THE UNIVERSITY OF NORTH CAROLINA

OFFICE OF THE PRESIDENT

ADMINISTRATIVE MEMORANDUM

SUBJECT Board of Governors Policy Concerning Improper Relationships Between Students and Employees

NUMBER 360

DATE March 18, 1996

On March 15, 1996, the Board of Governors adopted a policy concerning "Improper Relationships Between Students and Employees" for immediate implementation by all constituent institutions. Attached are copies of (1) the report of the Committee on Personnel and Tenure that conveyed and explained the committee recommendation that such a policy be adopted; (2) the policy as approved by the Board of Governors; and (3) a correspondingly revised version of the University policy concerning "Employment of Related Persons" (the anti-nepotism policy originally adopted April 13, 1973).

The new policy governing relationships between University students and employees identifies and defines a type of misconduct that can result in sanctions, including discharge from employment, against any employee who violates its provisions. The chancellors are responsible for insuring that both employees and students are effectively informed, on a continuing basis, about the type of misconduct prohibited by this policy; and they must insure that appropriate policies and procedures for receiving, investigating and resolving charges of misconduct are in place.

The revised anti-nepotism policy, separately approved by the Board of Governors, also must be effectively publicized by the chancellors, so that all affected employees will be aware of the broadened definition of "related persons" to whom its restrictions apply.

Questions about these additions to and changes in Board of Governors policies may be addressed to Mr. Richard Robinson.

C. D. Spangler, Jr.

Attachments

REPORT OF THE COMMITTEE ON PERSONNEL AND TENURE CONCERNING IMPROPER RELATIONSHIPS BETWEEN STUDENTS AND EMPLOYEES

An important measure of the quality of an academic community is the integrity of its decision making. Members of such a community must be evaluated carefully and fairly, on the basis of good-faith assessments of individual merit; extraneous personal considerations must not be permitted to contaminate decisions about the participation and progress of students or employees. The University of North Carolina and its constituent institutions have implemented various policies designed to assure fair decision making. For example, federal and state laws and corresponding university regulations require that there be no discrimination based on race, sex, religion, age or disability; decisions about conferring faculty tenure are not to be based on personal malice; and anti-nepotism policies are intended to avoid favoritism in employment based on marital and family relationships.

Recent events at some of our campuses suggest the need for a clarification of understandings and expectations about a particular circumstance that can interfere with effective implementation of the merit principle or otherwise cause harm to students: Consensual intimate, amorous or sexual relationships (referred to hereafter as amorous relationships) between university employees and students. Of special concern are relationships of that type between faculty members (and other instructional personnel) and students whom they are responsible for instructing, evaluating, or supervising. We reserve for separate treatment those situations in which university students function as employees of the institution and whose work is supervised by persons who may or may not be members of the faculty.

The subject of prohibited or questionable sexual activity--in both educational and employment settings within the university--has many facets, several of which require some discussion as foundation for our recommendations.

1. Some sexual acts are prohibited by and punished as felonies under the criminal laws of North Carolina, e.g., rape, statutory rape, and taking indecent liberties with a minor. Such misconduct is not within the scope of our inquiry into consensual relationships. An employee or student who is prosecuted for and convicted of violating such laws is subject to university disciplinary action.

2. Sexual harassment of students or employees of the university is prohibited by federal law. Sexual harassment consists of any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when (1) submission to or rejection of such conduct is made, either explicitly or implicitly, a condition to the conferral or withholding of rights or benefits for an employee or student or (2) such conduct has the purpose or effect of substantially interfering with a person's employment or student experience by creating an intimidating, hostile or offensive environment. As required by law, all of our campuses have established regulations and procedures designed to prevent and remedy instances of sexual harassment, affecting either students or employees. In addition to such legal mandates, ethical considerations compel university employees not to take advantage of either students or fellow employees, by improperly exploiting a professional relationship to coerce or intimidate or discomfit them sexually. Again, sexual harassment, because it concerns the unwelcome imposition of sexuality, is not within the immediate scope of our inquiry into amorous relationships. Members of the university community who engage in such misconduct already are subject to university sanctions, in addition to any civil or criminal penalties that may be imposed.

3. Amorous relationships present issues for the academic community that may not be as readily addressed--either conceptually or practically--as those presented by involuntary or unwelcome sexual contacts.

