



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

REPORT:

2018-19 Report on Free Speech and Free Expression Within the University

September 19, 2019

**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 2018-19 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, 2018, and June 30, 2019, 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 during the relevant time period, review progress since last year’s report, and provide recommendations for the upcoming academic year.

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., Jane Stancill, *UNC faculty pushes importance of free speech by adopting “Chicago principles”* News & Observer (April 13, 2018), <https://www.newsobserver.com/news/local/article208845484.html>; *REPORT: North Carolina is home to some of America’s best colleges for free speech* (September 24, 2018), <https://www.thefire.org/report-north-carolina-is-home-to-some-of-americas-best-colleges-for-free-speech/>; Dillon Davis, *UNCA responds to anti-Semitism concerns over MLK Day speaker Tamika Mallory*, Asheville Citizen Times (January 5, 2019), <https://www.citizen-times.com/story/news/local/2019/01/05/unca-tamika-mallory-speaker-event-anti-semitism-louis-farrakha-asheville-mlk/2489916002/>;

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 10 UNC System constituent institutions.⁶ Three constituent institutions have attained green light status since the

⁶ See Foundation for Individual Rights in Education's Speech Code Rating Database, https://www.thefire.org/spotlight/?x=&y=North+Carolina&speech_code=Green&submit=GO. UNC constituent institutions that have been awarded a "green light" rating are Appalachian State University, East Carolina

preparation of the 2017-18 report,⁷ and multiple other institutions are actively revising policies to attain green light status;

6. No constituent institution holds a “red light” rating from FIRE;⁸
7. Some constituent institutions have incurred expected and unexpected financial costs related to security surrounding speakers or expressive events on campus; and
8. Constituent institutions have accepted the recommendations for improvement contained in last year’s report by taking actions, such as:
 - a. Providing both a central way for people to ask questions or raise concerns about speech and expression at the constituent institutions, and an easily accessed institutional complaint process;
 - b. Offering a consistent and user-friendly way to access campus speaker/event information; and
 - c. Providing user-friendly resources for internal groups and/or outside individuals on UNC System’s commitment to free expression and information about holding events on campus.

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 University system. The UNC System Office convened regular Responsible Officer conference calls during the past academic year to analyze emerging free expression issues, discuss questions or concerns, and share policies and practices that campuses have found successful. The UNC System Office also

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 North Carolina’s largest university scraps unconstitutional speech policies, earns top free speech rating <https://www.thefire.org/north-carolinas-largest-university-scraps-unconstitutional-speech-policies-earns-top-free-speech-rating/>; WCU, UNC Pembroke bring speech policies in line with the Constitution, earn ‘green light’ rating <https://www.thefire.org/wcu-unc-pembroke-bring-speech-policies-in-line-with-the-constitution-earn-green-light-rating/>

⁸ The other six UNC constituent institutions currently have “yellow light” ratings. See https://www.thefire.org/spotlight/?x=&y=North+Carolina&speech_code=Yellow&submit=GO. NCSSM is not rated by FIRE.

established a webpage dedicated to providing information and resources related to free speech and free expression at UNC.⁹ 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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.¹⁴ Academic freedom has indeed been acknowledged by the

⁹ See UNC System Office "Campus Speech and Free Expression" website <https://www.northcarolina.edu/campus-free-speech>.

¹⁰ 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.

¹¹ 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.

¹² See *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

¹³ Section 600(1) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

¹⁴ Section 600(3) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

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.”¹⁵

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.”¹⁶

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 Expression¹⁷ and adopted a University-wide free expression policy which, among other elements, maintains institutional neutrality.¹⁸ 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 training (“Responsible Officers”) and publishing this annual report. A list of the 2018-19 Responsible Officers is included with this report as Attachment B.

¹⁵ *Keyishian v. Board of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

¹⁶ G.S. 116-300(2).

¹⁷ 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.

¹⁸ 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).

III. Discussion of Free Speech and Free Expression at the University During the 2018-19 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. ¹⁹	<ul style="list-style-type: none">• 12 of 16 institutions indicated no barriers or disruptions of free expression within the academic year.• Four institutions (UNC Asheville, UNC-Chapel Hill, Appalachian, and Western Carolina) provided substantive responses and examples: disruption of a registered student group's materials while group members were distributing information in the campus student union; an alleged assault of a demonstrator; a faculty member complaint regarding Section 1300.8 of the UNC Policy Manual; and an aggressive student at a speaker presentation.
(2) A description of the administrative handling and discipline relating to disruption or barriers identified in response to (1). ²⁰	<ul style="list-style-type: none">• 12 institutions had no administrative action to report.• After unsuccessful attempts to identify the student who disrupted the group's materials, the student group was offered staff support and no further incidents occurred.• 28 criminal citations or trespass orders were issued for incidents stemming from five protests and demonstrations centered on a confederate monument at UNC-Chapel Hill.• The above-referenced faculty complaint was handled informally and withdrawn.

