

# TRANSMITTAL LETTER

# The University of North Carolina General Administration

Transmittal Number 55 October 19, 2007

# THIS LETTER TRANSMITS CHANGES TO THE UNC POLICY MANUAL\*

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600.3.1 Selection Criteria and Operating Instructions for Special Responsibility Constituent Institutions. This policy was amended by the Board of Governors on October 12, 2007. Please contact Mr. James Smith, Associate Vice President for Finance, at 919-962-4609

with any questions.

Head Coaches' and Athletic Directors' Contracts. This policy was amended by the Board

of Governors on October 12, 2007. Please contact Dr. Harold Martin, Senior Vice

President for Academic Affairs, at 919-962-4614 with any questions.

1100.3.1[G] Guidance on Employment Contracts with Head Coaches' and Related Issues. This

guideline was Repealed by President Bowles on October 12, 2007. Please contact Dr. Harold Martin, Senior Vice President for Academic Affairs, at 919-962-4614 with any

questions.

The above documents are attached herein or can be found on our website at the link

elow:

http://www.northcarolina.edu/policy/index.php

#### Selection Criteria and Operating Instructions for Special Responsibility Constituent Institutions

A. Achieving and Retaining Status as a Special Responsibility Constituent Institution

Management Staffing Standards and Internal Controls and Safeguards

Responsibilities of Special Responsibility Constituent Institutions

The following standards and safeguards must be met and maintained in order to receive and retain the designation as a special responsibility constituent institution.

- a. The Chancellor/Executive Director must assume personal responsibility and also establish the appropriate administrative and internal control procedures for carrying out the special delegations of authority. In this regard, the Chancellor/Executive Director must certify that the administrative capability on campus in the areas of budgeting and accounting, personnel, and purchasing, as noted in b., c., and d. below, are sufficient to carry out the increased flexibility being granted.
- b. The capability of the staff and the system of budgeting, accounting and internal controls must be sufficient to administer the increased budget flexibility given to the designated institutions.
- c. The personnel capacity, which must be exercised under the direction of appropriate administrative officials, must be available on campus to evaluate jobs, classify positions appropriately, set compensation properly, and carry out the related functions of position management at the level of authority provided by the delegation.
- d. The on-campus expertise must be available to purchase properly the equipment, supplies, and other goods and services for the institution up to the benchmark level established by the Board of Governors for the institution pursuant to G.S. 116-31.10.
- e. The institution must maintain its financial records in such a manner that there are no significant findings in the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office.
- f. [Repealed]

g. Chancellors/Executive Director may delegate the authority for approving departmental plans for expenditures authorized under budget flexibility, but may not delegate the authority below the level of the appropriate Vice Chancellor.

<sup>&</sup>lt;sup>1</sup>On February 13, 2004, the Board placed into policy changes to these criteria that it had adopted on 2/08/02 and 9/12/03.

- h. The Chancellors/Executive Director shall review an annual internal audit report on expenditures authorized under budget flexibility.
- i. The Chancellor shall ensure that procedures and support systems are in place to provide for the effective operation and maintenance of all existing campus buildings and infrastructure. New facilities financed by the 2000 Higher Education Bond Program or any other sources of funds shall become a part of an effective program of preventive maintenance from the time that construction is completed. Procedures shall also be in place to assure proper accountability and safeguarding of all fixed assets and other items purchased by the University.
- 2. Responsibilities of the President and the Board of Governors

The President is directed to establish the administrative procedures necessary to carry out the following rules:

- a. The President and her/his staff shall review the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office for each special responsibility constituent institution.
- b. The President shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where significant findings are identified, the President shall notify the Chancellor/Executive Director of the particular special responsibility constituent institution that the institution must make satisfactory progress in resolving the findings, as determined by the President of The University, after consultation with the State Auditor, within a three-month period commencing with the date of receipt of the published financial audit report, any other audit report, or management letter.
- c. If satisfactory progress is not made within a three-month period, the President shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the President of The University of North Carolina, after consultation with the State Auditor. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest.
- d. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.
- e. The President and her/his staff, after consultation with the State Auditor, shall review and consult with the Director of the Office of State Personnel and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent

institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 116-31.10. Such review and consultation must take place no less frequently than once each biennium.

