



September 16, 2020 at 2:00 p.m.  
Via Videoconference and UNC-TV Live Stream  
University of North Carolina System Office  
Center for School Leadership Development, Board Room  
Chapel Hill, North Carolina

## AGENDA

### OPEN SESSION

- A-1. Approval of the Minutes of July 22, 2020 ..... David Powers
- A-2. 2019-20 Committee on University Governance Annual Report ..... David Powers
- A-3. Resolution on Clearance Requirements ..... David Powers
- A-4. Report on Free Speech and Free Expression  
Within the University of North Carolina System ..... Thomas Shanahan
- A-5. Review of the UNC Policy Manual ..... David Powers
  - a. Section 200.5 of the UNC Policy Manual (Initiating and Settling Potential and Pending Litigation)
- A-6. UNC Press Board of Governors Nomination ..... David Powers
- A-7. Vidant Medical Center Board of Trustees Appointments ..... David Powers
- A-8. Legal Counsel Statute; Amendment to UNC Policy ..... Thomas Shanahan

### CLOSED SESSION

- A-9. Approval of the Closed Session Minutes of July 22, 2020 ..... David Powers
- A-10. Legal Affairs Report ..... Thomas Shanahan

### OPEN SESSION

- A-11. Adjourn

### Additional Information Available

UNC Policy Manual Technical Corrections



## Closed Session Motion

### Motion to go 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.
- Consult with our attorney to protect attorney-client privilege; and

To consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases:

- *Alston, et al. v. UNC System, et al.*
- *DTH v. University of North Carolina*
- *Dieckhaus, et al. v. Board of Governors of the University of North Carolina*
- *Staton v. UNC, et al.*

**Pursuant to:** G.S. 143-318.11(a)(1) and (3).

**DRAFT MINUTES**

July 22, 2020  
Via Videoconference and UNC-TV Live Stream  
University of North Carolina System Office  
Center for School Leadership Development, Room 128  
Chapel Hill, North Carolina

This meeting of the Committee on University Governance was presided over by Chair David Powers. The following committee members, constituting a quorum, were also present at the meeting or by videoconference: C. Philip Byers, Leo Daughtry, Mark Holton, and Terry Hutchens. Pearl Burris-Floyd was not present for this meeting.

Dr. Wesley Burks, Chancellor Karrie Dixon, and Interim Chancellor Ron Mitchelson also participated.

Staff members present included Thomas Shanahan, Meredith Steadman, and others from the UNC System Office.

**1. Call to Order and Approval of the Minutes of May 19, 2020 and June 23, 2020 (Item A-1)**

The chair called the meeting to order at 3:00 p.m., on Wednesday, July 22, 2020.

Chair Powers reminded all members of the committee that the meeting would be conducted pursuant to new amendments to the Open Meetings Act, which stipulate that all votes be taken by roll-call vote. The chair also reminded committee members of their duty under the State Government Ethics Act to avoid conflicts of interest and appearances of conflict of interest. The chair asked if there were any conflicts or appearances of a conflict with respect to any matter coming before the committee. No members identified any conflicts at the time.

The chair next called for a motion to approve the open session minutes of May 19, 2020 and June 23, 2020.

**MOTION:** Resolved, that the Committee on University Governance approve the open session minutes of May 19, 2020 and June 23, 2020, as distributed.

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

## 2. Overview of 2020-21 Boards of Trustees Selection Process (Item A-2)

The chair provided an overview of the process for selecting members of the boards of trustees, explaining that every two years, one-half of the Board of Governors-elected board of trustee positions require either new elections or reelection. Working with the constituent institutions, the committee will identify and review candidates and then make recommendations to the full Board. Included with the materials was a proposed calendar for the 2020-21 selection process.

## 3. Discussion of Draft Revisions to the UNC Policy Manual (Item A-3)

In February, the committee began discussions on revisions to Section 200.7 of the UNC Policy Manual, the policy that addresses the duties, responsibilities, and expectations of Board members. The chair then called on Tom Shanahan to review the policy with the committee and to review additional proposed changes based on feedback at the May meeting. Following the briefing by Mr. Shanahan, the chair opened the floor for questions and comments by the committee and other Board members. At the close of the discussion, a motion was made to accept the revisions to Section 200.7 and bring it to the full Board for vote at the next meeting.

**MOTION:** Resolved, that the Committee on University Governance approve the proposed amendments to Section 200.7 of the UNC Policy Manual and recommend it for a vote of approval by the full Board of Governors at its next meeting.

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

## 4. Student Elections Working Group Recommendations (Item A-4)

The chair summarized the work of the Student Elections Working Group, which had been created in April 2020 by the Board of Governors. The working group was composed of student body presidents, chancellors, and members of the boards of trustees and the Board of Governors. The mission of the working group was to ensure that adequate anti-tampering procedures were implemented to preserve the integrity of student elections at each constituent institution.

Following a review of student government election policies from each constituent institution, the working group arrived at several recommendations aimed at ensuring each student government is consistent in its approach to election protocols and student election financial transparency. In addition to the recommendations, the working group considered policy changes to ensure there is no improper influence by University employees and officials in student government elections.

The working group reviewed and considered a proposed new section to the UNC Policy Manual, which would prohibit University board members from contributing to or influencing constituent institution student government elections. The working group voted unanimously in favor to recommend the draft policy, Section 700.3.2, Policy on Student Government Elections, to the Board of Governors. Following the summary of the working group by the chair, a motion was made to accept the new proposed policy, Section 700.3.2, and bring it for a vote by the full Board of Governors through the consent agenda at its next meeting.

**MOTION:** Resolved, that the Committee on University Governance accept the new proposed policy, Section 700.3.2, Policy on Student Government Elections, and recommend it for full Board of Governors approval through the consent agenda at its next meeting.

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

**5. North Carolina Arboretum Board of Directors Appointment (Item A-5)**

The chair provided background information to the committee on the nomination, as well as the process for the nominations, 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:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

**6. Vidant Medical Center Board of Trustees Appointment (Item A-6)**

The chair provided background information to the committee on the nomination, as well as the process for the nominations, roles, responsibilities, and duties of the Vidant Medical Center Board of Trustees.

**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:** Terry Hutchens

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

### 7. Closed Session

Mr. Byers moved that the committee go 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. To consult with our attorney to protect attorney-client privilege; and consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases: *Carcaño, et al. v. Cooper, et al.*; *Daily Tar Heel (DTH) v. Folt*; *DTH v. University of North Carolina*; *Dieckhaus, et al. v. Board of Governors of the University of North Carolina*; and *Staton v. UNC, et al.* Pursuant to G.S. 143-318.11(a)(1), (3), and (6).

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes
Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

**THE MEETING MOVED INTO CLOSED SESSION.**

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

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

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Chair Powers	Yes
Vice Chair Hutchens	Yes
Secretary Byers	Yes

Ms. Burris-Floyd	Not Present
Mr. Daughtry	Yes
Mr. Holton	Yes

**THE MEETING RETURN INTO OPEN SESSION AT 3:54 P.M.**

**8. Adjourn**

Before adjourning the meeting, Chair Powers took a moment to welcome new committee members and express appreciation for Tom Shanahan and Meredith Steadman, System Office staff for the committee.

There being no further business and without objection, the meeting adjourned at 3:55 p.m.

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C. Philip Byers, Secretary



## AGENDA ITEM

A-2. 2019-20 Committee on University Governance Annual Report .....David Powers

- Situation:** Each standing committee submits an annual report of its activities to the Board of Governors.
- Background:** Pursuant to Section 302 E of *The Code*, “Each standing committee shall make a written report to the Board of Governors at least annually, reviewing the work of the committee during the preceding year.”
- Assessment:** The annual report on the activities of the Committee on University Governance for fiscal year 2019-20 is ready for review and submission.
- Action:** This item requires a vote by the committee to accept the report for submission to the Board of Governors.



