, the capacity and authority to initiate litigation, as well as to settle potential and pending litigation, in the name of the University of North Carolina, and on behalf of the constituent institutions, lies exclusively with the Board of Governors. A constituent institution has no independent capacity or authority to initiate litigation or to settle potential or pending litigation in its own name or in the name of the University of North Carolina.

Potential or pending litigation may involve issues and claims that do not require the attention of the Board of Governors to approve their initiation or settlement. The Board of Governors therefore delegates the authority to initiate and settle potential and pending litigation only in the circumstances below:

I. A constituent institution may initiate litigation in the name of the University of North Carolina or the constituent institution if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in N.C.G.S. § 7A-243 upon the approval of the chancellor. The University of North Carolina may initiate litigation concerning issues that do not arise at a constituent institution, or that arise at more than one constituent institution, if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in N.C.G.S. § 7A-243 upon the approval of the president.

II. The Committee on University Governance may authorize the initiation of litigation in the name of the University of North Carolina if the amount in controversy is greater than the jurisdictional amount for civil actions in superior court, or if injunctive relief is sought.¹ A request to initiate litigation shall be made by the chancellor of a constituent institution, or by the request of the president for issues that do not arise at a constituent institution or that arise at more than one constituent institution. In an emergency, if a constituent institution or the University needs to seek an order from a court sooner than it is practical to call a meeting of the Governance Committee, the constituent institution or the University may initiate litigation on the authorization of the president or the senior vice president and general counsel of the University. The president or general counsel shall consult with the chair of the Governance Committee before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the authorization of the Governance Committee, the president, or the president's designee, shall inform the Governance Committee about the litigation at the Committee's next regular or special meeting.

III. If a settlement of potential or pending litigation involving a constituent institution or the University of North Carolina:

A. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay pursuant to an agreement to settle the potential or pending litigation is less than \$75,000, or if the University is to receive a payment, and the amount claimed was less than \$75,000, then the chancellor of a constituent institution is authorized to approve the settlement. If a matter did not arise at a constituent institution or involves more than one constituent institution, the president is authorized to approve the settlement.

¹Pursuant to N.C.G.S. § 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the president of the University. See UNC Policy 200.6, *Delegation Authority to the President of the University*, adopted 11/13/06.

B. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay is \$75,000 or greater, or if the University will receive a payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.²

C. Includes an agreement by the University, or one or more constituent institutions, to take, or refrain from taking, a specific action, and the agreement affects only the named parties in the litigation or parties reasonably anticipated to be named in potential litigation, such as actions that affect only named employees or students, then the president or the chancellor of the constituent institution may authorize the settlement agreement.

D. Includes an agreement by the University, or one or more constituent institutions, to take or refrain from taking a specific action which affects a group or class of people or which results in changing a University or constituent institution policy, procedure or regulation, then the Committee on University Governance is authorized to approve the settlement.

IV. The Committee on University Governance may refer a request to initiate or settle potential or pending litigation to the Board of Governors, in the committee's discretion. The president may refer a request to settle potential or pending litigation to the Committee on University Governance in the president's discretion. If the president makes such a referral, the Committee on University Governance is authorized to decide the matter, or it may make a recommendation to the Board of Governors.

V. Any settlement approved pursuant to [Section III.B., or III.D., of this policy](#) shall be reported to the Committee on University Governance and to the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors after the settlement is finalized.³

VI. The University of North Carolina may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the Committee on University Governance. The Committee, in its discretion, may refer the question to the Board of Governors.

VII. A constituent institution, or a school or college of a constituent institution, may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the chancellor of the institution and after providing advance written notice to the president. Nothing in this section is intended to limit the ability of an individual University employee or group of employees to appear as *amicus curiae* in the individual's or employee group's name.

This policy applies to the University of North Carolina Health Care System, to the UNC Physicians and Associates, and to the ECU Medical Faculty Practice plan except as otherwise provided in Policy §§ 1200.4 and 1200.5 and except as otherwise provided by State law, including G.S. § 116-219 *et seq.*

The requirements of this policy shall be effective on the date of adoption by the Board of Governors. The foregoing policy is meant to supplement, and does not supplant or modify, those statutory enactments which may govern the initiation and resolution of legal claims. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

²See Footnote 1.

³See Footnote 1.

AGENDA ITEM

A-6. NCSSM Board of Trustees Andrea Poole

Situation: The Board of Governors selects the four institutions from which the chief academic officers serve *ex officio* on the Board of Trustees of the NC School of Science and Mathematics (NCSSM).

Background: G.S. 116-233 calls for the Board of Governors to quadrennially designate three UNC System institutions and one private institution from which the chief academic officer will serve as an *ex officio* member of the NCSSM Board of Trustees, beginning in 1985. Duke University, North Carolina A&T State University, North Carolina State University, and UNC-Chapel Hill have served as the four schools for many years.

In 2015, the Board of Governors reappointed these schools to a four-year term (ending in 2019); however, this appointment term is contrary to the schedule in statute.

Assessment: It is recommended that Duke University, North Carolina A&T State University, North Carolina State University, and UNC-Chapel Hill continue as the designated institutions through June 30, 2021.

Action: This item requires a vote by the committee and a vote by the full Board of Governors.