

Resolution 2016-14. On the Importance of Shared University Governance

The Faculty Council resolves:

We recognize the concerns raised in the UNC Faculty Assembly letter of 8 June 2016, and Faculty Assembly Resolution 2016-1, “On the Governance Implications of North Carolina Session Law 2016-94.” It is essential that the time-honored principles and practices of faculty participation in the shared governance of the University of North Carolina be preserved.

Submitted by Prof. Stephen Leonard.

Comment:

The relevant documents are attached:

* Letter to UNC President Spellings and BOG Chairman Bissette from the UNC system Faculty Assembly Executive Committee. June 8, 2016

* Resolution 2016-1, “On the Governance Implications of North Carolina Session Law 2016-94.” Approved by the UNC Faculty Assembly on September 2, 2016.

8 June 2016

President Spellings, Chairman Bissette:

We write regarding significant faculty concerns about University governance. Recent actions at the legislative Short Session have raised difficult questions about the institution's commitment to excellence in the diverse missions of its constituent campuses, and the effectiveness of well-constituted governance practices encouraged and embodied in the UNC Code.

The Faculty Assembly has consistently maintained that commitment to efficacious processes of shared governance are essential for the success of the University. The University community welcomed the renewed commitment to these ideals expressed by President Spellings at the February 2016 Board retreat and in numerous public settings since she assumed office.

There is however a growing concern that the regulatory force and discipline of these ideals is now diminished.

While several examples of problematic actions can be cited (including matters related to HB 2, tenure, curriculum and research regulation, and faculty compensation), the content and proceedings of the NCGAP legislation (originally in H97, now in H1030) and the Access to Affordable College Education legislation (AACE; originally in S873, also now incorporated in H1030) have proven especially challenging.

First, these initiatives were originally formulated and to an extent still reflect a disregard for extant evidence and argument on best practices for promoting the public duties and mission of the University.

The preponderance of research and practice in higher education clearly demonstrates that resilience, adaptability, innovation, and enterprise on the part of individuals, institutions, and systems, are facilitated by encouraging a diversity of talents and perspectives. Both the representatives of the faculty and the President of the University have given these principles primacy in the definition of the University's public service mission.

It is then disquieting that NCGAP and AACE were proposed with limited regard for deference to Board of Governors and University Executive leadership, especially given the evident fact that the bills would compromise the University's commitment to access and diversity. The main fiscal concerns stated in the 18 May 2016 UNC Faculty Assembly analysis of S873 may have been addressed by budgetary offset of tuition revenue losses, but as of today AACE still remains a threat to the integrity of UNCP's particular and considerable historical mission.

Second, regarding the implications of these initiatives for practices of University governance: Both the substance and the process of these legislative initiatives circumvents the lawfully established prerogative authority of the UNC Board of Governors, and preempts campus self-governance.

NCGAP and AACE generally supersede Board authority (in NC GS 116-11. 2) "for the general determination, control, supervision, management and governance of all affairs of the constituent institutions," AACE abrogates Board authority (in NC GS 116-11.7) for setting "tuition and required fees at the institutions," and NCGAP supersedes Board responsibility (in NC GS 116-11. 8) for "enrollment levels of the constituent institutions." In addition, the fee delimitations of AACE invoke a wholly new construction of fee-setting authority to encompass local (campus specific) fees that students and campus communities impose on themselves through processes of institutional self-governance.

The leadership of the Faculty Assembly interprets the effect if not the intent of these measures as matters requiring an unequivocal re-affirmation of the principles of shared governance. Those principles are clearly explicated in the UNC Leadership and Policy statement, which notes that "UNC operates under an arrangement of shared governance that leverages the collective strengths of its campus chancellors and administrators, local boards of trustees, and the UNC President and Board of Governors," including honoring "the important traditional role of the faculty in the governance of the academy."

