



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

REPORT:

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

September 16, 2020

University of North Carolina System
Chapel Hill, North Carolina

UNC Board of Governors

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

I. Executive Summary

This report addresses free speech and free expression at the constituent institutions¹ of the University of North Carolina System (“UNC System” or “the University”) for the period of time between July 1, 2019, and June 30, 2020, as required by the [Restore/Preserve Campus Free Speech Act](#) (“the Act”).² In preparing and publishing this report, the UNC Board of Governors Committee on University Governance (“committee”), as the designated Committee on Free Expression,³ was guided primarily on the elements required by the Act.⁴ Additionally, the committee relied on information provided by the constituent institutions, information shared with the president and/or members of the Board of Governors, and on relevant articles and media stories published in the past year.⁵

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Background

A. University Commitment to Free Speech and Free Expression

As the nation's first public university, the University of North Carolina System affirms its long-standing commitment to free speech and free expression for its students, faculty members, staff employees, and visitors under the First Amendment of the U.S. Constitution and Article 1, Section 14 of the North Carolina Constitution. The University and its constituent institutions protect and promote these freedoms, consistent with First Amendment jurisprudence.⁹ Through its policies, the University has expressly established that no employment decision or academic decision shall be based on the exercise of these constitutional rights.¹⁰

The University's mission includes the transmission and advancement of knowledge and understanding, the pursuit of which is dependent upon the ability of our faculty and students to remain free to inquire, to study and to evaluate, to gain new maturity and understanding.¹¹ The University supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.¹² The University has

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

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

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

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

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

explicitly stated that faculty and students of the University share the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.¹³ Academic freedom has indeed been acknowledged by the Supreme Court as “of transcendent value to all of us” and “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”¹⁴

B. Restore/Preserve Campus Free Speech Act

Through statute, the North Carolina General Assembly has affirmed that the primary function of the University of North Carolina System and each of its constituent institutions is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, each constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression. According to G.S. 116-300(2), “it is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”¹⁵

The General Assembly has also established a number of requirements for the Board of Governors, the University of North Carolina System, and its constituent institutions regarding free expression. In response, the Board of Governors has designated a Committee on Free Expression¹⁶ and adopted a University-wide free expression policy which, among other elements, maintains institutional neutrality.¹⁷ A copy of the policy is included with this report as Attachment A. Additionally, the University meets its statutory obligations by providing training for institutional officers and administrators charged with responsibilities for compliance with the Act and coordinating campus-based

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

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

¹⁵ G.S. 116-300(2).

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

¹⁷ In this context, “institutional neutrality” specifically means only that “the constituent institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.” G.S. 116-300(3).

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

III. Discussion of Free Speech and Free Expression at the University During the 2019-20 Academic Year and Committee Findings

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

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

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

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

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

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

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

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

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

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

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

IV. Implementation of Past Report Recommendations

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

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

V. Committee Recommendations for 2020-21

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

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

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

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

V. Conclusion

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

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

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

Policy on Free Speech and Free Expression Within the University of North Carolina System**I. Purpose**

Consistent with Article 36 of Chapter 116 of the North Carolina General Statutes, the Board of Governors adopts this policy to support and assist the constituent institutions of the University of North Carolina System¹ in their continuing efforts to embrace the free speech and free expression rights of the members of their campus communities, and balance those rights with protections against unlawful activity. This policy supplements other University policies, regulations, and guidelines related to free speech and free expression.²

II. Statement of Commitment

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

The University's mission includes the transmission and advancement of knowledge and understanding, the pursuit of which is dependent upon the ability of our faculty and students to remain free to inquire, to study and to evaluate, to gain new maturity and understanding.³ The University supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.⁴ The University has explicitly stated that faculty and students of the University share the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.⁵ Academic freedom has indeed been acknowledged by the Supreme Court as "of transcendent value to all of us" and "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."⁶ Through its policies, the University has expressly established that no employment decision or academic decision shall be based on the exercise of these constitutional rights.⁷

The General Assembly has recognized the University's commitment to upholding free speech and free expression, and has reinforced the importance of these rights as well.⁸ Through G.S. 116-300, the General Assembly has affirmed that the primary function of the University of North Carolina and each of its constituent institutions is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, each constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression. It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

III. University's Role in Public Policy Controversies

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

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

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

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

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

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

Even so, all real property on the campus of any constituent institution or the UNC System Office, including without limitation all campus grounds, buildings, facilities, stadiums, or other improvements, that is owned, leased, used, or otherwise controlled by the University or one of its constituent institutions ("University Property"), is dedicated for the specific purpose of furthering the educational, research, and/or service missions of the institution. Consistent with the First Amendment, many areas of University Property are not open for general public use. University Property is routinely utilized for institutional activities and events which can present safety and security issues for the institution. Therefore, all persons on University Property must abide by all applicable laws and regulations as well as policies of the constituent institution and the Board in order to further the missions of the institution and for the protection of the students, faculty members, staff employees and guests of the institution. Thus, a

constituent institution may deny or condition entrance onto or into University Property or remove from the same, any person whose presence substantially interferes with or materially and substantially disrupts the institution's missions, including interfering with or disrupting the classroom environment, laboratory or research environments, or patient care environments, or any person who violates or refuses to comply with any Board or institutional policy or applicable law or regulation. Under no circumstances shall University Property be utilized to carry out unlawful activity.

