

November 15, 2023 at 2 p.m.
Via Videoconference and PBS North Carolina Livestream
University of North Carolina at Greensboro
Nursing and Instructional Building, Room 402

AGENDA

OPEN SESSION

- A-1. Approval of the Open Session Minutes of October 19, 2023Kellie Blue
- A-2. Consideration of Proposed Revisions to Section 200 of the UNC Policy Manual.....Mary Griffin Inscoe

CLOSED SESSION

- A-3. Approval of the Closed Session Minutes of October 19, 2023Kellie Blue
- A-4. Legal Affairs Report..... Andrew Tripp

OPEN SESSION

- A-6. Adjourn

Additional Information Available:

November 2023 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:
 - To consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases:
 - *Students for Fair Admissions, Inc. v. University of North Carolina*
 - *Soderlund, et. al. v. North Carolina School of the Arts, et. al.*
 - *UNC School of the Arts and University of North Carolina Tort Claim Affidavits*

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

DRAFT MINUTES

October 19, 2023 at 11:30 a.m.

Via Videoconference and PBS North Carolina Livestream

This meeting of the Committee on University Governance was presided over by Chair Kellie Blue. The following committee members, constituting a quorum, were also present by videoconference or phone: Alex Mitchell, Michael Williford, Pearl Burris-Floyd, and Philip Byers.

Chancellor Darrell Allison participated.

Staff members present included Andrew Tripp, Meredith McCullen, and others from the UNC System Office.

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

The chair called the meeting to order at 11:30 a.m. on Thursday, October 19, 2023, and called for a motion to approve the open session minutes of September 13, 2023.

MOTION: Resolved, that the Committee on University Governance approve the open session minutes of September 13, 2023, as distributed.

Motion: Michael Williford

Motion carried

2. North Carolina School of Science and Mathematics Board of Trustees Appointment (Item A-2)

Chair Blue called on Vice Chair Mitchell to introduce his nominee to fill an open seat on the North Carolina School of Science and Mathematics Board of Trustees. Vice Chair Mitchell reviewed his nominee, and Chair Blue called for a motion to approve.

MOTION: Resolved, that the Committee on University Governance approve the nomination of Carolyn Maynor to fill a partial term for the Congressional District 9 seat on the North Carolina School of Science and Mathematics Board of Trustees ending on June 30, 2027, and recommend it to the full Board of Governors for a vote.

Motion: Alex Mitchell

Motion carried

3. Closed Session

MOTION: Resolved, that the Committee on University Governance move into closed session to prevent the disclosure of information that is privileged or confidential under Article 7 of Chapter 126 of the North Carolina General Statutes; to consult with our attorney to protect attorney-client privilege; Pursuant to G.S. 143-318.11(a)(1) and (3).

Motion: Michael Williford
Motion carried

THE MEETING MOVED INTO CLOSED SESSION AT 11:33 a.m.
(The complete minutes of the closed session are recorded separately.)

THE MEETING RESUMED IN OPEN SESSION AT 11:54 a.m.

4. Consideration of Proposed Revisions to Section 1100.1 of the UNC Policy Manual, *Policy on Intercollegiate Athletics* (Item A-5)

Chair Blue called on Andrew Tripp, General Counsel, to discuss proposed policy amendments to Section 1100.11 of the UNC Policy Manual, *Policy on Intercollegiate Athletics*. After review and discussion, Chair Blue indicated the item was just for discussion today and potential amendments would be voted on by the committee at its next meeting.

There being no further business and without objection, the meeting adjourned at 11:56 a.m.

Michael Williford, Secretary

AGENDA ITEM

A-2. Proposed Revisions to Chapter 200 of the UNC Policy Manual.....Mary Griffin Inscoe

Situation: On October 1, 2022, the UNC System Office, through the Office of Legal Affairs, initiated a system-wide policy review effort. This effort precipitated from, and is grounded in, system-wide feedback and requests from constituent institutions. The policy update project encompasses reviewing and proposing revisions to *The Code* and UNC Policy Manual to System Leadership and bringing select recommendations to the Board of Governors for consideration. The review is being conducted chapter-by-chapter. The second round of proposed policy amendments within the Governance Committee's purview, Chapter 200, is presented herein.

