

# The New UNC Policy on Equality

## How will it impact support & programs for LGBT+ students?

Eric M. Fink

Elon Law School

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# Disclaimer

This is a general overview of recent changes to the UNC Policy Manual and related legal issues. The information presented is not offered or intended as legal advice.

# UNC Policy Manual

# Changes Adopted by Board of Governors

In May, the UNC Board of Governors voted to revise the UNC Policy Manual, repealing the policy on “Diversity and Inclusion Within the University of North Carolina” and associated regulations (§§ 300.8.5 and 300.8.5(R)) and replacing them with a new policy on “Equality Within the University of North Carolina” (new § 300.8.5).

# **New § 300.8.5: Equality Within the University of North Carolina**

# Purpose

*[UNC's] mission prescribed by law is to 'discover, create, transmit, and apply knowledge to address the needs of individuals and society.' Accomplishing the former—addressing the needs of individuals—requires that each be treated as an individual deserving of dignity and inclusion. The University shall continue to ensure that diverse persons of any background ... are invited, included, and treated equally.*

# Diversity

*Diversity means the ways in which individuals vary, including, but not limited to, backgrounds, beliefs, viewpoints, abilities, cultures, and traditions that distinguish one individual from another.*

# Affirmations

The new policy includes statements affirming the University's compliance and commitments regarding nondiscrimination & equality, freedom of speech & expression, and academic freedom.



# Student Success & Employee Wellbeing

*Campuses shall ensure that qualified students of all backgrounds are welcomed, included, and supported in their pursuit of a degree or certificate and that employee wellbeing remains a priority. Campuses shall continue to implement programming or services designed to have a positive effect on the academic performance, retention, or graduation of students from different backgrounds, provided that programming complies with the institutional neutrality specified in Section VII of this policy and/or other state and federal requirements.*

# Institutional Neutrality

*[N]o employing subdivision or employment position within the University shall be organized, be operated, speak on behalf of the University, or contract with third parties to provide training or consulting services, regarding: matters of contemporary political debate or social action as those terms are used in [Section 300.5.1 of the UNC Policy Manual](#); any prescribed “view of social policy” or “political controversies of the day,” as those terms are used in [G.S. 116-300\(3\) and \(3a\)](#); or in furtherance of the concepts listed in [G.S. 126-14.6\(c\)\(1\)-\(13\)](#).*

## **“Matters of contemporary political debate or social action”**

UNC Policy Manual § 300.5.1(A)(5) (“Prohibition of Compelling Speech”) provides that “the University shall neither ask nor require an employee or applicant for academic admission or employment to affirmatively ascribe to or opine about beliefs, affiliations, ideals, or principles regarding matters of contemporary political debate or social action as a condition to admission, employment, or professional advancement. Nor shall any employee or applicant be solicited or required to describe their actions in support of, or in opposition to, such beliefs, affiliations, ideals, or principles.”

But the policy does not define “matters of contemporary political debate or social action”.

## **“View of social policy” and “political controversies of the day”**

N.C. Gen. Stat. 116-300 directs the Board of Governors to “adopt a policy on free expression”, including these prohibitions:

*(3) The constituent institution shall not require students, faculty, or administrators to publicly express a given view of social policy*

*(3a) The constituent institution shall remain neutral, as an institution, on the political controversies of the day.*

But the statute does not define either term.

# Prohibited Concepts

## N.C. Gen. Stat. 126-14.6(c)

The concepts listed in this subsection shall not be promoted in State government workplaces or included as part of any State employee training program:

- (1) One race or sex is inherently superior to another race or sex.
- (2) An individual, solely by virtue of his or her race or sex, is inherently racist, sexist, or oppressive.
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.
- (4) An individual's moral character is necessarily determined by his or her race or sex.
- (5) An individual, solely by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
- (6) Any individual, solely by virtue of his or her race or sex, should feel discomfort, guilt, anguish, or any other form of psychological distress.
- (7) A meritocracy is inherently racist or sexist.
- (8) The United States was created by members of a particular race or sex for the purpose of oppressing members of another race or sex.
- (9) The United States government should be violently overthrown.
- (10) Particular character traits, values, moral or ethical codes, privileges, or beliefs should be ascribed to a race or sex or to an individual because of the individual's race or sex.
- (11) The rule of law does not exist, but instead is a series of power relationships and struggles among racial or other groups.
- (12) All Americans are not created equal and are not endowed by their Creator with certain unalienable rights, including life, liberty, and the pursuit of happiness.
- (13) Governments should deny to any person within the government's jurisdiction the equal protection of the law.

## Prohibited Concepts

The statute defines “promote” as “compelling State employees to affirm or profess belief in the concepts described in subsection (c) of this section.”

## Proviso for Legal Compliance, Free Speech, & Academic Freedom

*The foregoing prohibition that have no effect on employing subdivisions or employment positions tasked with ensuring compliance with federal or state law nor shall the foregoing prohibition affect University efforts to abide by the commitments to the free of speech and expression and academic freedom described in Section IV and V of this policy ...*

# Annual Reporting

The policies requires that each constituent institution must submit annual reports (beginning Sept. 1, 2024):

- certifying compliance “with the University’s commitment to institutional neutrality and nondiscrimination”; and
- identifying “reductions in force and spending, along with changes to job titles and position descriptions, undertaken as a result of implementing this policy and how those savings achieved ... can be redirected to initiatives related to student success and wellbeing.”