V. Speech and Expression Not Protected by Policy

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

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

VI. Dissemination of Information About Institutional Policies

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

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

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

C. Information for Outside Parties. All constituent institutions of the University of North Carolina System are encouraged to make available to outside parties information describing their institutional policies regarding free speech and free expression consistent with this policy and with Article 36 of Chapter 116 of the North Carolina General Statutes. Any information provided should also include the name and contact information of the institutional officer, office, or department with responsibility for ensuring compliance with this policy and for answering any related questions or concerns.

VII. Consequences for Violation of Policy

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

A. Disciplinary Sanctions. The UNC System Office and each constituent institution shall implement and enforce a range of disciplinary sanctions, up to and including dismissal or expulsion, for anyone under the jurisdiction of the UNC System Office or the constituent institution who materially and substantially disrupts the functioning of the UNC System Office, a constituent institution, or any other entity or unit of the University, or substantially interferes with the protected free expression rights of others.¹⁰

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

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

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

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

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

3. Any individual who disrupts a meeting of a public body, including University boards, may be temporarily or permanently barred from all or part of the campus or from future meetings of that public body, and/or may face criminal charges. If such individual is a student or faculty member or staff employee of the University, he or she shall also be subject to discipline according to the appropriate disciplinary procedures for misconduct by his or her constituent institution even if the disruption occurs at a meeting of a public body of a constituent institutions other than the institution which the individual is affiliated.¹¹

B. Procedural Safeguards for Students Involved in Expressive Speech or Conduct Disciplinary Cases.¹² In all student disciplinary cases where disciplinary action is proposed for materially and substantially disrupting the functioning of the UNC System Office, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, students are entitled to a disciplinary hearing under published procedures and Section 700.4.1 of the UNC Policy Manual, including, at a minimum:

1. The right to receive advance written notice of the charges;
2. The right to review the evidence in support of the charges;
3. The right to confront witnesses against them;
4. The right to present a defense;

5. The right to call witnesses;
6. A decision by an impartial arbiter or panel;
7. The right of appeal; and
8. The right to active assistance of counsel, consistent with G.S. 116-40.11.

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

D. **Procedural Safeguards for EHRA Non-Faculty Employees Involved in Expressive Speech or Conduct Disciplinary Cases.**¹³ In all EHRA non-faculty disciplinary cases where a demotion, suspension, or dismissal is proposed for disrupting the functioning of the UNC System Office, a constituent institution, or any other entity or unit of the University, or substantially interfering with the protected free expression rights of others, EHRA non-faculty employees are entitled to the procedural protections provided by Sections 300.1.1 and 300.2.1 of the UNC Policy Manual and any additional protections established by the UNC System Office or the constituent institution's relevant disciplinary and grievance policies.

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

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

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

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

C. **Duties.** Any officer(s) with these responsibilities shall be the primary point of contact for any student, faculty member, staff employee, or other individual's questions or concerns about

compliance with the law or policy or to assist with interpretation of the law or policy. The Responsible Officer(s) shall also coordinate any additional campus-based training or educational opportunities for students, faculty members, staff employees, or others on issues related to free speech and free expression.

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

1. Any barriers to or disruptions of free expression within the constituent institution;
2. The administrative handling and discipline relating to these disruptions or barriers, consistent with the federal and state confidentiality protections for personnel information and student education records;¹⁴
3. Any substantial difficulties, controversies, or successes in meeting the requirements of this policy, as described in section III, above; and
4. Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

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

IX. Other Matters

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

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

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

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

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

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

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

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

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

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

¹⁰ Any complaint about an outside disruption or interference should be communicated to the relevant UNC System Office or campus administrator or disciplinary panel for review by the chair of the Board of Governors, the chair of the board of trustees, or the presiding or sponsoring officer of the meeting or event, as appropriate. This expectation does not limit or supersede the UNC System Office's or the constituent institution's ability to independently initiate any disciplinary review for a person under their jurisdiction.

¹¹ Any complaint about an outside disruption or interference should be communicated to the relevant UNC System Office or campus administrator or disciplinary panel for review by the chair of the Board of Governors, the chair of the board of trustees, or the presiding officer of the meeting, as appropriate. This expectation does not limit or supersede the UNC System Office's or the constituent institution's ability to independently initiate any disciplinary review.

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

¹³ Discontinuation of an at-will position is not considered disciplinary action under this policy, but may separately be covered by a constituent institution's grievance policy.

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

RESPONSIBLE OFFICERS ACROSS THE UNC SYSTEM

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

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

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