Background: The proposed revisions to Chapter 200 of the Policy Manual govern Board of Governors affairs. Specifically, the proposed amendments clarify delegations of authority as it relates to initiating and settling potential and pending litigation, as well as delegation for campus safety and security. These proposed edits define reporting requirements to the Committee on University Governance and Board of Governors as it relates to initiating and settling litigation. Additionally, these proposed edits incorporate statutory updates as it relates to dual memberships and conflicts of interest for Board members. The campus comment period for Chapter 200 was October 27, 2023, to November 1, 2023. System Leadership solicited input from constituent institution leadership and staff to ensure that items developed for inclusion in the UNC Policy Manual reflect a thorough review of policy and delegation considerations.

Assessment: If approved, these proposed revisions to the Policy Manual will be presented to the Full Board in January. Pursuant to *The Code* 202F, any provision of *The Code* (except those required or governed by statutory or constitutional provisions) may be amended by a vote of 2/3 of the voting membership of the full board at the subsequent meeting. Under UNC Policy 100.2, the approval vote for a *Policy* amendment will be through the consent agenda at the subsequent meeting.

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

Dual Memberships and Conflicts of Interest

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

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

Members of the Board of Governors may, from time to time, be asked to serve simultaneously on a foundation board or a board of visitors or some similar board for one of the 16 constituent institutions. No matter how conscientious or successful a member may be in maintaining impartiality among constituent institutions, service on such a board will undoubtedly be construed by some as showing favoritism. It is also felt that some institutions will feel pressure to name members of the Board of Governors to such boards if service on them becomes commonplace. For these reasons members of the Board of Governors are encouraged to decline any such service.

2. Service on Boards of Private Colleges and Universities

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

3. Inquiries Concerning Admissions and Job Openings

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

4. Appointments by the Board of Governors

In order to avoid any appearance of undue influence, the Board of Governors will not consider for

membership on any board to which it makes appointments any person who is a spouse of a Board of Governors member, a brother or a sister or a lineal ancestor or descendant of a member, or the spouse of any such person. This policy shall not apply, however, to any person who may have been elected or appointed to any such board prior to the time the related person became a member of the Board of Governors. Nor shall the policy apply to any person who may already be serving on any such board at the time of the adoption of the policy. The boards to which this policy shall apply include the boards of trustees of the constituent institutions and all boards to which the Board of Governors make appointments.

5. Inappropriate Advantage Derived from Board Membership

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

b. Definitions

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

i. "Business entity" means a "business" as defined in G.S. 138A-3(5)~~G.S. 163A-152(5)~~¹ or a not for profit corporation.

ii. "Person" means a member of the Board of Governors or of a board of trustees of a constituent institution, the vice president for finance, a chancellor, or the chief finance officer of a constituent institution.

iii. "Substantial interest" means any of the following:

1. A "business with which associated" as that term is defined in G.S. 138A-3(7)~~163A-152(7)~~,² except that ownership of more than \$10,000 in a publicly traded corporation by itself is not a substantial interest; or

2. A "nonprofit corporation or organization with which associated" as that term is defined in G.S. 138A-3(54)~~163A-152(54)~~,³ except that uncompensated service as a director, officer, or trustee of a not for profit corporation is not a substantial interest.

iv. "The University" as applied to members of the Board of Governors, the president, and the vice president for finance means the University of North Carolina System Office (UNC System Office) or any of the constituent institutions. The University as applied to members of the boards of trustees, a chancellor, or a chief finance officer of a constituent

institution means the constituent institution on whose board of trustees the member serves or at which the chancellor or chief finance officer is employed.

c. Requirements

i. Each person must contemporaneously submit to the vice president of finance, each Statement of Economic Interests that the person files with the State Ethics Commission pursuant to G.S. ~~138A-22163A-187~~. These disclosure statements are public records.

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

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

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

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

iv. Unless otherwise prohibited by state or federal law, t~~he~~ restrictions on entering into a contract in paragraph c.iii., do not apply if the person with the substantial interest does not participate in making or administering the contract and:

1. The contract results from a competitive sealed bid or a competitive request for proposals with specifications and criteria;
2. The contract is for goods or services sold or provided to the general public at a uniform price or is for goods on state contract sold to state agencies at a uniform price, unless the contract is prohibited by state law;
3. The contract is an employment contract with the dependent child or spouse of the president, the vice president for finance, a chancellor, or chief finance officer, or the dependent child of a member of the Board of Governors or

a board of trustees and the employment is allowed under Section 300.4.2 of the UNC Policy Manual;

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

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

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

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

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

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

1. Has or will prepare plans, specifications, criteria or estimates for the contract;
2. Awards, approves, negotiates, or administers the contract; or
3. Inspects or supervises the contract.