## DUTIES AND MEMBERSHIP

The Committee on University Governance is responsible for reviewing and making recommendations for proposed changes to the UNC Policy Manual, including *The Code*, and the delegations of duty and authority involving University governance; for nominating individuals for election to the 17 institutional boards of trustees and other University-related boards; and for authorizing the initiation and settlement of litigation and pending litigation in circumstances where that authority has not otherwise been delegated. This report summarizes the work of the committee from July 2019 through June 2020.

The committee was composed of the following Board members: W. Louis Bissette, Jr., Pearl Burris-Floyd, Thomas H. Fetzer, Thomas C. Goolsby, James L. Holmes, Jr., Terry Hutchens, and David Powers. Mr. Powers served as chair, Mr. Goolsby served as vice chair, and Mr. Fetzer served as secretary.

Dr. Wesley Burks (UNCHCS), Chancellor Sartarelli (UNCW), and Interim Chancellor Valentine (FSU) also served on the committee.

## ACTIONS

Between July 1, 2019 and June 30, 2020, the Committee on University Governance met in eight regularly scheduled meetings. The major actions of the committee are summarized as follows:

### Appointments to Boards for Affiliated Entities

Pursuant to the committee's recommendations for affiliated entities to the University, the Board of Governors made the following appointments or confirmations:

Name of Board	Member	Term Ending
East Carolina University	Van Isley	June 30, 2023
State Advisory Council on Indian Education	Tiffany Locklear	June 30, 2022
UNC-Chapel Hill	Munroe Cobey	June 30, 2021
UNC Pembroke	Linda 'Mickey' Gregory	June 30, 2023
UNC Press Board of Governors	John C. O'Hara, Jr.	June 30, 2025
UNC Press Board of Governors	Carlton E. Wilson	June 30, 2025
UNC Television	Jack Clayton	June 30, 2024
UNC Television	Rich French	June 30, 2024
UNC Television	Michael Schoenfeld	June 30, 2024
Vidant Medical Center	Ron Mitchelson	<i>Ex Officio</i>
Vidant Medical Center	Mark Stacy	<i>Ex Officio</i>

### Campus Liaison Assignments

Each constituent institution and selected affiliated entities were assigned a “liaison” from the Board. The 2019-20 campus liaisons were:

Ms. Burris-Floyd:	N.C. A&T State University NC School of Science and Math North Carolina Arboretum UNC Asheville
Mr. Fetzer:	UNC School of the Arts Winston-Salem State University
Mr. Goolsby:	UNC Wilmington Other Appointments
Mr. Holmes:	Appalachian State University North Carolina Central University UNC-Chapel Hill
Mr. Hutchens:	Fayetteville State University UNC Greensboro UNC-TV
Mr. Powers:	East Carolina University Elizabeth City State University North Carolina State University UNC Charlotte UNC Pembroke Western Carolina University Other Appointments
Mrs. Coward:	UNC Health Care

### Review of *The Code*, UNC Policy Manual (Policies, Regulations, and Guidelines)

Throughout the year, the committee held ongoing discussions in areas of the UNC Policy Manual that needed to be added, updated, amended, or reviewed.

The committee reviewed the following policies during the 2019-20 year:

- Section 200.2 of the UNC Policy Manual (Election Procedures): *At this point, no changes are needed.*
- Section 200.7 of the UNC Policy Manual (Duties, Responsibilities, and Expectations of Board Members).
- Section 200.1 of the UNC Policy Manual (Dual Memberships and Conflicts of Interest): *At this point, no changes are needed.*
- Section 300.5.1 of the UNC Policy Manual (Political Activities of Employees): *At this point, no changes are needed.*
- Section 300.5.2 of the UNC Policy Manual (Candidacy for Elective Office; Officeholding (Elective and Appointive Public Office): *At this point, no changes are needed.*
- Section 900.1 of the UNC Policy Manual (Policy on Student Residence Classification for Tuition Purposes).
- Section 900.2 of the UNC Policy Manual (Policy on State Residence Committee).

- Section 1300.8 of the UNC Policy Manual (Policy on Free Speech and Free Expression Within the University of North Carolina System): *At this point, no changes are needed.*

The committee voted to adopt the following revisions:

### 1. Technical Corrections to the UNC Policy Manual

- a. **Section 100.2.IV.D.** This section of the UNC Policy Manual authorizes the secretary of the University, in consultation with the senior vice president and general counsel, to make technical changes to the UNC Policy Manual. Technical changes are defined as including:
  - Correction of typographical errors;
  - Updates to names, titles, statutory, and regulatory references, and other designations;
  - Correction of inconsistencies among policies that may result due to a more recent policy adoption, amendment, or rescission;
  - Assurance that board delegations and resolutions are accurately reflected throughout *The Code* and the UNC Policy Manual; and
  - Annotation of policies, regulations, and guidelines to cross-reference other provisions of the UNC Policy Manual.

Any corrections or changes made pursuant to this policy are required to be summarized and reported in writing to the chair of the Board of Governors and the Committee on University Governance. The attached chart displays all technical corrections made in the 2019-20 year.

### 2. UNC Policy Manual

- a. **Section 200.7.** Section 200.7 of the UNC Policy Manual details the duties and responsibilities of members of the Board of Governors, boards of trustees of constituent institutions, and the boards of University-affiliated organizations. The policy also establishes the basis and procedures for board member sanctions, including removal or recommendation for removal. The draft revisions to Section 200.7 of the UNC Policy Manual expand and clarify the duties and responsibilities of board members. The changes would also establish a more detailed process for receipt, review, and consideration of complaints against board members. The revisions clarify the Board's authority to impose sanctions, including removal or recommendation for removal, within the Board's discretion. The Board of Governors is scheduled to vote on the amended policy on September 17, 2020.
- b. **Section 900.1.** Pursuant to state statute, the North Carolina State Education Assistance Authority (SEAA) now administers a unified system to determine the residency, for tuition purposes, of applicants to the institutions of higher education in North Carolina. With the full implementation of this system, known as the Residency Determination System (RDS), the Board of Governors and the constituent institutions no longer play a role in residency determination, and the State Residence Committee has ceased to exist. Board policy was amended to reflect the current state of residency determination. In light of the full

implementation of RDS, which is administered by SEAA, Section 900.1 of the UNC Policy Manual was amended to reflect the transfer of authority for the residency function to SEAA.

- c. **Section 900.2.** Section 900.2 of the UNC Policy Manual created the State Residence Committee (SRC), to review appeals of residency determinations made by the institutions. In 2013, the General Assembly directed the creation of RDS, which was finally fully implemented in November 2018. Administrative authority to perform all functions necessary for the implementation and administration of RDS currently lies with SEAA. The Higher Education Collaborative Advisory Committee (HECAC), which is comprised of representatives of the UNC System, NCCCS, and North Carolina Independent Colleges and Universities, guides and assists SEAA in formulating, developing, and implementing any policies necessary for the proper administration of RDS. Because the residency function is now housed at SEAA, the Board policies regarding residency determination, as well as accompanying regulations and guidelines, need to be amended or repealed. Section 900.2 of the UNC Policy Manual was repealed on December 12, 2019, through the Consent Agenda.

### **Complaints Involving the East Carolina University Board of Trustees**

The Committee on University Governance received four complaints from members of the East Carolina University Board of Trustees, each seeking the removal of members of that board. Vern Davenport, Fielding Miller, and Vince Smith filed a complaint seeking the removal of Robert Moore and Phil Lewis. Robert Moore filed one complaint seeking the removal of Vern Davenport, one complaint seeking the removal of Fielding Miller, and one complaint seeking the removal of Max Joyner.