First, a threshold problem concerns whether such a relationship is in fact voluntary and consensual. If an older, more prestigious and influential employee initiates or encourages a relationship with a student, there may be questions about whether the student actually was coerced or seduced, and thus whether the ostensible consent in fact was vitiated by a power or influence differential between the two. If such a relationship eventually came to be viewed as an

exploitative one, then the matter could fall within the purview of sexual harassment; and a heavy burden would rest on the employee to prove otherwise, under the circumstances. But for purposes of this discussion, we assume that the relationship in question is in fact voluntary and consensual.

Second, such consensual conduct (sexual activity between unmarried consenting adults) is a misdemeanor under North Carolina law. Whether the conduct involves two employees, two students, or an employee and a student, the participants may be prosecuted and punished under the criminal law.

With respect to such consensual relationships between students and employees, the two ends of the philosophical spectrum, for university purposes, could be: On one hand, that all such amorous relationships between employees and students should be prohibited and punished by the university; on the other hand, that such voluntary relationships should not be regulated separately and independently by the university, leaving any regulation and punishment to the criminal law process.

Our inquiries suggest that very few higher education institutions have addressed this subject explicitly. We have reviewed sample policies from such institutions, including the six campuses within our system that have legislated on this subject. We have received recommendations from all sixteen chancellors, based on consultation with their respective faculty and student leaders, and from the University Faculty Assembly.

Based on our study of this problem, we believe that a middle ground--exemplified by the approach already taken independently by six of our campuses--would best serve the university's interests: An employee should be prohibited from evaluating or supervising any student with whom he or she has an amorous relationship.

The approach we propose is based on recognition of the university's compelling interest in insuring fair and impartial decision making. It is an extension of the conflict-of-interest principle that underlies anti-nepotism policies and is intended to avoid the fact or appearance of or opportunity for favoritism, discrimination, exploitation or control based on extraneous considerations unrelated to an individual's merit as a student.

A statement of policy adopted in 1995 by the American Association of University Professors provides helpful guidance:

> Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.
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> In their relationships with students, members of the faculty are expected to be aware of their professional responsibilities and avoid apparent or actual conflict of interest, favoritism, or bias. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision of the student.

Excerpts from the policies adopted by several of our campuses also effectively express what we believe should be the controlling rationale. For example, as the policy of North Carolina State University explains:

> This institution's faculty, more than any of its other resources, make North Carolina State University a distinctive setting for the pursuit of academic and professional interests. Accordingly, faculty are encouraged to foster wholesome and appropriate relationships with colleagues, students and staff. Students and staff tend to hold the academic profession in high esteem and to invest in relationships with faculty an extraordinary degree of trust and respect. Interactions among members of the academic community can and should be the occasion for enhancing freedom, demonstrating integrity, and encouraging mutual respect. Only by upholding high standards will university personnel be able to meet their collective obligation to each other.

* * *

> While close working relationships are encouraged among faculty, staff, and students, it is improper for an individual to exercise direct supervisory, instructional, and/or advising responsibilities . . . for someone with whom there is a familial, romantic, and/or sexual relationship.

As the policy of the University at Charlotte states:

> Central to the educational mission of the University is the establishment of close working relationships between those who teach and those who learn. Although such relationships are encouraged, it is improper and professionally unethical for a faculty member or instructional assistant to participate in the instruction, evaluation, or supervision of a student with whom there is a familial or amorous relationship (a romantic relationship which may or may not be platonic in nature). Such a relationship creates or may appear to create a conflict of interest for the faculty member or instructional assistant involved, and is contrary to the interests of the University, its faculty and students, and the public which it serves.

And as the policy of the University at Chapel Hill provides:

> The University's educational mission is promoted by professionalism in faculty-student relationships, and professionalism is fostered by an atmosphere of mutual trust and respect. Actions of faculty members or other members of the instructional staff that harm this atmosphere undermine professionalism and hinder fulfillment of the educational mission. Trust and respect are diminished when those in positions of authority abuse or appear to abuse their power.

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> Because it may easily involve or appear to involve a conflict of interest, an amorous or sexual relationship between a faculty member and a student entails serious

> ethical concerns when the faculty member has professional responsibility for the student.
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> [F]aculty members or other instructional staff shall not initiate, pursue, or be involved in any amorous or sexual relationships with any student whom they are in a position to evaluate or supervise by virtue of their teaching, research, or administrative responsibilities.

We believe that the principles endorsed in the foregoing statements (and similar statements found in the policies of three other campuses) provide sound basis for a properly focused policy applicable to all campuses of the University of North Carolina.