~~This paragraph does not prohibit the receipt of advertising items of nominal value, awards such as plaques or trophies, food served at professional meetings or banquets, or gifts from family members or personal friends when it is clear that the friendship extends beyond the business relationship. This paragraph does not prohibit receipt of gifts which would be permitted under G.S. 133-32 or G.S. 138A-32.~~

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

d. Procedures

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

ii. Potential conflicts:

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

2. If the person with the substantial interest claims or the chief finance officer believes that the contract is permissible pursuant to paragraph c.iv.1., 2., 3., or 4., above, the determination of whether the contract is permissible or impermissible may be made by the respective president or chancellor, or the president or chancellor may request that the designated committee make the determination. Any determination by the president or a chancellor shall be in writing and shall be a public record.

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

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

iii. Allegations of conflict

1. If any person or any senior academic or administrative officer (SAAO) becomes aware or alleges that a person covered by this policy has violated this policy, the person shall report the alleged violation to the chancellor or President of the institution that is or would be a party to the contract.

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

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

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

c. To the president if the person alleged to have violated this policy is a chancellor or the vice president for finance; or

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

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

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

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

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

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

e. Sanctions

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

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

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

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

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

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

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

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

¹ G.S. ~~138A-3(5)~~ ~~163A-152(5)~~ defines a “business” as, “Any of the following organized for profit:

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

² G.S. ~~138A-3(7)~~ ~~163A-152(7)~~ Business with which associated. A business in which the covered person or filing person or any

member of that covered person’s or filing person’s immediate family does any of the following:

- a. Is an employee.
- b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
- c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent of the business, whichever is less, other than as a trustee on a deed of trust.
- d. Is a lobbyist registered under Article 8 of Chapter 163A of the General Statutes.

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

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

³ G.S. ~~138A-3(54)~~ ~~163A-152(54)~~ Nonprofit corporation or organization with which associated. Any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the state primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person’s immediate family is a director, officer, governing board member, employee, lobbyist registered under Article 8 of Chapter 163A of the General Statutes or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this state.

Policy on Legal Affairs; Initiating and Settling Potential and Pending Litigation

I. Purpose. This policy governs legal affairs and the initiation and settlement of litigation within the University of North Carolina.

II. Definitions. For purposes of this policy:

A. "Chancellor" means the administrative and executive head of a constituent institution of the University of North Carolina, as described in Section 502 of *The Code*.

B. "Constituent institution" means one of the 17 degree/diploma granting institutions that comprise the University of North Carolina.

C. "President" means the chief administrative and executive officer of the University of North Carolina, as described in Section 501 of *The Code*.

D. "University" means the University of North Carolina, a body politic and corporate defined as a single public multi-campus University composed of seventeen (17) constituent institutions and other educational, research, and public service organizations.

III. Legal Counsel

A. The UNC System Office and the constituent institutions employ attorneys on staff, whose clients are their employing institutions, rather than individual University officers or employees in their personal capacities.

B. Every person employed within the University of North Carolina, including any of its constituent institutions, to serve as an attorney shall be licensed to practice law in the State of North Carolina at the time that the person is employed. If a person is licensed to practice law in another state, but is not licensed to practice law in the State of North Carolina, the person may be provisionally employed conditioned on the person's obtaining a license to practice law in North Carolina within one year after the date of the person's initial employment. The president is authorized to make an exception to this requirement if the particular position for which the person is employed requires that the person offer advice and counsel predominantly in areas of federal law.

C. Pursuant to N.C. Gen. Stat. § 116-11(13b) (hereinafter G.S.), the president shall, subject to University procedures, have the authority to (1) authorize the designation of legal counsel, including private counsel, to provide legal advice, counsel, and representation to the University of North Carolina, the constituent institutions, and University officers and employees in any legal

matter, case, or proceeding; and (2) authorize the expenditure of funds for private counsel or other outside counsel for the legal services they provide.

IV. Initiating and Settling Potential and Pending Litigation

A. By virtue of 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 and affiliated institutions, lies exclusively with the Board of Governors. A constituent and affiliated 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.