After allowing the complainants to file supplemental materials and allowing each respondent the opportunity to respond in writing, the committee met on February 5, 2020, to consider the submitted documentation and to question the parties as necessary. The committee first considered the complaint filed by Mr. Davenport, et al., requesting the removal of Mr. Moore and Mr. Lewis. After reviewing the documentation and questioning the parties, the committee voted unanimously to take no action and refer the complaint to the full Board for consideration.

Following the vote on the complaint filed by Mr. Davenport, Mr. Moore requested that he be allowed to withdraw his complaints against Mr. Davenport, Mr. Miller, and Mr. Smith. Because there was no clear procedure allowing the withdrawal, the committee instead voted unanimously to take no action and to refer the complaints to the full Board for consideration, with the understanding that his request to withdraw the complaints would be communicated to the full Board.

The committee discussed the complaint filed by Robert Moore seeking the removal of Max Joyner on March 19, 2020. After allowing the complainants to file supplemental materials and allowing the respondent the opportunity to respond in writing, the committee decided to refer the matter to the State Ethics Commission for further inquiry pursuant to G.S. 138A. Accordingly, the chair of the Committee on University Governance submitted a written request to the State Ethics Commission to conduct an inquiry into this matter, which remains pending.

### **Department of Defense Classified Research**

The committee passed a resolution on Clearance Requirements, which is an annual requirement related to Department of Defense contracts. The Department of Defense requires the UNC System to maintain Facility Security Clearance. Department of Defense regulations permit the exclusion from the personnel clearance requirements of certain members of the Board and other officers, provided that this action is recorded in the corporate minutes. This resolution was included in the Friday, September 20, 2019, Consent Agenda.

### **Litigation Requests/Settlements**

The committee considered and approved a range of requests to initiate or settle legal matters and heard updates on pending disputes from its counsel.

### **Report on Free Speech and Free Expression**

As required by State law and Section 1300.8 of the UNC Policy Manual, the Committee on University Governance is responsible for preparing an annual report on free speech and free expression within the University that addresses at least the following topics:

- Any barriers to or disruptions of free expression within the University's constituent institutions;
- The administrative handling and discipline relating to disruptions or barriers to free expression;
- Any substantial difficulties, controversies, or successes in meeting the requirements of maintaining institutional neutrality as provided in the law and Section 1300.8 of the UNC Policy Manual; and
- Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

The report reviewed free speech and free expression within the University for the period of time between July 1, 2018, and June 30, 2019. The report finds that constituent institutions are committed to promoting and protecting free speech and free expression, and that disruptions and interference at scheduled speaking or expressive events have been minimal over the past year. The report details steps that constituent institutions are taking to inform campus constituencies about rights and responsibilities, as well as recommendations for improving free expression across the University.

### **Student Elections Working Group**

On April 17, 2020, the University of North Carolina Board of Governors Committee on University Governance created the Student Elections Working Group. The working group was composed of student body presidents, chancellors, campus staff, System Office staff, and members of boards of trustees and the Board of Governors. The working group's mission was to ensure that adequate anti-tampering procedures are in place to preserve the integrity of student elections at each constituent institution. The working group reviewed each constituent institution's policies and practices regarding its student government election process. Based on the information collected, the working group determined that student government election policies across the UNC System could be improved by incorporating several common elements or additional provisions regarding elections oversight. The final report, recommendations, and proposal for a new section of the UNC Policy Manual, Section 700.3.2, "Policy on

Student Government Elections” was presented to the Committee on University Governance on July 22, 2020. The Board of Governors is scheduled to adopt the policy at its September 17, 2020, meeting.

## 2019-20 Annual Report on Technical Corrections

<i>The Code/UNC Policy Manual</i>	UNC Policy Manual - Chapter	Policy/Regulation/Guideline	Section(s)	Technical Correction(s)	Effective Date (Posted to Webpage)
UNC Policy Manual	Chapter 700, Admissions, Matriculation, and Other Student Matters	Policy	700.4.1, Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings	Insert missing word in first paragraph, and revise reference to "The Code" to be consistent with later amendments to the UNC Policy Manual.	8/19/2019
UNC Policy Manual	Chapter 1300, Matters of University-Wide Significance	Policy	1300.8, Policy on Free Speech and Free Expression Within the University of North Carolina System	Update references made to "UNC General Administration" to "UNC System Office," and UNC System; and other Style Guide corrections consistent with later amendments to the UNC Policy Manual.	8/19/2019
<i>The Code</i>	Appendix I	N/A	I.D., Chancellor Selection	Technical changes made to align with recently approved amendments to Section 200.8 of the UNC Policy Manual, Policy on Chancellor Searches and Elections.	10/21/2019
UNC Policy Manual	Chapter 200, Board of Governors	Policy	200.9, Requests for Information or Data from the General Assembly	Update references made to "UNC General Administration" to "UNC System Office," and UNC System; and other Style Guide corrections consistent with later amendments to the UNC Policy Manual.	10/21/2019

<i>The Code/UNC Policy Manual</i>	UNC Policy Manual - Chapter	Policy/Regulation/Guideline	Section(s)	Technical Correction(s)	Effective Date (Posted to Webpage)
<i>The Code</i>	Section 301. The Standing Committees' Jurisdiction	N/A	301 D. (Committee on Personnel and Tenure)	Update references made to "UNC General Administration" to "UNC System Office," and UNC System; and other Style Guide corrections consistent with later amendments to the UNC Policy Manual.	10/21/2019
<i>The Code</i>	Section 301. The Standing Committees' Jurisdiction	N/A	301 G. (Committee on Audit, Risk Management, and Compliance (CARMC))	Update reference made to "General Administration" to "UNC System Office."	1/3/2020
UNC Policy Manual	Chapter 1300, Matters of University-Wide Significance	Policy	1300.1, Illegal Drugs	Technical changes to align with the UNC Style Guide, state and federal laws, and corrections for consistency to later amendments to the UNC Policy Manual.	1/3/2020
UNC Policy Manual	Chapter 1300, Matters of University-Wide Significance	Policy	1300.6, Policy on Efficiency and Effectiveness	Update reference made to "General Administration" to "UNC System Office" along with a couple of other UNC Style Guide updates.	1/3/2020
<i>The Code</i>	Chapter VI, Academic Freedom and Tenure	N/A	611, Review of Personnel Actions Affecting Specified Employees Exempt from the State Personnel Act (EPA)	Update references made to "UNC General Administration" and to the "State Personnel Act." Technical changes made to align with the UNC Style Guide and later amendments to the UNC Policy Manual.	2/27/2020



<i>The Code/UNC Policy Manual</i>	<b>UNC Policy Manual - Chapter</b>	<b>Policy/Regulation/Guideline</b>	<b>Section(s)</b>	<b>Technical Correction(s)</b>	<b>Effective Date (Posted to Webpage)</b>
UNC Policy Manual	Chapter 300, Personnel Policies	Policy	300.2.15, UNC Pandemic and Communicable Disease Emergency Policy	Clarify policy, including UNC System and constituent institution, and statutory references. Technical changes made to align with UNC Style Guide, and later amendments to the UNC Policy Manual.	2/28/2020



**AGENDA ITEM**

A-3. Resolution on Clearance Requirements.....David Powers

**Situation:** A resolution is required annually of the Board of Governors by the United States Department of Defense.

**Background:** The Department of Defense requires the UNC System to maintain a Facility Security Clearance in the performance of classified contracts. In connection with this Facility Clearance, certain senior management officials must obtain an individual security clearance. This resolution is required to exempt members of the Board of Governors and senior officers of the UNC System from the requirement to obtain individual security clearances.

