



Faculty Senate
140 Rawl Annex

919-757-6537
919-757-6122 Fax
FSLEE@ECUVM1

MEMORANDUM

TO: ECU Faculty Senators and Alternates

FROM: Patricia J. Anderson
Chair of the Faculty *Patricia J. Anderson*

DATE: January 12, 1994

SUBJECT: Extended Definition of Personal Malice

As you may recall, several documents were referred to by Professor Henry Ferrell, Chair of the Faculty Affairs Committee, during his presentation at the Faculty Senate meeting on December 7, of the proposed extended definition of personal malice. Attached are copies of those documents for your information and review prior to the return of this issue to the Faculty Senate for action on March 29, 1994.

Please do not hesitate to forward any comments or concerns on this issue to Professor Ferrell at ext. 6326.

:lal
pc: Henry Ferrell

attachments: Board of Governors Excerpt from Report of Committee
July 19, 1993, Memorandum
June 30, 1993, Memorandum
March 12, 1993, Memorandum
September 4, 1990, Memorandum
Policy Statement #98

C O P Y

Excerpt from Report of Committee on Personnel and Tenure
Adopted by the Board of Governors, March 9, 1990

Both parties to this appeal acknowledge that neither the Code of The University of North Carolina nor the tenure regulations define "personal malice." Thus, in responding to this appeal, we are called upon to provide an interpretation of the relevant section of the Code.

Section 604B of the Code provides:

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) discrimination based upon the faculty member's race, sex, religion or national origin or (c) personal malice.

The tenure regulations of the constituent institutions, as approved by the Board of Governors, incorporate that prohibition verbatim. Those regulations also state, uniformly, that the decision whether to reappoint may be based on any factor considered relevant to institutional interests. Thus, institutional discretion in such decisionmaking is limited only by the Board requirement that the decision not be based on one or more of the three specifically identified impermissible considerations.

The three prohibited grounds for decision are identical in their basic rationale. Each deals with a cause-and-effect relationship between an improper motivation and the denial of an employment opportunity. Each deals with decisionmaking based on considerations that are not relevant in evaluating employee performance. Thus, a

nonreappointment decision shall not be used to retaliate against an employee for exercising constitutional rights of free speech; a nonreappointment decision shall not be used to discriminate on the basis of race, sex, religion or national origin; and a nonreappointment decision shall not be used as the medium for expressing feelings of personal malice.

As used in the Code, the term "personal malice" means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decisionmaking. Having separately dealt with matters of race, sex, religion and national origin, this particular Code provision simply goes on to state that other personal factors similarly may be outside the scope of proper consideration. Thus, to identify but a few possibilities, personnel decisions based on negative reactions to an employee's anatomical features, marital status or social acquaintances are intrinsically suspect.

While the terms "ill-will", "dislike", "hatred" and "malevolence" may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the Board's prohibition. Any degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for decisionmaking.

C O P Y



MEMORANDUM

Faculty Senate
140 Rawl Annex

919-757-6537
FSLEE@ECUVM1

TO: Henry Ferrell, 1992-93 Chair
Faculty Affairs Committee

FROM: Patricia Anderson *Patricia Anderson*
1993-94 Chair of the Faculty

DATE: July 19, 1993

SUBJECT: Appendix K: Equal Employment Opportunity/Affirmative Action
Policy of East Carolina University

Attached is a memorandum that I received recently requesting that we review our Equal Opportunity Policy and consider including a prohibition against discrimination on the basis of sexual orientation. Also attached is a packet of material that was forwarded along with the memorandum.

As Past Chair of the Faculty Affairs Committee, I would like to ask that you bring this issue to the attention of the Faculty Affairs Committee at your first meeting in September. If at all possible, please report to the Faculty Senate on this issue on October 19, 1993, in order that the Faculty Assembly Delegates may forward the information in November to the Faculty Assembly.

Please do not hesitate to contact me if further information is needed. Thank you!