B. 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:

1. 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 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 G.S. 7A-243 upon the approval of the president.

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

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

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

constituent institution or involves more than one constituent institution, the president is authorized to approve the settlement.

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

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

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

4. 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.

5. Any litigation initiated 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.³

6. 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.⁴

67. 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.

87. 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.

V. This policy applies to the UNC Health Care System, to the UNC Faculty Physicians, and to the ECU Physicians except as otherwise provided in Sections 1200.4 and 1200.5 of the UNC Policy Manual and except as otherwise provided by state law, including G.S. 116-219, *et seq.*

VI. Other Matters

A. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. 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.

C. 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.

¹Pursuant to 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 Section 200.6 of the UNC Policy Manual, *Policy on Delegation Authority to the President*.

²See Footnote 1.

³[See Footnote 1.](#)

⁴See Footnote 1.

Regulation on Engagement of Private Counsel and Designation of Litigation Counsel

I. Purpose. The following regulation (“this regulation”) establishes procedures by which (a) private counsel may be engaged and/or (b) litigation counsel may be designated on behalf of the University by constituent institutions and the UNC System Office in accordance with the authority delegated by the Board of Governors to the president, pursuant to N.C. Gen. Stat. § 116-11(13b) (hereinafter G.S.), and in accordance with Section 200.5 of the UNC Policy Manual. These procedures will be administered by the Office of Legal Affairs at the University of North Carolina System Office (“UNC System Office”).

II. Definitions. The following operational definitions apply to the policy and this regulation:

A. “Chancellor” means the administrative and executive head of a constituent institution of the University of North Carolina, as described in Section 502 of *The Code*.

B. “Constituent institution” means one of the 17 degree/diploma-granting institutions that comprise the University of North Carolina.

C. “President” means the chief administrative and executive officer of the University of North Carolina, as described in Section 501 of *The Code*.

D. “Office of Legal Affairs” means the Office of Legal Affairs within the University of North Carolina System Office.

E. “University” means the University of North Carolina, a body politic and corporate defined as a single public multi-campus University composed of 17 constituent institutions and other educational, research, and public service organizations.

F. “UNC System Office” means the University of North Carolina System Office ~~and includes the University of North Carolina Center for Public Media.~~

G. “NC DOJ” means the North Carolina Department of Justice.

III. Authorization of Private Counsel Engagements. Engagements of private counsel for the University, by the constituent institutions and the UNC System Office, must be authorized in accordance with the requirements of this section or must otherwise be authorized by the president.

A. ~~Using a competitive solicitation process to occur on a~~ regular periodic basis ~~(e.g., every three years)~~ and with input and participation from the general counsels of the constituent institutions, the UNC System Office shall maintain one or more panels of private law firms to be readily available to provide legal services to the University. Firms on the approved panels shall provide legal services under a master agreement approved by the chief financial officer of the UNC System. Selection of panel firms shall be based on a best value methodology, through which consideration shall be given to the firms’ qualifications, the competitiveness of the firms’ billing rates and charges to the University, and other material information. Preference will be given to North Carolina-based law firms, or firms with substantial operations in North Carolina.

B. A constituent institution or the UNC System Office shall be deemed to have authorization to engage and pay private counsel to provide legal services to the entity concerning a specific legal matter without further approval from the president, provided all of the following requirements are met:

1. The general counsel of the University entity (either the constituent institution or the UNC System Office) that is engaging private counsel has approved and will direct the engagement, after reasonably concluding that there are insufficient legal and personnel resources within the Education Section of the North Carolina Department of Justice (“NC DOJ”) and the University entity to meet the needs presented by the specific legal matter;
2. The chief financial officer of the University entity (either the constituent institution or the UNC System Office) that is engaging private counsel has verified that sufficient funds exist for the engagement and has approved the engagement;
3. The engagement will be with a law firm selected from a pre-approved panel of private counsel assembled by the UNC System Office in accordance with section III.A., of this regulation, using the current master agreement in place with the UNC System Office and the firm, the terms of which will govern the legal representation and include the appropriate State of North Carolina and University terms for the engagement of vendors;
4. The engagement is subject to a maximum fee for the entirety of the representation in the specific legal matter, which does not exceed the institution’s purchasing benchmark, as approved by the Board of Governors in accordance with G.S. 116-31.10. The institution’s purchasing benchmark may not be exceeded without prior approval from the president;
5. If private counsel is expected to be designated as litigation counsel, the University entity has complied with section IV of this regulation; and
6. The University entity engaging private counsel notifies the Office of Legal Affairs of the engagement within five (5) business days after the commencement of work on the engagement.