#### f. [Repealed]

#### B. Budget Administration

- 1. Appropriations to Special Responsibility Constituent Institutions
  - a. All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made.
  - b. Notwithstanding G.S. 143-23(al), G.S. 143-23 (a2), G.S. 143-23(a3), and G.S. 120-76(8), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the Chancellor/Executive Director to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors including but not limited to the following:
    - 1. A current institutional expenditure plan for each budget code must be established and maintained under the direction of the Chancellor/Executive Director.
    - 2. No action shall be taken that would materially change the capability of the institution to carry out its educational mission as defined by the Board of Governors. The Board of Governors will retain program responsibility. No actions taken should have the effect of either establishing a new academic, research, or public service program or closing such a program without the specific approval by the Board. Reallocation of academic program resources should not be made to the extent that a particular existing program is seriously weakened or effectively discontinued, or a new activity not expressly authorized by the Board of Governors is initiated.
    - 3. Reallocations of interinstitutional program resources should not be made to the extent that campus participation in a particular program is materially weakened without specific approval by the Board.
    - 4. No action should be taken which would have the effect of establishing a new community service or student financial aid program without specific approval by the Board of Governors.
    - 5. Appropriations providing support for Distance Education/Extension degree credit instruction at off-campus locations cannot be reallocated for other purposes without specific approval by the Board of Governors.

- c. The quarterly allotment procedure established pursuant to G.S. 143–17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution.
- d. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.
- e. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions.
- 2. Reversions and Carry-Forwards of Appropriations

Of the General Fund current operations appropriations credit balance remaining in each budget code of a special responsibility constituent institution, at the close of a fiscal year, any amount of the General Fund appropriations for that budget code, may be carried forward by the institution to the next fiscal year and may be used for one—time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one—half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution

#### C. Personnel Administration

The Chancellor of a special responsibility constituent institution, when he finds that to do so would help to maintain and advance the programs and services of the institution, may establish and abolish positions, acting in accordance with:

- (1) State Personnel policies and procedures if these positions are subject to the State Personnel Act and if the institution is operating under the terms of a Performance Agreement or a Decentralization Agreement authorized under Chapter 126 of the General Statutes; or
- (2) Policies and procedures of the Board of Governors if these positions are exempt from the State Personnel Act.

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel.

With respect to personnel actions taken under subdivision (2) of this section, no action should have the effect of either establishing a new academic program or administrative unit or closing an existing academic or inter–institutional program or administrative unit. No action should be taken which permanently reduces the number or amount of Regular Term budgeted teaching positions supported by General Fund appropriations thereby changing the student–faculty ratio or the budgeted average teaching salary established by the Board of Governors.

Implementation of all personnel actions shall be subject to the availability of funds within the institution's current budget to fund the full annualized costs of these actions.

#### D. Purchasing

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than \$500,000. The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

Institutions with an expenditure benchmark greater than \$250,000 but not greater than \$500,000 shall submit to the Division of Purchase and Contract for that Division's approval, or other action deemed necessary by the Division, a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division.

The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapter 143 and 146 of the General Statues and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

- (1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or
- (2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution procures personal property or services under condition (1) or (2) above, the special responsibility constituent institution is delegated the authority to procure the property or services without approval by the Board of Governors, and the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of Administration, the State Purchasing Officer, or the Board of Awards shall not be required, regardless of dollar value.

Special responsibility constituent institutions shall have the authority to purchase equipment, materials, supplies, and services from sources other than those certified by the Secretary of Administration on term contracts, subject to the following conditions:

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;
- (2) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts;
- (3) The cost of the purchase shall not exceed the benchmark established under G. S. 116-31.10; and
- (4) The special responsibility constituent institution notifies the Department of Administration of purchases consistently being made under this provision so that State term contracts may be improved.

#### E. Impact on Education

Each special responsibility constituent institution shall include in its institutional effectiveness plan those assessment measures that are determined by the Board to be measures that will assure some standard measure of student learning and development in general undergraduate education. The intent of this requirement is to measure the impact of G.S. 116–30.1 through G.S. 116–30.5, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development. The measures shall be taken from accountability reports to the Board and any other performance measures developed for this purpose by the Board.

#### F. Reporting Requirements

#### 1. Monthly Report

Each designated institution must prepare a monthly operating report for each budget code in the format of the current BD-701 report. The "Authorized Budget" included in this report, which may be changed under the direction of the Chancellor/Executive Director, will show the institution's current expenditure plan. The current Chart of Accounts will be used for reporting purposes.

- 2. [Repealed]
- 3. [Repealed]

Adopted 09/13/91 Amended 09/09/94 Amended 09/08/95 Amended 09/13/96 Amended 05/22/97 Amended 11/13/98 Amended 08/13/99 Amended 02/13/04<sup>1</sup> Amended 11/12/04 Amended 09/12/07

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- c. The personnel capacity, which must be exercised under the direction of appropriate administrative officials, must be available on campus to evaluate jobs, classify positions appropriately, set compensation properly, and carry out the related functions of position management at the level of authority provided by the delegation.
- d. The on-campus expertise must be available to purchase properly the equipment, supplies, and other goods and services for the institution up to the benchmark level established by the Board of Governors for the institution pursuant to G.S. 116-31.10.

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## 2. Reversions and Carry-Forwards of Appropriations

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- (2) Policies and procedures of the Board of Governors if these positions are exempt from the State Personnel Act.