**Assessment:** This is an annual resolution to be adopted by the Board of Governors.

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



**RESOLUTION OF THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA  
AUTHORIZING SECURITY CLEARANCE**

**WHEREAS**, current Department of Defense Regulations contain a provision making it mandatory that the chair of the Board and principal officers meet the personnel clearance requirements established for a contractor's facility clearance; and

**WHEREAS**, said Department of Defense Regulations permit the exclusion from the personnel clearance requirements of certain members of the Board of Governors and other officers, provided that this action is recorded in the corporate minutes.

**NOW, THEREFORE, BE IT DECLARED** that the chair of the Board, the president of the University of North Carolina, Insider Threat Program Senior Official, and the University's Facility Security Officer and Assistant Facility Security Officer at the present time do possess, or will be processed for, the required security clearance; and

**BE IT RESOLVED** that in the future, when any individual enters upon any duties as chair of the Board, the president of the University of North Carolina, Insider Threat Program Senior Official, or as the University's Facility Security Officer or Assistant Facility Security Officer, such individual shall immediately make application for the required security clearance; and

**BE IT FURTHER RESOLVED** that the following members of the Board of Governors and other officers shall not require, shall not have, and can be effectively excluded from access to **CLASSIFIED** information in the possession of the corporation and do not occupy positions that would enable them to affect adversely corporate policies or practices in the performance of classified contracts for the Department of Defense or the User Agencies of its Industrial Security Program.

<b>NAME</b>	<b>TITLE</b>
Norma Reid Houston	Chief of Staff
Jennifer Healy Haygood	Senior Vice President for Finance and Administration and Chief Financial Officer
Kimberly Philpot van Noort	Senior Vice President for Academic Affairs and Chief Academic Officer
Jonathan Charles Pruitt	Senior Vice President and Chief Operating Officer
Thomas Cortland Shanahan	Senior Vice President for Governance, Legal, and Risk and General Counsel
Andrew Patrick Kelly	Senior Vice President for Strategy and Policy
Matthew Scott Brody	Senior Vice President and Chief Human Resources Officer

<b>NAME</b>	<b>TITLE</b>
Darrell Timberlake Allison	Member
Winston Louis Bissette, Jr.	Member, <i>ex officio</i>
Kellie Hunt Blue	Member
Pearl Burris-Floyd	Member
Charles Philip Byers	Member
Jimmy Dean Clark	Member
Carolyn Lloyd Coward	Member
Namon Leo Daughtry	Member
Thomas Cowart Goolsby	Member
Isaiah Maurice Green	Member, <i>ex officio</i>
Reginald Ronald Holley	Member
James Leroy Holmes, Jr.	Member
Martin Luther Holton III	Member
Hilton Terry Hutchens	Member
William Marshall Kotis III	Member
Steven Brent Long	Member
John Alexander Mitchell	Member
Wendy Floyd Murphy	Member
Anna Spangler Nelson	Member
Roderick Doyle Parrish	Member
James Arthur Pope	Member
David Murphy Powers	Member
Orris Temple Sloan III	Member
Dwight David Stone	Member
William Leighton Williford	Member

The foregoing resolution was duly adopted by the Board at a regular meeting of the Board on the 17<sup>th</sup> day of September, 2020.

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF ORANGE )

SS:

SECRETARY'S CERTIFICATE  
OF AUTHORIZATION

I, Meredith R. McCullen, Assistant Vice President and Secretary of the University of North Carolina, *DO HEREBY CERTIFY* that (1) the foregoing is a full, true and correct copy of the approving resolution adopted by the Board of Governors of the University of North Carolina at its regular meeting on September 17, 2020, and appearing in the minutes of such meeting, (2) notice of the meeting of the Board of Governors of the University of North Carolina held on September 17, 2020, was sent to each member of the Board, and (3) a quorum was present at the meeting on September 17, 2020, at which time the foregoing Resolution was adopted.

*WITNESS*, my hand and the seal of the University of North Carolina this 17<sup>th</sup> day of September 2020.

[SEAL]

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Meredith R. McCullen  
Assistant Vice President and Secretary  
The University of North Carolina

## AGENDA ITEM

### A-4. Report on Free Speech and Free Expression

Within the University of North Carolina..... Thomas Shanahan

**Situation:** As required by state law and Section 1300.8 of the UNC Policy Manual, the report on free speech and free expression provides information annually on the following subjects:

1. Any barriers to or disruptions of free expression within the UNC System constituent institutions;
2. The administrative handling and discipline relating to disruptions or barriers to free expression;
3. Any substantial difficulties, controversies, or successes in meeting the requirements of Section 1300.8 of the UNC Policy Manual; and
4. Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

The UNC System Office staff worked with institutions' responsible officers to compile information on the required topics and other issues related to campus speech activity.

**Background:** G.S. 116-301 requires that the Board designate a standing committee to act as the Committee on Free Expression and report annually to the public, the Board, the Governor, and the General Assembly on issues related to free speech and free expression within the University. The Board has designated the Committee on University Governance to fulfill these responsibilities.

**Assessment:** This report addresses free speech and free expression at the constituent institutions for the period of time between July 1, 2019, and June 30, 2020. The report finds that constituent institutions are committed to promoting and protecting free speech and free expression, and that disruptions and interference at scheduled speaking or expressive events have been minimal over the past year. The report details steps that constituent institutions are taking to inform campus constituencies about rights and responsibilities, as well as recommendations for improving free expression across the University.

**Action:** This item requires a vote by the committee.



# **THE UNIVERSITY OF NORTH CAROLINA SYSTEM**

## **REPORT:**

### **2019-20 Report on Free Speech and Free Expression Within the University**

**September 16, 2020**

**University of North Carolina System  
Chapel Hill, North Carolina**

## UNC Board of Governors

### Committee on University Governance, acting as the designated Board Committee on Free Expression 2019-20 Report on Free Speech and Free Expression Within the University

#### I. **Executive Summary**

This report addresses free speech and free expression at the constituent institutions<sup>1</sup> of the University of North Carolina System (“UNC System” or “the University”) for the period of time between July 1, 2019, and June 30, 2020, as required by the [Restore/Preserve Campus Free Speech Act](#) (“the Act”).<sup>2</sup> In preparing and publishing this report, the UNC Board of Governors Committee on University Governance (“committee”), as the designated Committee on Free Expression,<sup>3</sup> was guided primarily on the elements required by the Act.<sup>4</sup> Additionally, the committee relied on information provided by the constituent institutions, information shared with the president and/or members of the Board of Governors, and on relevant articles and media stories published in the past year.<sup>5</sup>

The committee’s intent in issuing this annual free expression report is to address the specific categories of information identified in the Act, assess institutional compliance with Section 1300.8 of the UNC Policy Manual, survey the expressive events that took place at the UNC System constituent institutions

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<sup>1</sup> Because of the additional protections afforded to K-12 institutions under the First Amendment, the North Carolina School for Science and Math, the University of North Carolina School of the Arts for its high school students, and any lab schools operated by a constituent institution are not included within the scope of the report. 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.

<sup>2</sup> The Restore/Preserve Campus Free Speech Act was enacted in 2017 as [S.L. 2017-196](#) and is codified in the North Carolina General Statutes as Article 36 of Chapter 116.

<sup>3</sup> The Act requires the Board of Governors to establish a Committee on Free Expression. N.C. Gen. Stat. § 116-301 (hereinafter G.S.). Section 10.3 of S.L. 2018-5 (“Current Operations Appropriations Act of 2018”) amended G.S. 116-301 to allow the chair of the Board of Governors to designate a standing or special committee of the Board as the Committee on Free Expression.

<sup>4</sup> G.S. 116-301(c) articulates specific information to be provided in the annual report. See Section IV., herein, for more information.