C. Any engagement of private counsel that does not meet or is expected to no longer meet all criteria listed above in section III.B., requires prior approval from the president. Requests for approval to engage private counsel under this section should be submitted to the Office of Legal Affairs and will be considered based on factors including:

1. Whether there exist sufficient and appropriate legal resources available through the Education Section of the NC DOJ;
2. The time and labor required; the novelty and complexity of the legal needs of the institution; the difficulty of the questions involved; and the skill requisite to perform the attorney services properly;
3. The geographic area where the attorney services are to be provided; and

4. The amount of experience desired for the particular kind of legal services to be provided and the nature of attorney experience with similar issues or cases.

Any request submitted to the president under this section must state that the constituent institution's general counsel and chief financial officer have approved the engagement and that the general counsel will direct the engagement.

IV. Designation of Litigation Counsel. Designation of litigation counsel to represent the University, including the constituent institutions, must be authorized in accordance with the requirements of this section.

A. The Education Section of the NC DOJ serves as the University's primary outside litigation counsel for the University, including the constituent institutions and the UNC System Office. The general counsels for each of the constituent institutions and the UNC System Office may designate NC DOJ attorneys as litigation counsel, including lead litigation counsel, in any litigation matter for their respective institutions, subject to the acceptance of such designation by NC DOJ.

B. If after conferring with NC DOJ, the general counsel of the constituent institution or the UNC System Office that is a party in a particular litigation matter concludes that the matter requires assistance from private counsel, the general counsel may, in consultation with NC DOJ, select private counsel from a preapproved panel of private counsel assembled by the UNC System Office in accordance with section III.A., to serve as litigation counsel, including lead litigation counsel, for the institution.

C. Those few constituent institutions that generate a significant volume of potential litigation matters and can justify the employment of experienced in-house litigation counsel who devote substantially all of their practice to University litigation matters may obtain, through an agreement with the president, authorization to designate those in-house attorneys as litigation counsel for their respective constituent institutions, including as lead litigation counsel, in any litigation matter. In-house attorneys employed by University entities shall not represent University employees or officials in their personal capacities.

D. Any designation of litigation counsel, or any designation of lead litigation counsel, except as authorized by sections IV.A., IV.B., or IV.C., above, requires prior approval from the president. All other requests for approval to designate litigation counsel, or lead litigation counsel, should be submitted to the Office of Legal Affairs.

V. Additional Procedures. The Office of Legal Affairs may adopt any such other procedures for the implementation of the policy and this regulation at the discretion of the senior vice president and general counsel or his or her designee.

VI. Other Matters

A. Effective Date. The requirements of the policy and this regulation with regard to new private counsel engagements shall be effective for attorney service engagements expected to take effect as of December 1, 2020, and thereafter.

B. Relation to Federal and State Laws. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or related to the subject matter of this regulation.

200.6
Adopted 11/13/06
Amended 06/08/07
Amended 04/08/11
Amended 08/10/12
Amended 10/11/12
Amended 07/29/16
Amended 10/14/16
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Amended 11/19/20
Amended 05/27/21
Technical Corrections 09/22/21
Technical Correction 01/13/22
Amended 04/07/22
Amended 11/17/22
Amended __/__/23

Policy on Delegation of Authority to the President

I. Pursuant to N.C.G.S. § 116-11(13) (G.S.), and other North Carolina law as referenced herein, and notwithstanding *The Code* or any other Board of Governors policy,ⁱ the Board of Governors delegates the following authorities to the president of the University of North Carolina (UNC) System:

A. Human Resources

1. Authority to establish and administer a human resources program for employees exempt from the North Carolina Human Resources Act.ⁱⁱ

a. “Human resources program” shall include such personnel actions related to the establishment of positions and the administration of salary ranges; recruitment, appointments, salaries, base-salary adjustments, and temporary salary adjustments; promotion and tenure; leave programs; performance management; non-faculty discontinuation, discipline, and discharge; and non-faculty grievance and appeals processes.ⁱⁱⁱ

b. The president may approve management flexibility plans for special responsibility constituent institutions and may delegate limited authority for human resources actions to constituent institutions that are not authorized as special responsibility constituent institutions.^{iv}

c. Notwithstanding the above provisions, unless otherwise delegated:

(1) The Board of Governors shall retain authority over the appointments, compensation, and salary adjustments for: the president; the chancellors of the constituent institutions, except as provided in paragraph F. of this policy; the chief executive officer of the UNC Health Care System; and the chief executive officer of the UNC Center for Public Media.^v

(2) The Board of Governors shall retain authority over certain contract terms for athletic directors and head coaches of the constituent institutions.^{vi}

(3) The Board of Governors shall retain authority over non-promotional^{vii} salary increases for ~~Tier I~~ Senior Academic and Administrative Officers of the constituent institutions that both exceed 10 percent of the June 30 base salary as of the most recent fiscal year and exceed the 75th percentile of the applicable salary range.

(4) The president shall consult with the Board's Committee on University Personnel on appointments, compensation, and salary adjustments for the senior officers of the UNC System Office who report directly to the president.

(5) The president shall consult with the chair of the Committee on University Personnel and may then approve an emergency retention salary increase for a ~~Tier I~~ Senior Academic and Administrative Officer of the constituent institutions in lieu of any required pre-approval by the Committee as set forth in section I.A.1.C. of this policy when necessary to avoid loss of any key senior officer to an external offer of employment. The details of such an action shall be reported to the committee at its next regularly scheduled meeting.

d. Based on demonstrated institutional need and research activity, the president may authorize constituent institutions with special authority to directly create and/or modify ~~EHRA—Exempt Professional Staff (EPS) non-faculty instructional, research, and information technology (IRIT)~~ positions in accordance with UNC System Office classification procedures and guidelines. All such positions must fall within salary ranges established by the UNC System Office.

e. All other approvals for human resources actions are delegated to the President, who may further delegate actions to the boards of trustees for the constituent institutions or the boards of trustees may further delegate such actions to the chancellors as provided in Section 600.3.4 of the UNC Policy Manual.

2. Authority to approve all actions relating to the administration of the Optional Retirement Program^{viii} and the Phased Retirement Program.^{ix}

3. The president shall report in writing on actions taken under the authority of these delegations to the appropriate committee of the Board of Governors no less than annually, or as otherwise requested by the chair of the Board of Governors or the chair of the Committee on University Personnel.

B. Governance

1. The authority to approve the initiation of a lawsuit in the name of the University, a constituent institution or an affiliated institution if the action is for monetary relief and the amount in controversy is less than \$250,000.^x

2. The authority to approve the initiation of a lawsuit in the name of the University, a constituent institution or an affiliated institution if the action is a small claims action as provided in G.S. 7A-210.^{xi}

3. _____ The authority to settle potential or pending litigation by or against a constituent or affiliated institution, or the University of North Carolina System, if the settlement is ~~solely~~ for monetary relief and the amount the University is to pay pursuant to the settlement is less than \$250,000 or, if the University is to receive a payment, the amount the University claimed is less than \$250,000.^{xii}

~~34.~~ Authority to approve the political activities of employees of the UNC System who are candidates for or serving in public office.^{xiii}

C. Reports. The authority to approve and submit any report the UNC System or the Board of Governors is required to submit to the General Assembly, the State Board of Education, or any other state or federal agency or officer.

D. Real Property and Capital Improvement Projects

1. The power to authorize acquisition or disposition of the following interests in real property without obtaining approval of the Board of Governors, subject to any necessary approvals from state officials and agencies:

a. Any interest in real property, other than a leasehold, with a value less than \$750,000; and

b. A leasehold interest in real property with annual value less than \$750,000 and a term of not more than 10 years.

The president's authority may be exercised on behalf of the UNC System Office, affiliated entities, or the constituent institutions in the president's discretion.^{xiv}

2. Authority to approve capital improvement projects funded entirely with non-General Fund or non-State Capital and Infrastructure Fund money^{xv} that are projected to cost less than \$750,000.^{xvi}

3. Authority to approve advance planning of capital improvement projects, where the advance planning effort is to be funded entirely with non-General Fund or non-State Capital and Infrastructure Fund money.