In addition, to address other concerns about student well-being, we believe that account must be taken of the special relationship between the university and minor students who are entrusted to its care. This is of particular concern at one of our institutions, the North Carolina School of the Arts, which maintains a high school division; an independent investigation recently commissioned by the Board of Governors produced a recommendation for special policies to protect young students from amorous relationships with employees. Although North Carolina legal definitions of both statutory rape and taking indecent liberties with minors apply only to children below the age of 16, we believe that the university is fully justified in requiring that its employees not engage in sexual activities of any kind with students who otherwise are the subject of special solicitude under North Carolina law, as minors below the age of 18.

We acknowledge that even with respect to consensual relationships not involving special responsibility or minors, prospectively there may be serious hazards--for the student, for the employee and for the institution--when employees and students enter into such amorous relationships. For example, if the student at any time concluded that he or she in fact had been taken advantage of or seduced by a faculty member, charges of sexual harassment could occur. By way of further example, the parties to such a relationship later might encounter situations in which an evaluative or supervisory connection could arise between them, and they would be faced with the requirement of either ending the relationship or

foregoing some university experience that would implicate their respective roles as student and faculty member. Finally, the conduct in question, if sexual in nature, would be illegal and could lead to criminal charges. Such considerations suggest that students and employees should not initiate amorous relationships within the academic community.

Nonetheless, we do not believe that a more general university prohibition should be established, to address relationships between employees and students who are not linked by instructional, evaluative or supervisory roles or when the student is a minor. In many types of organizations, including higher education institutions, members who share common interests make personal choices that lead to friendships and romances. Constitutional principles of privacy and freedom of association could be invoked to challenge university punishment of such personal relationships, when the university as an instrumentality of state government is not able to demonstrate that the distinctive concerns of the university are affected adversely by particular types of relationships among members of the teaching and learning community. The university does not condone such relationships, but should leave their regulation to the requirements of applicable criminal law.

In summary, we believe that the basic principles applicable to the sixteen constituent institutions should be:

(1) That amorous relationships between employees and students of the university are a potential source of problems for the participants and for the institution and should be avoided. Such relationships, which are illegal under North Carolina law, are not condoned by the University.

(2) That it should be deemed by the University to be misconduct for an employee, incident to any instructional, research, administrative or other employment responsibilities, to evaluate or supervise a student of the institution with whom he or she has an amorous relationship.

(3) That it should be deemed by the University to be misconduct for an employee to initiate or to be involved in sexual activity with a minor student of the institution, other than his or her spouse.

(4) That an employee who violates the requirements of principles (2) or (3) should be subject to established institutional

processes for determining what corrective or disciplinary measures are warranted.

We believe that a specific and uniform policy, embodying the foregoing principles, should be adopted by the Board for implementation at the sixteen constituent institutions. The proposed text of such a policy is included as Appendix A to this report. Because provision (2), above, is based on conflict-of-interest principles, as exemplified by anti-nepotism policies, we believe that the policy should extend its prohibition to conventional family and marital relationships as well.

As a separate but related matter, our analysis also reveals a need to amend existing personnel policies of the Board concerning anti-nepotism. With respect to all university employees, including students when functioning in any university employment capacity, the definition of "related persons" should include--in addition to persons related by blood or marriage--those engaged in "amorous relationships." The proposed amendments are set forth in Appendix B to this report.

POLICY OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA CONCERNING IMPROPER RELATIONSHIPS BETWEEN STUDENTS AND EMPLOYEES

The University of North Carolina does not condone amorous relationships between students and employees. Members of the University community should avoid such liaisons, which can harm affected students and damage the integrity of the academic enterprise. Further, sexual relationships between unmarried persons can result in criminal liability. In two types of situations, University prohibition and punishment of amorous relationships is deemed necessary: (1) When the employee is responsible for evaluating or supervising the affected student. (2) When the student is a minor, as defined by North Carolina law. The following policies shall apply to all employees and students of the sixteen constituent institutions.

A. Prohibited Conduct

1. It is misconduct, subject to disciplinary action, for a University employee, incident to any instructional, research, administrative or other University employment responsibility or authority, to evaluate or supervise any enrolled student of the institution with whom he or she has an amorous relationship or to whom he or she is related by blood, law or marriage.

2. It is misconduct, subject to disciplinary action, for a University employee to engage in sexual activity with any enrolled student of the institution, other than his or her spouse, who is a minor below the age of 18 years.