Third, the provisions of AACE specifying the differential treatment of particular institutions in the UNC system required the annulment of well-reasoned constraints (in NC GS 116-11.9c) that do not "allow the General

2015-16 Executive Committee

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Assembly, except as to capital improvements, to refer to particular constituent institutions and any specifications as to priorities” in matters pertaining to “new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served... improvements in levels of operation and increases to remedy deficiencies, as well as other areas.” The Board is also to be constrained in relation to favoring particular institutions, as it must (per NC GS 116-11.9a) prepare “a single, unified recommended budget for all of the constituent institutions,” including “funds requested without reference to constituent institutions.”

The AACE thus voids the well-ordered restraints of NC GS 116-11.9a, NC GS 116-11.9c and other restrictions of law, removing all legal obstacles to its problematic features by way of a sweeping promulgation of its authority “Notwithstanding any other provision of law.”

Taken together, these actions of the legislature, the endorsement of these actions by a number of members of the Board of Governors, and President Spellings’ recent characterizations of attending developments, have raised faculty concerns about the University’s capacity to promote excellence in the diverse missions of its constituent campuses, the effectiveness of its governance practices, and the potentially pernicious effects of continuing and recently exacerbated confusions about lines of authority and rigor of analysis in the formulation of University policy.

Our duties require us to bring these concerns to the attention of University administration and governance leadership. The Faculty Assembly will of course continue to encourage the pursuit of best practices in University management, but we must also oppose any actions that establish restrictive precedents binding the actions of the current faculty and its successors, the Executive leadership of our campuses and the system, future Boards of Governors, and the representatives of the people of this State, in their efforts to promote the success of public higher education in North Carolina.

On behalf of the UNC system Faculty Assembly Executive Committee,

Gabriel Lugo
Chair Elect, UNC system Faculty Assembly

Stephen Leonard
Chair, UNC system Faculty Assembly

Resolution 2016-1

On the Governance Implications of North Carolina Session Law 2016-94

Approved by the UNC Faculty Assembly September 02, 2016

Whereas, NC General Statute 116-11 establishes a Board of Governors to plan and develop a coordinated system of higher education and govern the 17 constituent institutions; and

Whereas, NC General Statute 116-14 provides for the Board to elect a President of University of North Carolina to act as the chief administrative officer of the University; and

Whereas, UNC operates under a system of shared governance leveraging the collective strength of chancellors, and administrators, and honoring the traditional role of the faculty in the governance of the academy; and

Whereas; Session Law 2016-94, section 11.6 (GS 116-239.5) mandates the creation of Lab Schools on eight UNC campuses, circumventing: administrative structures and procedures established by the UNC Code, the Department of Public Instruction, local Boards of Education, and best practices of effective governance by excluding consultation with faculty and administrators of the schools of education at UNC campuses; and

Whereas; Session Law 2016-94, section 11.8 establishes a Policy “Collaboratory” at UNC Chapel Hill in apparent violation of multiple clauses of GS 116, and established procedures for the creation of centers and institutes required by UNC Code 400.5[R], which clearly apply to this entity; and

Whereas; Session Law 2016-94, section 11.9 overrides Board of Governors’ action penalizing UNC Chapel Hill in the 2015-2016 academic year for exceeding the UNC Code mandated 18% out-of-state enrollment cap, thereby undermining the lawful prerogative authority of the Board of Governors and principles of effective institutional governance;

Resolved, The UNC Faculty Assembly opposes the processes of formulating and implementing the aforementioned actions, and reiterates the Assembly’s opposition to all actions establishing restrictive precedent that binds the governance authority of the current faculty and its successors, the Executive leadership of UNC campuses and the UNC system, current and future Boards of Governors, and future representatives of the people of this State, in their efforts to promote the success of public higher education in North Carolina;

Resolved, That the NC General Assembly fully restore all prerogative authority of the Board of Governors in matters pertaining to institutional adherence to the UNC Code; and

Resolved, That the appended justification of this resolution (Appendix A) provides a narrative of developments and concerns explaining its origins.