4. Authority to administer and execute design and construction contracts for capital improvement projects, requiring the estimated expenditure of public money of \$4,000,000 or less. This authority may be exercised on behalf of the UNC System Office, affiliates, or the constituent institutions at the president's discretion.^{xvii}

5. Authority to approve an increase of up to 10 percent of the cumulative value of an originally awarded construction contract for a System Office, affiliate, or constituent

institution capital improvement project previously authorized by the Board of Governors.^{xviii}

6. After the long-term financing of a capital improvement project has been approved in accordance with statutory requirements, the president may approve interim financing or bank loans as a means of short-term financing. The president shall report any such actions to the Committee on Budget and Finance at its next meeting.^{xix}

E. Institutional Trust Funds. Authority to delegate to the chancellors management of institutional trust funds.^{xx}

F. Chancellors' Incentive Compensation Program

1. Authority to establish and implement an incentive compensation program to provide the president an opportunity to award performance-based compensation to the chancellors.

2. Authority to grant performance-based compensation awards to the chancellors as provided under the incentive compensation program. Awards granted under this authority shall be one-time payments per year, cannot exceed 20 percent of the chancellor's base salary, and are the responsibility of the constituent institution to fund.

3. Authority to modify the incentive compensation program as necessary to maintain alignment between performance goals established by the Board of Governors for the president and those established by the president for the chancellors.

G. Campus Safety and Security. The authority to undertake measures to enhance the safety and security of the University of North Carolina and the constituent institutions. This authority is in addition to that delegated to the president pursuant to Section 1300.7 of the UNC Policy Manual. As provided in Section XV of Appendix I of *The Code*, chancellors are responsible for the maintenance of campus security of their respective constituent institutions subject to applicable provisions of state law and such policies as may be adopted by the Board of Governors or the board of trustees.

II. The president will report all actions taken under the authority of the delegations in sections I.B., through I.F., above, to the appropriate committee of 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.

III. These delegations will remain in effect unless and until the Board of Governors rescinds them in whole or in part.

IV. Other Matters

A. Effective Date. The requirements of this policy shall be effective on the date of adoption of this policy by the Board of Governors.

B. Relation to State Laws. The foregoing policy as adopted by the Board of Governors is meant to supplement, and does not purport to supplant or modify, those statutory enactments which may govern or relate to the subject matter of this policy.

C. Regulations and Guidelines. 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.

ⁱThe secretary of the University is authorized to annotate the referenced policies and regulations to cross-reference these delegations.

ⁱⁱG.S., Chapter 126.

ⁱⁱⁱSections 300.1.1, 300.1.2, and 300.2 of the UNC Policy Manual.

^{iv}Section 600.3.4 of the UNC Policy Manual.

^vSection 500 of *The Code*; Sections 300.1.1 and 1200.1 of the UNC Policy Manual; and G.S. 116-37(c) and 37.1(c). The use of “UNC Center for Public Media” in the statute refers to PBS North Carolina.

^{vi}Section 1100.3 of the UNC Policy Manual.

^{vii}For the purposes of this policy, the term “non-promotional” means salary actions that do not relate to assuming an entirely new position but rather adjusting the salary of the existing position for reasons such as labor market, equity, retention, additional duties, reclassification, and other permitted miscellaneous reasons.

^{viii}G.S.135-5.1

^{ix}Section 300.7.2 of the UNC Policy Manual.

^xSection 200.5 of the UNC Policy Manual.

^{xi}[Section 200.5 of the UNC Policy Manual.](#)

^{xii}Section 200.5 of the UNC Policy Manual.

^{xiii} Sections 300.5.1 and 300.5.2 of the UNC Policy Manual.

^{xiv}The Board of Governors may delegate additional authority to the president or boards of trustees for real property transactions consistent with Sections 600.1.3 and 600.1.3[R] of the UNC Policy Manual.

^{xv}This delegation shall be interpreted consistent with G.S. 143C-8-12.

^{xvi}The Board of Governors may delegate additional authority to the president or boards of trustees for approval of capital improvement projects consistent with Section 600.1.1 of the UNC Policy Manual.

^{xvii} Section 600.1.1 of the UNC Policy Manual. This delegation shall be interpreted consistent with G.S. 116-31.11.

This delegation may be further delegated.

^{xviii} Section 600.1.1 of the UNC Policy Manual

^{xix} Section 600.1.1 of the UNC Policy Manual

^{xx}Sections 600.2.4 and 600.2.4.1 of the UNC Policy Manual.