<sup>5</sup> See, e.g., Julian Grace, et al., *Speech by conservatives Charlie Kirk, Lara Trump spurs protests at NC State*, WRAL.com (November 12, 2019), <https://www.wral.com/speech-by-conservatives-charlie-kirk-lara-trump-spurs-protests-at-nc-state/18762247/>; *East Carolina University says it has received “great deal of feedback” since President Trump Rally* (July 19, 2019), ABC11.com, <https://abc11.com/trump-rally-send-her-back-ecu-east-carolina/5406472/>; Jordan Culver, *A North Carolina professor who sparked outrage with his tweets still has his job. Why? It’s called the First Amendment*, USA Today (June 11, 2020), <https://www.usatoday.com/story/news/nation/2020/06/10/first-amendment-north-carolina-wilmington-professor-tweets/3173332001/>



during the relevant time period, review progress since last year's report, and provide recommendations for the upcoming academic year.

The committee's role in compiling and publishing this report is to describe constituent institutions' efforts in fulfilling the University's commitment to free speech and expression that is detailed in University policy. The Board of Governors' role with regard to free expression on UNC System campuses is primarily confined to setting System-wide policy and providing support to constituent institutions in complying with those statements of policy. Responsibility for policy administration, including ensuring appropriate protection for free speech and expression, resides with each constituent institutions' administrators and board of trustees. Constituent institutions generally fulfill their statutory and policy obligations regarding free expression by adopting, communicating, and enforcing institutional policies, which are tailored to their unique campus environments, and by working collaboratively with members of their campus communities.

With the requirements of the Act in mind, this report provides background on and context for free speech and free expression at UNC System constituent institutions, highlights experiences at our institutions over the past year, identifies some key findings by the committee, and offers recommendations that are aimed at providing more awareness and transparency on issues related to free speech and free expression. Specifically, as will be further detailed in the report, the committee found that:

1. The constituent institutions are committed to promoting and protecting free speech and free expression;
2. Disruptions and interference at scheduled expressive events have been minimal;
3. Constituent institutions have developed and utilized mechanisms for receiving, investigating, and resolving complaints regarding alleged free expression policy violations;
4. The constituent institutions are regularly providing information to campus constituencies about rights and responsibilities associated with expression on campus through policies, training, and other outreach;
5. The Foundation for Individual Rights in Education (FIRE), which rates college and university speech policies, has awarded its highest rating ("green light") to 11 UNC System constituent

institutions.<sup>6</sup> Fayetteville State University has attained green light status since the preparation of the 2018-19 report.<sup>7</sup> FIRE's "green light" rating is held by only 51 institutions nationwide.

6. Some constituent institutions have incurred expected and unexpected financial costs related to security surrounding speakers or expressive events on campus; and
7. Constituent institutions have accepted the recommendations for improvement contained in last year's report by taking actions, such as:
  - a. Creating, formalizing, improving, and promoting methods for community members to ask questions or raise concerns about free expression, including institutional complaint processes;
  - b. Reviewing and revising institutional policies regarding or impacting free expression;
  - c. Publicizing and widely distributing institutional free expression policies;
  - d. Providing regular training to students, employees, and board members regarding free expression within the University;
  - e. Creating and distributing standardized resources for prospective campus speakers;
  - f. Creating and/or maintaining websites dedicated to free expression policies and resources;
  - g. Creating a public directory of all spaces on campus available for reservation, including links for reservations and contact information for the responsible institutional unit.

The committee acknowledges that the UNC System's constituent institutions have a long record of hosting events without significant disruption or interference, and that many successful events tend not to garner significant publicity or public attention. This past year was no exception.

In addition to work happening on each individual campus, the University's collection of Responsible Officers, who are designated to ensure compliance with Section 1300.8 of the UNC Policy Manual, have also engaged cooperatively to create and improve resources regarding free expression within the

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<sup>6</sup> See Foundation for Individual Rights in Education's Speech Code Rating Database, [https://www.thefire.org/resources/spotlight/?x=&speech\\_code=Green&y=NC&institution\\_type=Public&speech\\_code\\_advanced=Green&y\\_advanced=NC#search-results](https://www.thefire.org/resources/spotlight/?x=&speech_code=Green&y=NC&institution_type=Public&speech_code_advanced=Green&y_advanced=NC#search-results). UNC constituent institutions that have been awarded a "green light" rating are Appalachian State University, East Carolina University, Fayetteville State University, North Carolina Central University, NC State University, UNC-Chapel Hill, UNC Charlotte, UNC Greensboro, UNC Pembroke, UNC Wilmington, and Western Carolina University.

<sup>7</sup> See Fayetteville State becomes 12th North Carolina institution to earn highest free speech rating (November 25, 2019) <https://www.thefire.org/fayetteville-state-becomes-12th-north-carolina-institution-to-earn-highest-free-speech-rating/>.

University. As required by N.C.G.S. 116-303(b) and Section 1300.8 of the UNC Policy Manual, the UNC System Office convened free expression training for constituent institutions' Responsible Officers that was developed and provided by University of North Carolina School of Government faculty members Frayda Bluestein and Robert Joyce on October 29, 2019. The UNC System Office continues to maintain and update a webpage dedicated to providing information and resources related to free speech and free expression across the UNC System.<sup>8</sup> The webpage allows members of the University community and broader public to access information about laws and policies affecting free expression, find contact information for each constituent institution's Responsible Officer, and access annual editions of the Report on Free Expression.

## **II. Background**

### **A. University Commitment to Free Speech and Free Expression**

As the nation's first public university, the University of North Carolina System 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.<sup>9</sup> 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.<sup>10</sup>

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, and to gain new maturity and understanding.<sup>11</sup> The University supports and encourages freedom of inquiry for faculty members and students, so 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.<sup>12</sup> The University has

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<sup>8</sup> See UNC System Office "Campus Speech and Free Expression" website <https://www.northcarolina.edu/campus-free-speech>.

<sup>9</sup> See, e.g., Sections 601, 604, and 608 of *The Code of the University of North Carolina* ("The Code"). See also Sections 101.3.1, 300.1.1., 300.2.1, 700.4.2, and 1300.8 of the UNC Policy Manual.

<sup>10</sup> See Sections 601, 604, and 608 of *The Code*. See also Sections 101.3.1, 300.1.1, 300.2.1, 700.4.2 of the UNC Policy Manual.

<sup>11</sup> See *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

<sup>12</sup> Section 600(1) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

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.<sup>13</sup> 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.”<sup>14</sup>

#### B. Restore/Preserve Campus Free Speech Act

Through statute, the North Carolina General Assembly has affirmed that the primary function of the University of North Carolina System 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. According to G.S. 116-300(2), “it is not the proper role 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.”<sup>15</sup>

The General Assembly has also established a number of requirements for the Board of Governors, the University of North Carolina System, and its constituent institutions regarding free expression. In response, the Board of Governors has designated a Committee on Free Expression<sup>16</sup> and adopted a University-wide free expression policy which, among other elements, maintains institutional neutrality.<sup>17</sup> A copy of the policy is included with this report as Attachment A. Additionally, the University meets its statutory obligations by providing training for institutional officers and administrators charged with responsibilities for compliance with the Act and coordinating campus-based training (“Responsible

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<sup>13</sup> Section 600(3) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

<sup>14</sup> *Keyishian v. Board of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

<sup>15</sup> G.S. 116-300(2).

<sup>16</sup> Section 10.3 of S.L. 2018-5 (Current Operations Appropriations Act of 2018), which became law on June 12, 2018, amended the requirements for the committee to allow the chair of the Board of Governors to designate a standing or special committee of the Board as the Committee on Free Expression. See <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S99v6.pdf>. The chair of the Board of Governors has designated the Committee on University Governance as the statutorily mandated Committee on Free Expression.