2016-17 Executive Committee

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APPENDIX A
Justification for UNC Faculty Assembly Resolution 2016-5
On the Governance Implications of North Carolina Session Law 2016-94

A. **Section 11.6** Lab Schools – NC 116-239

- a. Section NC 116-239 of the NC budget calls for the Board of Governors (BOG) to designate eight campuses to establish “Laboratory Schools” to improve student performance in local administrative units with low performance schools. Except as provided, Lab Schools are exempt from statutes and rules applicable to local Boards of Education.
- b. Board of Governors records (or lack thereof) show that the creation of the Lab Schools was mandated unilaterally by the Legislature without the informed input of GA, chancellors or any of the deans and faculty in the colleges of education in the system.
- c. The legislation establishes new duties for Boards of Trustees well beyond those established by the Code. These include adopting a plan for the location of the Lab Schools, appointing advisory boards that will provide general oversight, and other duties which are within the purview of faculty, such as establishing the standard course of study for Lab Schools and conducting student assessments.
- d. The bill circumvents the Department of Public Instruction, local school boards, and possibly SACS and other accreditation agencies regulating schools of education
- e. The bill provides no resources for its enactment.

SUMMARY: This legislation is an unprecedented and unjustified overreach into the management of UNC institutions, including an unfunded mandate that will burden institutional resources, an instance of legislative interference in the curriculum of UNC institutions, and a statutory constraint on faculty working conditions that are more appropriately managed at the campus level.

B. **Section 11.8** UNC-CH Policy Collaboratory

- a. Section 11.8 of Session Law 2016-94 establishes a “Policy Collaboratory” at UNC-CH to facilitate the dissemination of policy and research expertise on environmental matters, primarily for practical use by State and local government.
- b. Board of Governors records (or lack thereof) show that the creation of the Policy “Collaboratory” was mandated unilaterally by the Legislature without approval by the Board or consultation with Chapel Hill academic units carrying disciplinary responsibility for research on these and related topics.
- c. The “Collaboratory” Policy is in our considered judgment a violation of both North Carolina statute, and UNC Policy, including:
 - i. **NC GS 116-11.2**, which establishes Board authority “for the general determination, control, supervision, management and governance of all affairs of the constituent institutions,”
 - ii. **NC GS 116-11.9c**, which does not “allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions and any specifications as to priorities” in matters pertaining to “new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served... improvements in levels of operation and increases to remedy deficiencies, as well as other areas.”
 - iii. **NC GS 116-11.9a** which constrains favoring particular institutions, as it must (per) prepare “a single, unified recommended budget for all of the constituent institutions,” including “funds requested without reference to constituent institutions.”
 - iv. **UNC Policy 400.5**, which requires campuses to initiate all planning, and the Board of Governors to exercise approval authority, for all research, service, and teaching centers and institutes; this entity clearly falls into this category. Faculty have noted that this action is particularly troubling as these Regulations were altered in 2015 to allow the Board to unilaterally eliminate -- at the behest of the legislature and Governors' office -- centers and institutes. Now it appears that the legislature has arbitrarily superseded all processes and procedures regarding University centers and institutes simply by inventing a non-existing word for the title of this program

SUMMARY: The Faculty Assembly counsels that UNC General Administration, and the UNC Chapel Hill Administration, make every effort to oppose and to call for correcting this misuse of legislative powers. This issue has the potential to generate dispute over jurisdictional authority, as well as reviving the kinds of discontents over process and substance that marked the Board's 2015 interventions in campus research, teaching, and service centers and institutes activities

3. **Section 11.9** Out of State penalty refund to Chapel Hill

At the March 4 2016 meeting of the BOG, UNCCH was penalized \$1 million for violations of the UNC Code mandated out-of-state enrollment cap of 18%. Session Law 2016-94 partially restores those cuts back to the UNCCH campus, thereby eroding the powers of the Board.

SUMMARY. It is in general problematic when the legislature overrides authority delegated to the Board, and overturns the provisions of NC GS 116-11.9a, which constrains the legislature from favoring particular institutions, sets a very troubling precedent that allows individual legislators to push through statutes singling out individual campuses for reward or punishment.