¹⁹ G.S. 116-301(c)(1) and Section 1300.8, VIII.C.1 of the UNC Policy Manual.

²⁰ G.S. 116-301(c)(2) and Section 1300.8, VIII.C.2 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
	<ul style="list-style-type: none"> • Disciplinary action was taken against the above-referenced aggressive student and all sanctions were completed in a timely manner. • Some institutions made amendments to policies, training, counselling, and practices regarding imposing sanctions or criminal citations.
(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. ²¹	<ul style="list-style-type: none"> • Among the 10 constituent institutions that had substantive findings to report: • Successes included expanded training and outreach, additional organized extracurricular lectures, and introduction of comprehensive event planning protocols • Some institutions reported that members of their university community questioned or expressed differing expectations regarding university responses on political and social issues • Multiple institutions reported negative reactions and acute media coverage regarding scheduled expressive events on campus. In these situations, no institutions reported cancelling or prohibiting these events.
(4) Any assessments, criticisms, commendations, or recommendation the constituent institution would like the committee to consider in preparing the annual report. ²²	<ul style="list-style-type: none"> • Multiple institutions reported maintaining or improving their speech rating status with FIRE. • Institutions expressed appreciation for the UNC System Office facilitation of Responsible Officer meetings and training. It was suggested that the UNC System Office develop model training materials.

²¹ G.S. 116-301(c)(3) and Section 1300.8, III and VIII.C.3 of the UNC Policy Manual.

²² 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"> • Institutions that faced criticism for scheduled events on campus reported that these events were not cancelled or otherwise hindered.
(5) Confirmation of whether the institution fulfilled the University policy requirements to disseminate information about institutional policies during the 2018-19 academic year.	<ul style="list-style-type: none"> • All 16 institutions indicated that they had disseminated information as required by policy.
(6) Identification of representative institutional policies that reinforce commitment to free speech and free expression (e.g., academic freedom, tenure regulations, facilities use, etc.).	<ul style="list-style-type: none"> • 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. • Several institutions reported amending or adopting policies, including facilities use policies, student codes of conduct, and student organization policies. • One institution reported initiating a review of all institutional policies. • 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.²³

²³ See <https://www.carolinajournal.com/news-article/n-c-a-national-leader-in-protecting-free-speech-on-campus-report-says/>.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
(7) Examples of speakers or other events that have been held at the institution during the 2018-19 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. A complete listing of the institutions' event submissions is included as Attachment C to this report. • 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 2018-19 academic year.	<ul style="list-style-type: none"> • All 16 institutions identified types of communications, trainings, and/or outreach that had taken place. • Many institutions reported that relevant information is readily available in the handbooks and accessible on campus.
(9) Information about security and other costs associated with protecting and affirming free expression on campus.	<ul style="list-style-type: none"> • Five institutions did not report additional costs. • Other institutions provided some information (overtime costs for security and law enforcement officers, security fees, potential to cause great financial burden on campus if a major disruption occurred, etc.). • Many institutions utilize on-campus police resources or cooperation with local police departments in protecting and affirming free expression on campus.

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 10 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 2017-18 free expression annual report. For instance, several institutions reported introducing or improving institutional question and complaint processes, including receiving reports or complaints through an institutional hotline. 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 and 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 responsible officers, and some institutions have undertaken free speech and free expression training for their boards of trustees.

V. Committee Recommendations for 2019-20

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. Provide training to constituent institution administrators who have transitioned into the Responsible Officer title.
2. Provide training to Responsible Officers regarding topics of institutional neutrality and political speech on campus.
3. Promote and refine constituent institution processes for receiving and resolving complaints related to speech or expression (which may be part of an existing complaint or grievance process).
4. Continue to encourage constituent institutions to further develop accessible resources to publicize information on scheduled speakers and events on campus.

5. 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.
6. 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.
7. Develop free speech and free expression training materials that may be shared among the constituent institutions.
8. Expand Boards of Trustees training on the Act and free speech/free expression as part of the board member orientation process or in other ways that would be helpful.

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 ___, 2019.