<sup>17</sup> In this context, “institutional neutrality” specifically means only that “the constituent institution 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.” G.S. 116-300(3).

Officers”) and publishing this annual report. A list of the 2019-20 Responsible Officers is included with this report as Attachment B.

**III. Discussion of Free Speech and Free Expression at the University During the 2018-19 Academic Year and Committee Findings**

Pursuant to the Act, the University’s policy, and Board’s interest in a broad review of free expression across the University, the committee received information from the constituent institutions in 10 areas. The questions and summaries of the institutional responses are provided below.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
(1) A description of any barriers to or disruptions of free expression within the constituent institution, including specific incidents and/or particularized complaints. <sup>18</sup>	<ul style="list-style-type: none"> <li>• No constituent institution reported an institutional barrier or disruption of free expression during the academic year.</li> <li>• Institutional responses referenced the disruption to campus operations created by the COVID-19 pandemic. Despite these challenges and fewer on-campus events, institutions developed methods to continue free expression opportunities.</li> <li>• One institution reported that a counter protester was arrested during an on-campus event, which continued uninterrupted.</li> <li>• Another institution reported needing to change the location of a student organization event because a local elections official informed the institution that the original location of the event would constitute a violation of election law.</li> </ul>
(2) A description of the administrative handling and discipline relating to disruption or	<ul style="list-style-type: none"> <li>• 13 institutions had no administrative action to report.</li> <li>• As listed above, one institution reported an arrest to prevent disruption of a campus speech event. The arrest resulted in a misdemeanor charge.</li> </ul>

<sup>18</sup> G.S. 116-301(c)(1) and Section 1300.8, VIII.C.1 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
barriers identified in response to (1). <sup>19</sup>	<ul style="list-style-type: none"> <li>• One institution reported that it had received concerns about threats to freedom of expression. One of these concerns was investigated by the institution and the other was resolved through conversation. The investigated concern was not substantiated</li> <li>• Another institution reviewed a student complaint against a University administrator for alleged violation of Section 1300.8 of the UNC Policy Manual. The institution found no evidence of a violation of the applicable NCGS and UNC policy.</li> </ul>
(3) Identification and description of any difficulties, controversies, and successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues. <sup>20</sup>	<ul style="list-style-type: none"> <li>• Multiple institutions reported successes in hosting a broad range of guest speakers, student organization events, and visiting groups without incident.</li> <li>• One institution reported success in counseling students regarding expression of political speech and activity.</li> <li>• Other successes included administrators responding to complaints by explaining applicable policies.</li> <li>• One institution received an external complaint regarding an employee’s expressive conduct. After review, the institution concluded that the concerns were without merit. The institution responded that it is not the proper role of the university to shield individuals from protected speech, and that the university’s protection of protected speech should not be construed as an endorsement.</li> </ul>
(4) Any assessments, criticisms, commendations, or recommendation the constituent	<ul style="list-style-type: none"> <li>• Multiple institutions provided detailed responses regarding their efforts in prioritizing free expression on</li> </ul>

<sup>19</sup> G.S. 116-301(c)(2) and Section 1300.8, VIII.C.2 of the UNC Policy Manual.

<sup>20</sup> G.S. 116-301(c)(3) and Section 1300.8, III. and VIII.C.3 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
<p>institution would like the committee to consider in preparing the annual report.<sup>21</sup></p>	<p>campus, including maintaining or improving their policy rating status with FIRE.</p> <ul style="list-style-type: none"> <li>• Institutions expressed appreciation for the UNC System Office’s facilitation of Responsible Officer training. It was suggested that the UNC System Office develop model training materials or resources.</li> <li>• One institution reported that, based on student requests, additional information about free expression was introduced into its curriculum.</li> </ul>
<p>(5) Confirmation of whether the institution fulfilled the University policy requirements to disseminate information about institutional policies during the 2019-20 academic year.</p>	<ul style="list-style-type: none"> <li>• 15 institutions indicated that they had disseminated information as required by policy.</li> </ul>
<p>(6) Identification of representative institutional policies that reinforce commitment to free speech and free expression (e.g., academic freedom, tenure regulations, facilities use, etc.).</p>	<ul style="list-style-type: none"> <li>• Eleven institutions reported amending or adopting policies, including facilities use policies, student codes of conduct, and student organization policies.</li> <li>• In addition to constituent institution policies specifically addressing free speech on campus, the most commonly identified policies relate to use of facilities, student conduct, faculty conduct, and tenure and employment. Institutional policies reinforcing the University’s commitment to free speech also relate to harassment and non-discrimination, campus events, solicitation, and advertising.</li> </ul>

<sup>21</sup> G.S. 116-301(c)(4) and Section 1300.8, VIII.C.4 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
	<ul style="list-style-type: none"> <li>• UNC Greensboro completed a complete review of its policies during the 2017-18 academic year and had no additional free expression related changes this year.</li> <li>• New Title IX regulations regarding sexual harassment caused some campuses to review or create policy language that affects free expression.</li> <li>• North Carolina leads the nation in the number of public higher education institutions with free speech and free expression policies receiving the Foundation for Individual Rights in Education’s highest rating.</li> </ul>
(7) Examples of speakers or other events that have been held at the institution during the 2019-20 academic year.	<ul style="list-style-type: none"> <li>• Institutions provided representative samplings of events, and all institutions reported multiple speakers or free expression events during the academic year.</li> <li>• Several institutions reported instances of speakers engaging in free expression on campus without invitation or registration.</li> </ul>
(8) Identification of communications, trainings, or other educational outreach regarding free speech and free expression that have been provided during the 2019-20 academic year.	<ul style="list-style-type: none"> <li>• All institutions identified that free expression communications, trainings, or outreach that had taken place during the academic year.</li> <li>• Many institutions reported that relevant information is readily available in the student handbooks or accessible on web pages dedicated to free expression.</li> <li>• Several institutions reported offering free expression training, provided by campus administrators and/or programming related to civil discourse that is part of the institution’s annual calendar of campus events.</li> </ul>
(9) Information about security and other costs associated with	<ul style="list-style-type: none"> <li>• Institutions reported either no or minimal additional security costs associated with expressive events.</li> </ul>



QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
protecting and affirming free expression on campus.	<ul style="list-style-type: none"> <li>• University security support is made available when warranted for crowd control purposes or to satisfy the policy requirements of a sponsoring organization or facility.</li> <li>• Many institutions allocate campus police department resources for campus events or seek cooperation from local police departments or other System institutions.</li> </ul>

As a result of the information gathered, it appears that (1) the constituent institutions are committed to promoting and protecting free speech and free expression; (2) disruptions and interference at scheduled speaking or expressive events have been minimal over the past year; (3) the constituent institutions are working to provide information to various campus constituencies about rights and responsibilities associated with speech and expression on campus through policies, training, and other outreach; (4) the Foundation for Individual Rights in Education (FIRE), which rates college and university speech policies, has awarded its highest rating (“green light”) to 11 UNC System constituent institutions, more than any other state; and (5) some constituent institutions have incurred additional costs related to security surrounding speakers or expressive events on campus; .

**IV. Implementation of Past Report Recommendations**

Constituent institutions reported a variety of processes and resources that have been introduced or improved to implement recommendations from the committee’s 2018-19 free expression annual report. For instance, several institutions reported introducing or improving institutional complaint processes, including receiving reports or complaints through an institutional hotline, email address, or web portal. Most institutions have developed or improved user-friendly mechanisms for accessing campus speaker and event information. These resources include dedicated webpages listing events on campus or providing prospective speakers with information about relevant campus policies, facility reservation information, and contact information for relevant campus units or individuals. Most institutions report improvements or increases in their free expression training for students and employees, and some institutions have undertaken free speech and free expression training for their boards of trustees. Many

institutions report that they regularly review campus policies that affect free expression, and that during the past academic year they proactively communicated these policies to the campus community.