B. Definition of Terms

1. "Amorous relationship." An amorous relationship exists when, without the benefit of marriage, two persons as consenting partners (a) have a sexual union or (b) engage in a romantic partnering or courtship that may or may not have been consummated sexually.

2. "Related by blood, law or marriage" means:
   a. Parent and child

b. Brother and sister
c. Grandparent and grandchild
d. Aunt and/or uncle and niece and/or nephew
e. First cousins
f. Step-parent and step-child
g. Husband and wife
h. Parents-in-law and children-in-law
i. Brothers-in-law and sisters-in-law
j. Guardian and ward

3. "Evaluate or supervise" means

a. To assess, determine or influence (1) one's academic performance, progress or potential or (2) one's entitlement to or eligibility for any institutionally conferred right, benefit or opportunity, or

b. To oversee, manage or direct one's academic or other institutionally prescribed activities.

C. Corrective Action

Violations of the provisions of Section A shall be addressed in accordance with remedial measures prescribed by each constituent institution; if disciplinary action is brought against an affected employee, it shall be conducted in accordance with existing institutional policies and procedures prescribed for prosecuting misconduct charges against members of the class of employment of which the affected employee is a member.

Adopted 4/13/73
[See Administrative Manual
1991 edition, pages III-D1&2]
Amended 3/15/96

EMPLOYMENT OF RELATED PERSONS

WHEREAS, decisions concerning the employment, evaluation, promotion and compensation of academic personnel should be based in every instance on considerations of individual merit, and

WHEREAS, favoritism based on family or personal relationships between employees derogates from the merit principle of employment, and

WHEREAS, the risk of occurrence of such favoritism can be avoided most effectively by the advance establishment of general restrictions against the creation of situations where such favoritism could be operative; and

WHEREAS, a common policy concerning the employment of ~~relatives~~ related persons, applicable to personnel practices at all constituent institutions of The University of North Carolina, is desirable,

NOW, THEREFORE, the Board of Governors herewith adopts the following UNIVERSITY POLICY CONCERNING THE CONCURRENT EMPLOYMENT OF ~~RELATIVES~~ RELATED PERSONS

A. Basic Principles

Consistent with the principle that University employees and prospective employees shall be evaluated on the basis of individual merit, without reference to considerations of race, sex, religion or national origin, or any other factors not involving personal professional qualifications and performance, the following restrictions, designed to avoid the possibility of favoritism based on family or personal relationship, shall be observed with respect to institutional personnel who are not subject to the State Personnel Act:

1. Related persons shall not serve concurrently within the institution in any case where one such ~~relative~~ related person would occupy a position having responsibility for the direct supervision of the other ~~relative~~ related person.

2. With respect to proposed employment decisions which would result in the concurrent service of related persons within the same academic department (or other comparable institutional subdivision of employment), a ~~relative~~ person related to an incumbent employee may not be employed if the professional qualifications of other candidates for the available position are demonstrably superior to those of the ~~relative~~ related person.

3. With respect to the concurrent service of related persons within the same academic department (or other comparable institutional subdivision of employment), neither ~~relative~~ related person shall be permitted, either individually or as a member of a faculty or as a member of a committee of a

faculty, to participate in the evaluation of the other ~~relative~~ related person.

B. Definition of "Related Persons"

The following relationships are sufficiently immediate to invoke the prohibitions against concurrent service of related persons:

1. Parent and child

2. Brothers and sisters

3. Grandparent and grandchild

4. Aunt and/or uncle and niece and/or nephew

5. First cousins

6. Step-parent and step-child

7. Step-brothers and step-sisters

8. Husband and wife

9. Parents-in-law and children-in-law

10. Brothers-in-law and sisters-in-law

11. Guardian and ward

12. Persons engaged in amorous relationships; an amorous relationship exists when, without the benefit of marriage, two persons voluntarily have a sexual union or are engaged in a romantic courtship (e.g., dating or engaged to be married) that may or may not have been consummated sexually.

C. Effective Date

The provisions of this policy shall be applicable prospectively only, with reference to appointments made after the adoption date of the policy.

D. Employees Subject to the State Personnel Act

With respect to University employees who are subject to the State Personnel Act, applicable restrictions concerning the concurrent service of related persons shall be those adopted by the State Personnel Board.

E. Each Chancellor shall report annually to the Board of Trustees, at the regular meeting falling closest to the date of commencement, concerning all specific cases during the preceding year in which the terms of this policy were applied.