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel.

With respect to personnel actions taken under subdivision (2) of this section, no action should have the effect of either establishing a new academic program or administrative unit or closing an existing academic or inter–institutional program or administrative unit. No action should be taken which permanently reduces the number or amount of Regular Term budgeted teaching positions supported by General Fund appropriations thereby changing the student–faculty ratio or the budgeted average teaching salary established by the Board of Governors.

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Institutions with an expenditure benchmark greater than \$250,000 but not greater than \$500,000 shall submit to the Division of Purchase and Contract for that Division's approval, or other action deemed necessary by the Division, a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division.

The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapter 143 and 146 of the General Statues and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

- (1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or
- (2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution procures personal property or services under condition (1) or (2) above, the special responsibility constituent institution is delegated the authority to procure the property or services without approval by the Board of Governors, and the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of Administration, the State Purchasing Officer, or the Board of Awards shall not be required, regardless of dollar value.

Special responsibility constituent institutions shall have the authority to purchase equipment, materials, supplies, and services from sources other than those certified by the Secretary of Administration on term contracts, subject to the following conditions:

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;
- (2) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts;
- (3) The cost of the purchase shall not exceed the benchmark established under G. S. 116-31.10; and
- (4) The special responsibility constituent institution notifies the Department of Administration of purchases consistently being made under this provision so that State term contracts may be improved.

## E. Impact on Education

Each special responsibility constituent institution shall include in its institutional effectiveness plan those assessment measures that are determined by the Board to be measures that will assure some standard measure of student learning and development in general undergraduate education. The intent of this requirement is to measure the impact of G.S. 116–30.1 through G.S. 116–30.5, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development. The measures shall be taken from accountability reports to the Board and any other performance measures developed for this purpose by the Board.

#### F. Reporting Requirements

#### 1. Monthly Report

Each designated institution must prepare a monthly operating report for each budget code in the format of the current BD–701 report. The "Authorized Budget" included in this report, which may be changed under the direction of the Chancellor/Executive Director, will show the institution's current expenditure plan. The current Chart of Accounts will be used for reporting purposes.

# 2. [Repealed]

# 3. [Repealed] Annual Report

- An annual report, and other reports as may be directed by the President, are required from each special responsibility constituent institution. The annual report must be submitted to the Office of the President by October 10 following fiscal year end, and shall include the following information:
  - a. an annual operating report in the same format as the monthly report described above
  - b. the impact on undergraduate student learning and development as demonstrated by the standard assessment measures related to this topic
  - c. fiscal savings
  - d. management initiatives undertaken
  - e. increased efficiency and effectiveness achieved, including institutional purchases under the expenditure benchmark established by the Board of Governors for the institution
  - f. other outcomes made possible by the flexibility provided
  - g. documentation of any reallocation of resources which distinguishes between onetime and permanent transfers, including the actual uses of funds reallocated during the fiscal year as a result of lapsed salaries
  - h. the actual uses of appropriations carried forward from the previous fiscal year
  - i. any additional costs incurred
  - i. a schedule of positions established and positions abolished
  - k. list of positions that were vacant for more than 9 months during the fiscal year and an explanation for the length of the vacancy
  - l. compliance certification letter to the President from each SRCI Chancellor/Executive Director

Each institution must establish the administrative procedures necessary to accumulate this information for reporting purposes.

#### **Head Coaches' and Athletic Directors' Contracts**

The Board of Governors recognizes the importance of intercollegiate athletics to the University's constituent institutions. The Board emphasizes that a constituent institution's athletic program must be (1) consistent with and complementary to the academic mission of the university, (2) fiscally sound such that the athletic program does not take resources away from the academic program of the institution and the institution does not undertake any financial obligation for which it does not have funds available from appropriate sources to fulfill, and (3) under the control of the chancellor of the constituent institution.

Consistent with the requirements set forth in the Delegations of Duty and Authority to the Boards of Trustees contained in the Appendix to *The Code*, no contract of employment between an institution and a head athletic coach or an athletic director which is for a term longer than one year shall be valid unless and until all terms and conditions of the contracts have been approved by the Board of Trustees.

#### A. Required Element of Contracts.

While determination of the terms and conditions of contracts for head coaches and athletic directors lies in the discretion of the boards of trustees, the Board of Governors seeks to assure the priority of academics in the athletic program, the fiscal soundness of the program, and sufficient institutional control of the program free from undue influence of outside sources. In all instances, contracts with head coaches and athletic directors must have provisions that comply with the following principles:

- 1. Academic Values. Fostering educational values and maintaining a program of integrity must be an integral part of the contracts of all coaches and athletic directors. In particular, contracts must address the constituent institution's policy on the recruitment and retention of qualified student athletes and the necessity that athletes progress toward a degree in a defined academic program. The coach and athletic director must have a clear obligation to contribute to the academic progress of team members under his or her supervision.
- 2. Compliance with NCAA Rules. Each contract must clearly acknowledge that the athletic program under the direction of the coach, or the programs under the direction of the athletic director, must comply with the policies of the constituent institution and of the NCAA and that the failure of the program to so comply will, at the option of the institution, be deemed a violation of the provisions of the coach's or athletic director's contract that is grounds for termination of the contract.
- 3. No Automatic Extensions. "Roll-over" or "evergreen" contracts, by which the term of the contract is automatically renewed on an annual or other periodic basis, are contrary to sound personnel policies. Any renewal of a contract must be advertent, based upon a deliberate assessment of performance by the chancellor and board of trustees, and not automatic.
- 4. Outside Compensation. Employment contracts must clearly define the rights and obligations of a coach or athletic director who enters into outside agreements for compensated services, while addressing the interests of the constituent institution. Every contract must require the coach or athletic director to have the approval of the chancellor before entering into an agreement to earn athletically-related income or benefits from sources outside the constituent institution and to report all such income annually, through the athletic director, to the chancellor. Coaches and athletic directors must comply with the Board of Governors and constituent institution policies on external activities for pay for any outside income that is not athletically related.
- 5. Source of Funding. Student athletic fees may be used to pay a coach or athletic director's base salary. State general funds and tuition may be used to pay only the instructional

portion of a coach's base salary. Funds available for paying the salaries EPA non-faculty personnel may be used to pay the base salary of an athletic director.

6. Contracts as Public Rrecords. Every head coach and athletic director contract must state that, upon execution, it is a public record subject to disclosure under North Carolina's Public Records Law.

#### B. Contract Terms that Require Board of Governors' Approval

Certain terms in head coach and athletic director contracts have become common in the marketplace. While including these terms in an employment contract may be necessary to obtain the services of the candidate deemed to be the best qualified individual to serve the needs of the constituent institution, those terms may create additional financial risk for constituent institutions. In light of this risk, if a constituent institution proposes to include any of the following terms in a coach or athletic director contract, approval of the terms of the contract must be approved by the constituent institution's board of trustees, and before executing the contract, the constituent institution must obtain approval of the terms of the contract by the President, and if the President approves the terms, on the President's recommendation, by the Board of Governors:

- 1. Deferred Compensation. A provision to pay deferred compensation, including, for example, a direct deferred payment or an annuity. In considering a contract including deferred compensation, the constituent institution must provide the Board of Governors with the following information:
  - a. The source of the funds that the constituent institution will use to pay the deferred compensation. Neither State funds, tuition, nor student fees may be used for such deferred compensation.
  - b. Whether the funding for deferred compensation will come from an outside entity. If so, the outside entity must provide the funds to the constituent institution, not directly to the coach or athletic director.
  - c. If an outside entity is to be the source of funds, whether the funds have already been provided, whether the funds have been raised or pledged, or whether the funds remain to be raised. If such funds are not to be provided in advance, the constituent institution's obligation to pay the deferred compensation must be contingent on the constituent institution's receipt of the funds from the outside entity.
- 2. Buyout Clauses. Any buyout clause which obligates the constituent institution to pay more than the balance of the base salary the coach or athletic director would have earned during the remainder of the term of the contract had he or she remained employed plus any bonuses or deferred compensation already earned or vested in accordance with the terms of the contract. The amount of the payment required by such a clause must bear a clearly discernible relationship to the actual financial loss that would likely be incurred by the coach or athletic director if the contract were terminated without cause during its term.
- 3. Damage Mitigation Waiver. A provision waiving a requirement that the coach or athletic director mitigate his or her damages and set off actual earnings against the amount to be paid by the constituent institution.
- 4. Loss of Outside Income. A provision which obligates the constituent institution or any party related to the constituent institution to replace the loss of any outside compensation to the coach or athletic director.
- C. Considerations for Approval by the Board of Governors.

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When considering contract terms identified in Part B of this policy, the Board of Governors will consider, among other relevant factors:

- 1. The constituent institution's ability to pay the compensation, benefits, or possible buyout amounts provided for in the agreement.
- 2. The sources of funding the constituent institution will use in paying the compensation, benefits and buy-out amounts provided for in the contract.
- 3. If payments are to be made using funds from an outside entity, whether or not the outside funds have already been raised or whether or not pledges of funding have been committed.
- 4. Whether the constituent institution's commitment to pay the required buy-out amount on termination is likely to have a significant financial impact on the athletic department or the constituent institution.

A chancellor is encouraged to consult with the President if the chancellor has any question about or desires any clarification of this policy.

Chancellors will forward to the President a copy of each contract entered into with a head coach or athletic director promptly after the contract is executed.

Effective date: This policy applies to contracts entered into after its adoption. It also applies to contract terms which have been substantively modified in contracts renewed, extended, or modified after its adoption.