#### **V. Committee Recommendations for 2020-21**

The committee recognizes that there are always opportunities for improving the University's commitment to free speech and free expression. This annual report provides a welcome opportunity to consider options that will demonstrate our System-wide leadership and action in support of free speech and free expression. The committee therefore offers these recommendations for consideration for implementation by the UNC System Office, aimed at providing more awareness, consistency, and transparency on issues related to free speech and free expression starting with the upcoming academic year:

1. Foster opportunities for free speech and free expression among campus communities that are geographically disconnected due to social distancing guidelines.
2. Adapt traditional free expression expectations within increased virtual instruction and online interaction.
3. Provide training to constituent institution administrators who have transitioned into the Responsible Officer title.
4. Provide training to Responsible Officers regarding topics of institutional neutrality and political speech on campus.
5. Continue to encourage constituent institutions to further develop accessible resources to publicize information on scheduled speakers and events on campus.
6. Continue to encourage each constituent institution to develop standard resources for potential speakers, describing in a user-friendly way how to access or reserve campus spaces; applicable time, place, and manner restrictions; and any information about costs that may be assessed.
7. Continue to encourage constituent institutions to regularly review and, as necessary, revise policies impacting free expression to improve clarity and ensure protection of rights to free expression.

Taken together, these recommendations are designed to provide more visibility and understanding about the ongoing good work and commitment to protecting and promoting free speech and free expression at our constituent institutions; to assure that there are common definitions of certain issues and clear avenues for addressing questions, issues, or concerns; and to build skills and expertise of

campus administrators and other constituencies in this important area. The committee looks forward to periodic briefings on the progress of implementing these recommendations.

## **V. Conclusion**

The committee unanimously supports the UNC System Office's and the constituent institutions' efforts to promote and protect free speech and free expression; increase awareness and understanding of the broad protections for speech and expressive activities on campus; and take action, when needed, to prevent substantial disruption or interference in scheduled events. Our constituent institutions offer a range of speakers, topics, and outreach, and we recognize the efforts of our faculty, administrators, and students to invite different, and even unpopular, views and opinions on important issues. We further recognize their efforts to allow (or participate in) protests without undue disruption to or interference with scheduled events, consistent with the constitutional protections of free speech and expression.

We encourage each institution to continue offering a broad range of perspectives in various speech and expressive activities, and we strongly encourage members of the Board of Governors and Boards of Trustees to attend these events. We affirm that the right to speak and the right to protest are values we share and cultivate across the UNC System, consistent with federal and state law. Among the important responsibilities we have in public higher education are clearly explaining the free expression rights and responsibilities held by students, faculty, staff, and University visitors, and upholding the rights of individuals and groups on our University campuses. We are grateful for the work being done, and we acknowledge the UNC System's role in serving as an exemplar in this area for other higher education institutions and systems. With the recommendations we have provided, we look forward to an even more successful year ahead.

**Accepted by the Board of Governors Committee on University Governance, the designated Board Committee on Free Expression on September 16, 2020.**

## **Policy on Free Speech and Free Expression Within the University of North Carolina System**

### **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 Carolina System<sup>1</sup> 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.<sup>2</sup>

### **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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> Through 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 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 the expression of 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 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 System 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" includes, but is not limited to, any or all of the following:

- A. Any action that qualifies as disorderly conduct under G.S. 14-288.4;
- B. Any action that qualifies as a disruption under G.S. 143-318.17;
- C. Any action in violation of a chancellor's designation of a curfew period pursuant to 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 the UNC System Office, 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 materially and substantially disrupts the functioning of the UNC System Office, 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 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 System 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.<sup>9</sup>

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 System 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 System 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 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. The UNC System Office and 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 UNC System Office or the constituent institution who materially and substantially disrupts the functioning of the UNC System Office, a constituent institution, or any other entity or unit of the University, or substantially interferes with the protected free expression rights of others.<sup>10</sup>

A “material and 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 “material and substantial disruption” or “substantial interference,” the UNC System Office or the constituent institution should 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 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 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 materially and substantially disrupted the functioning of the UNC System Office, 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 material and 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 material and 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 the UNC System Office 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.<sup>11</sup>

B. Procedural Safeguards for Students Involved in Expressive Speech or Conduct Disciplinary Cases.<sup>12</sup> In all student disciplinary cases where disciplinary action is proposed for materially and substantially disrupting the functioning of the UNC System Office, 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 Section 700.4.1 of the UNC Policy Manual, 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 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 materially and substantially disrupting the functioning of the UNC System Office, 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.**<sup>13</sup> In all EHRA non-faculty disciplinary cases where a demotion, suspension, or dismissal is proposed for disrupting the functioning of the UNC System Office, 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 and 300.2.1 of the UNC Policy Manual and any additional protections established by the UNC System Office or the constituent institution's relevant disciplinary and grievance policies.

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 materially and substantially disrupting the functioning of the UNC System Office, 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 institutional 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 UNC 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 (Committee on University Governance) 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 records;<sup>14</sup>
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.

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.

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<sup>1</sup> 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.

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<sup>2</sup> 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*.

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

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

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

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

<sup>7</sup> 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*.

<sup>8</sup> Article 36 of Chapter 116 of the North Carolina General Statutes.

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

<sup>10</sup> Any complaint about an outside disruption or interference should be communicated to the relevant UNC System Office or 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 or sponsoring officer of the meeting or event, as appropriate. This expectation does not limit or supersede the UNC System Office's or the constituent institution's ability to independently initiate any disciplinary review for a person under their jurisdiction.

<sup>11</sup> Any complaint about an outside disruption or interference should be communicated to the relevant UNC System Office or 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 UNC System Office's or the constituent institution's ability to independently initiate any disciplinary review.

<sup>12</sup> See also Sections 700.4.1 and 700.4.1.1[R] of the UNC Policy Manual.

<sup>13</sup> 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.

<sup>14</sup> See 20 U.S.C. § 1232g, 34 C.F.R. pt. 99, and Article 7 of Chapter 126 of the North Carolina General Statutes.

### RESPONSIBLE OFFICERS ACROSS THE UNC SYSTEM

Each UNC System constituent institution must identify officer(s) and/or offices or departments with responsibilities for ensuring compliance with the law and UNC policy, and for answering any related questions or concerns from students, faculty members, staff employees, or others.

<b>INSTITUTION</b>	<b>RESPONSIBLE OFFICER(S)</b>	<b>TITLE</b>
Appalachian State	Jacqui Bergman	Vice Provost for Faculty Affairs
	Jeff Cathey	Interim Assistant Vice Chancellor for Student Affairs
East Carolina	Paul Zigas	Interim University Counsel and Vice Chancellor for Legal Affairs
Elizabeth City State	Alyn Goodson	General Counsel
	Tiffany Hinton	Director of Community Standards
Fayetteville State	Wanda Jenkins	General Counsel
	Angel Powell	Assistant General Counsel
	Regina Rudisill	Director of Student Conduct
N.C. A&T	Melissa Jackson Holloway	General Counsel
NC Central	Joy Hartfield	Director of Student Conduct and Community Standards
NC State	Warwick Arden	Executive Vice Chancellor and Provost
	Brent McConkey	Assistant General Counsel
	Lisa Zapata	Senior Associate Vice Chancellor
UNC Asheville	Heather Parlier	Vice Chancellor for Human Resources, Institutional Equity, and General Counsel
UNC-Chapel Hill	Jean Elia	Associate Provost for Strategy and Special Projects
	Becci Menghini	Senior Associate Vice Chancellor, Equal Opportunity/Compliance
	Jonathan Sauls	Dean of Students

INSTITUTION	RESPONSIBLE OFFICER(S)	TITLE
	Kim Strom-Gottfried	Director, Ethics Education and Policy Management, and Smith P. Theimann Distinguished Professor, School of Social Work
UNC Charlotte	Jesh Humphrey	Vice Chancellor for Institutional Integrity and General Counsel
	Samantha Sears	Deputy General Counsel
UNC Greensboro	Alan Boyette	Senior Vice Provost
UNC Pembroke	R. Travis Bryant	Assoc. VC for Campus Safety and Emergency Operations
UNC School of the Arts	David Harrison	General Counsel
UNC Wilmington	John Scherer	General Counsel
Western Carolina	Shea Browning	General Counsel
Winston Salem State	Cornelius Graves	Director of Government & Community Relations



## AGENDA ITEM

A-5. Review of the UNC Policy Manual.....David Powers

**Situation:** The Committee on University Governance will review a number of policies over the 2020-21 academic year. The purpose of the review is to determine whether these policies are still needed, and whether these policies are still meeting their goals and purposes. This review process will help determine when changes are required to improve the effectiveness or clarify the University's policies and procedures.