# Student-led Organizations

*Student-led organizations may use university facilities and receive student activity funding notwithstanding any speech or expressive activity by such organizations that would otherwise violate Section VII ["Maintaining Institutional Neutrality"], provided that such use and receipt of student activity funding may only be granted to student-led organizations pursuant to the written policies or regulations of each constituent institution for use of university facilities and resources.*

# Guidance

- The UNC System Division of Legal Affairs has issued [guidance on implementation of the new policy](#).

# Legal Challenges

# Florida

The Florida “Individual Freedom Act” (a.k.a. “Stop WOKE Act”), which prohibits a variety of DEI practices, has been the subject of multiple legal challenges, including restrictions similar to those under the new UNC policy.

# Training and Instruction in Public Schools and Universities

## Fla. Stat. § 1000.05(4)

(a) It shall constitute discrimination on the basis of race, color, national origin, or sex under this section to subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the following concepts:

1. Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
2. A person, by virtue of his or her race, color, national origin, or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
3. A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
4. Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
5. A person, by virtue of his or her race, color, national origin, or sex, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, national origin, or sex.
6. A person, by virtue of his or her race, color, national origin, or sex, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
7. A person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex.
8. Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.

(b) Paragraph (a) may not be construed to prohibit discussion of the concepts listed therein as part of a larger course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

## ***Pernell v. Florida Board of Governors***

In *Pernell* a group of public university faculty and students assert that Fla. Stat. § 1000.05(4) unconstitutionally “prohibit[s] expression of certain viewpoints regarding the eight specified concepts during class instruction.” In November 2022, the trial court granted the plaintiffs’ request for a preliminary injunction against enforcement of § 1000.05(4) and associated regulations adopted by the Florida Board of Governors of the State University System. 641 F. Supp. 3d 1218 (N.D. Fla. 2022).

An appeal is currently pending in the 11th Circuit U.S. Court of Appeals.

## *Honeyfund.com Inc. v. DeSantis*

In *Honeyfund*, the plaintiffs challenged another section of the Florida “Individual Freedom Act” that imposes similar restrictions on employee training by any employer, public or private. Earlier this year, the Court of Appeals upheld a preliminary injunction on constitutional grounds. 94 F.4th 1272 (11th Cir. March 4, 2024).

## ***Black Emergency Response Team v. Drummond***

An Oklahoma law prohibits the teaching of certain concepts, similar to those targetted in NC and Florida, in public K-12 schools. In *Drummond*, the court recently dismissed a 1st Amendment challenge, holding that the Oklahoma law “is directed to the curricular speech of K-12 teachers in Oklahoma and that, in accordance with the authority set forth above, such curricular speech is not protected by the First Amendment.” 2024 WL 3014659 (W.D. Okla. June 14, 2024)

The court allowed the plaintiffs to proceed with other claims:

- A 1st Amendment challenge to a provision that prohibits “any form of mandatory gender or sexual diversity training or counseling” for students in the state’s public university system, noting “that the curricular speech of the university level instructor-Plaintiffs is protected to some extent by the First Amendment.”
- A 14th Amendment challenge to restrictions on K-12 instruction and diversity training in public universities on grounds that they were enacted “with the purpose to discriminate against students of color by chilling and suppressing Inclusive Speech aimed at enhancing the educational, social, and civic experiences of students of color and their families” and that some of the statutory terms are unconstitutionally vague.



# Personal titles and pronouns

Another provision of the Florida “Individual Freedom Act” restricts the use of personal titles and pronouns in public K-12 schools:

Fla. Stat. § 1000.071

(1) It shall be the policy of every public K-12 educational institution that is provided or authorized by the Constitution and laws of Florida that a person’s sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person’s sex.

(3) An employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if such preferred personal title or pronouns do not correspond to his or her sex.

## ***Wood v. Florida Dept. of Educ.***

In *Wood*, a public school teacher who is a transgender woman challenged § 1000.071(3). Granting the plaintiff's request for a preliminary injunction, the court agreed that the statute unconstitutionally restricts the plaintiff's freedom of speech as a citizen regarding a matter of public concern:

*This Court is reminded of Walt Whitman's "Song of Myself," a gleefully sweeping masterpiece of American poetry that opens with these lines:*

*"I celebrate myself, and sing myself, And what I assume you shall assume, For every atom belonging to me as good belongs to you."*

*In sharing her preferred title and pronouns, Ms. Wood celebrates herself and sings herself—not in a disruptive or coercive way, but in a way that subtly vindicates her identity, her dignity, and her humanity. Section 1000.071(3) has silenced her and, by silencing her, forced her to inhabit an identity that is not her own. The State of Florida has not justified this grave restraint, and so the United States Constitution does not tolerate it. Ours is a Union of individuals, celebrating ourselves and singing ourselves and being ourselves without apology.*

2024 WL 1536749 (N.D. Fla. April 9, 2024).

## *Wood v. Florida Dept. of Educ.*

The plaintiffs in *Wood* also assert claims under Title VII and Title IX, contending that prohibiting them from providing their preferred personal titles and pronouns unlawfully discriminates on the basis of sex. The court recently denied the defendants' motion to dismiss those claims. 2024 WL 3371319 (N.D. Fla. July 10, 2024).

