

Free Speech and Free Expression Within the University of North Carolina

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 Carolina¹ 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.

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, 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.² 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.³ 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.⁴ 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."⁵ 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.⁶

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.⁷ 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

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

³ Section 600(1) of *The Code of The University of North Carolina*. See also Section 700.4.2 of The UNC Policy Manual.

⁴ Section 600(3) of *The Code*. See also Section 700.4.2 of The UNC Policy Manual.

⁵ *Keyishian v. Board of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

⁶ 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*.

⁷ Article 36 of Chapter 116 of the North Carolina General Statutes.

Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

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III. University's Role in Public Policy Controversies

The University's role in supporting and encouraging freedom of inquiry requires assuring opportunities for 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 the 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.

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IV. Free Expression at UNC 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" encompasses any or all of the following:

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1. any action that qualifies as disorderly conduct under [N.C.G.S. §14-288.4](#);
2. any action that qualifies as a disruption under [N.C.G.S. §143-318.17](#);
3. any action in violation of a chancellor's designation of a curfew period pursuant to [N.C.G.S. §116-212](#);
4. 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.

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Even so, all real property on the campus of any constituent institution or UNC General Administration, 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 institution ("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, 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 substantially disrupts or substantially interferes with the function of the constituent institutions.
- 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.
- H. Speech by public employees pursuant to their official duties.

VI. Dissemination of Information About Institutional Policies

A. Information for Students

All constituent institutions of The University of North Carolina 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.⁸

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

B. Information for Employees

All constituent institutions of The University of North Carolina are encouraged to provide to employees 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.

Commented [6]: Language required by §116-303. Note that the statute is specific to "student" speech, but these restrictions are applicable to students and employees (with an additional reference to the Garcetti standard).

Commented [7]: We did not include "violations of State or federal law" here since that seemed duplicative to the introductory paragraph. We can discuss though, since that is language included in the statute.

Commented [8]: Language required by §116-302 for freshman orientation.

⁸ The additional duties of this officer, office or department are set forth in Section VIII of this policy.

C. Information for Outside Parties

All constituent institutions of The University of North Carolina 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 and employees to develop alternative approaches so as to minimize the possibility of disruptions and support the right to dissent.

A. Disciplinary Sanctions

Each constituent institution shall implement a range of disciplinary sanctions, up to and including dismissal or expulsion, for anyone under the jurisdiction of the constituent institution who substantially disrupts the functioning of the constituent institution or substantially interferes with the protected free expression rights of others.

A "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 "substantial disruption" or "substantial interference," the constituent institution may 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.

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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 speech 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 speaker's 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.

OPTIONAL LANGUAGE ABOUT SANCTIONS FOR UNIVERSITY STUDENTS AND EMPLOYEES:

- (1) Any University student or employee who is found to have substantially disrupted the functioning of UNC General Administration or of a constituent institution or substantially interfered with the protected free expression rights of others will first receive a written warning or reprimand; provided, however, that any student or employee who is arrested and convicted of a criminal violation in connection with such activity may be suspended, expelled, or dismissed even upon a first violation. Any subsequent violation will result in more severe

sanctions for the student or employee, including issuing a trespass warning to the student or employee for the location(s) involved as well as being suspended, expelled, or dismissed; or

- (2) Any University student or employee who is found to have substantially disrupted the functioning of UNC General Administration or a constituent institution or substantially interfered with the protected free expression rights of others shall be subject to discipline according to the appropriate disciplinary procedures for misconduct.

ALSO ADDRESSING NON-STUDENTS/NON-EMPLOYEES:

- (3) Any guest or other individual on the campus who is alleged to have substantially disrupted the functioning of 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.

AND SANCTIONS APPLICABLE TO ALL GROUPS:

- (4) 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. If such individual is a student or employee of the University, he/she shall also be subject to discipline according to the appropriate disciplinary procedures for misconduct.

B. Procedural Safeguards for Students Involved in Expressive Speech or Conduct Disciplinary Cases⁹

In all student disciplinary cases involving expressive speech or conduct, students are entitled to a disciplinary hearing under published procedures and UNC Policy Section 700.4.1, 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.

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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, 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.

Commented [11]: Section 2 of S.L. 2017-196

⁹ See also Sections 700.4.1 and 700.4.1.1[R] of The UNC Policy Manual.

B. Training

Any officer(s) with these responsibilities will receive training on ensuring compliance. Such training will be developed and provided by the University of North Carolina School of Government.

Commented [12]: Section of S.L. 2017-196

C. Duties

Any officer(s) with these responsibilities shall be the primary point of contact for any student, employees, 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, 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 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;
3. Any substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues; 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.