**Background:** The committee will review and update, as needed, the following policies over the 2020-21 academic year.

- September 2020: Section 200.5 of the UNC Policy Manual (Initiating and Settling Potential and Pending Litigation)

**Assessment:** This item includes copies of Section 200.5 of the UNC Policy Manual (Initiating and Settling Potential and Pending Litigation) the committee will review.

**Action:** This item is for discussion only.

200.5

Adopted 08/14/98

Replaced 05/14/04

Amended 09/08/05

Amended 09/09/16

### **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.<sup>1</sup> 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:

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<sup>1</sup>Pursuant 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.

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.

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.<sup>2</sup>

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 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.<sup>3</sup>

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.

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<sup>2</sup>See Footnote 1.

<sup>3</sup>See Footnote 1.



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.



## AGENDA ITEM

A-6. UNC Press Board of Governors Nomination .....David Powers

**Situation:** UNC Press has one vacancy on its Board of Governors with a five-year term beginning July 1, 2020, and ending June 30, 2025.

**Background:** The UNC Press Board of Governors has 15 elected members who serve five-year terms and may be reelected for successive terms up to a service limit of three full terms. Fourteen of the current members actively hold an academic position at universities including Appalachian State University, North Carolina Central University, North Carolina State University, University of North Carolina at Chapel Hill, and University of North Carolina at Greensboro.

According to its by-laws, the UNC Press Board of Governors creates a nominating committee and submits a slate to the chancellor of UNC-Chapel Hill, who transmits it to the president of the UNC System, who presents it to the Board of Governors.

**Assessment:** Following the recommendation of UNC Press and UNC-Chapel Hill Chancellor Guskiewicz, President Hans nominates Dr. Kim Smith for appointment. Biographical information for each is included in the materials.

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

**Kim Smith**

Kim Smith currently works as an associate professor in the Department of Journalism and Mass Communication at North Carolina A&T University. He has received numerous awards for his assistance and advocacy of undergraduate research, including the Undergraduate Research Faculty Mentor Award in 2019 for engaging non-STEM students in research, and the Outstanding Teaching award from the College of Arts, Humanities and Social Sciences in 2020. In fall 2019, Smith was named the interim associate director of the University Writing Center, where he uses social media to increase the center's visibility. Prior to his work at N.C. A&T, he worked as a graduate and research assistant at the University of South Carolina and an adjunct journalism instructor at the University of South Carolina Upstate.

Smith received a Ph.D. and a Master's in Mass Communication from the University of South Carolina. He also obtained a B.A. in Broadcast Journalism from Howard University. In addition to his work with undergraduates at N.C. A&T, Smith has also written book chapters, peer-reviewed articles, and presented research at several conferences.



## AGENDA ITEM

A-7. Vidant Medical Center Board of Trustees Appointment ..... David Powers

**Situation:** There are two vacancies on the Vidant Medical Center (VMC) Board of Trustees: Seat one and Seat 10.

**Background:** Pursuant to the amended affiliation agreement between the University, ECU, and VMC, the Board of Governors of the UNC System is responsible for appointing nine of the twenty total seats on VMC's Board of Trustees. The VMC Nominating Committee, consisting of VMC board chair Carlester Crumpler, Bob Greczyn, Interim Chancellor Ron Michelson, and Dean Mark Stacy met regarding the Board of Governor's two upcoming vacancies.

**Assessment:** The nominating committee recommends Donald Thompson for appointment to Seat one for a five-year term beginning on March 1, 2020 and ending on February 28, 2025. The nominating committee recommends Anthony 'Tony' Cannon for appointment to Seat 10 for a five-year term beginning on March 1, 2020 and ending on February 28, 2025.

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

### **Tony Cannon**

Anthony “Tony” Cannon currently serves as the general manager/CEO of the Greenville Utilities Commission. He was promoted in 2012, having previously served as the COO for six years. Cannon is the vice-chair of the Board of Directors for the American Public Power Association and a member of the Executive Committee, the Liaison Committee for the American Public Gas Association, and the Finance and Audit Review Committee. He is also the chair-elect for the Board of Directors for Electricities of North Carolina and serves on the Board of Commissioners for the NC Eastern Municipal Power Agency. Cannon is also the executive vice president for the East Carolina University Educational Foundation. In total, he has more than thirty years of experience with public utilities.

Mr. Cannon has a Bachelor’s in business administration and a Master’s degree in organizational management from Southern Wesleyan University. His experience in utilities management includes electric, water, sewer, and natural gas operations.

### **Donald Thompson**

Currently Donald Thompson works as the CEO of Walk West, a digital marketing firm, and he is the founder and CEO of The Diversity Movement, a diversity, equity, and inclusion solutions company. As a member of multiple organizations, including the National Speakers Association, the Triangle Business Journal Leadership Trust, and, formerly the NC Department of Commerce Board of Science, Technology, and Innovation, Thompson has been successful growing various technology and marketing firms. He is a Certified Diversity Executive, who helps train executives to cultivate diversity, equity, and inclusion in the workplace. Thompson is a renowned keynote speaker and, as CEO of West Walk, he has helped the firm earn recognition in 2018 and 2019 as North Carolina’s fastest growing marketing firm.

In addition to be an accomplished entrepreneur, Thompson has his own publications, including, *Underestimated: A CEO’s Unlikely Journey to Success*, coming out later this year. He is also a columnist for *WRAL TechWire* and the host of the *Donald Thompson Podcast*.



## AGENDA ITEM

A-8. Legal Counsel Statute; Amendment to UNC Policy.....Tom Shanahan

**Situation:** Recent amendments to Chapter 116 of the General Statutes permit the president to designate legal counsel for the University, with appropriate authorization from the Board of Governors.

**Background:** N.C. Gen. Stat. § 116-11(13b) permits the president, with authorization from the Board, to approve the designation of lead legal counsel and the engagement and expenditure of funds for legal counsel, including private counsel, as needed to represent the interests of the University of North Carolina, including the constituent institutions, and any officer or employee in any legal matter, case, or proceeding.

**Assessment:** It is proposed that the Board implement the authority provided by statute through the adoption of the following resolution:

RESOLVED, that:

- (a) Consistent with N.C.G.S. § 116-11(13b), the Board hereby delegates to the president the authority to approve the designation of lead legal counsel and the engagement and expenditure of funds for legal counsel, including private counsel, as needed to represent the interests of the University of North Carolina, the constituent institutions, affiliated educational, research, and public service organizations, and any officer or employee in any legal matter, case, or proceeding;
- (b) The president shall present a proposed amendment to the UNC Policy Manual formalizing this delegation; and
- (c) The president or his designee shall establish such procedures as he may deem necessary to implement this authority.

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