:lal

attachments

pc: Ken Wilson
Faculty Assembly Delegates
Mary Ann Rose



The University of North Carolina

FACULTY ASSEMBLY

Kenneth Wilson, Chairperson

East Carolina University
Dept. of Sociology & Anthropology
Greenville, NC 27858-1353
(919) 737-4897

C O P Y

Appalachian State
University

East Carolina
University

Elizabeth City
State University

Wayne State
University

North Carolina
Agricultural and
Mechanical State
University

North Carolina
Central University

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State University

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June 30, 1993

TO: Faculty Senate and Council Chairs
University of North Carolina Campus

FM: Ken Wilson, Chair
UNC Faculty Assembly

RE: EQUAL OPPORTUNITY POLICY STATEMENT ON SEXUAL ORIENTATION

At the April 2, 1993 meeting of the UNC Faculty Assembly, the delegates passed a resolution (92-6) asking me to encourage the UNC Campus Faculty Senates and Councils to amend their Equal Opportunity Policies to include a prohibition against discrimination on the basis of sexual orientation. This resolution passed without dissent and without any negative votes being casted. If you have already amended your policy to include this provision, I would like to commend your actions. If you have not already addressed this issue, I would like to strongly endorse the position of the Faculty Assembly and to encourage you to place this item on the agenda of the appropriate campus committee.

I am enclosing a packet of material sent to the Faculty Assembly by Professor Shirley Browning (UNC-A). This material provides models policies and suggests ways to avoid some troublesome issues that may bog down the debate. In particular, I would like to draw your attention to the third paragraph of the UNC-CH policy that clearly states that the policy does not apply to "the University's relationships with outside organizations." While it would be nice to be able to make a very broad statement of values, this exclusion may be a practical way to implement the policy on campus without creating too many problems with external organizations.

I hope your Senate will soon review your policy and recommend the inclusion of this important protection against discrimination. Let us all reaffirm that "educational and employment decisions should be based on an individual's abilities and qualifications, and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance."

Appalachian State
University

Please note that this request is on behalf of the UNC System. UNCA has had such a policy since April 17, 1991. Therefore, this request is not an effort to seek Faculty Assembly support to resolve a domestic issue relevant to a single campus. Equitable, professional, and just treatment of our fellow human beings in all settings and environments is a minimum standard we should set for ourselves.

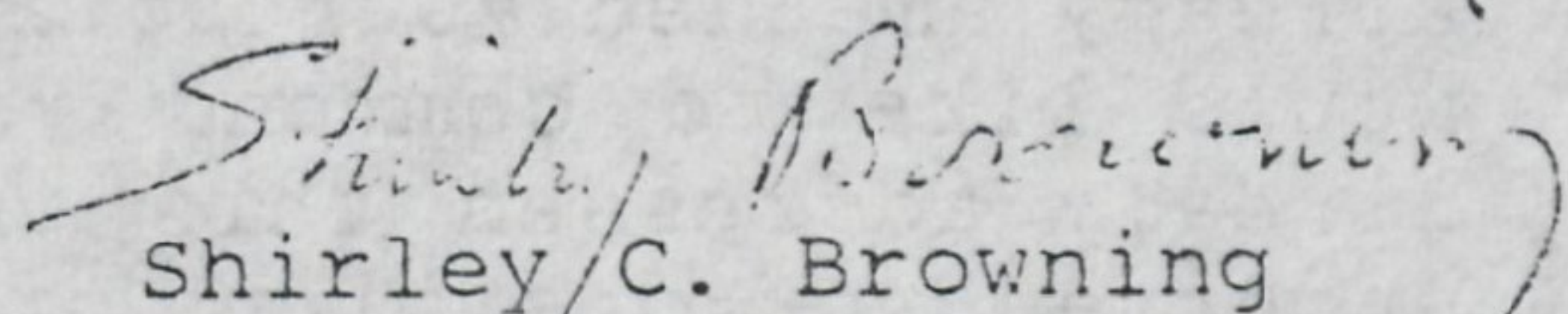
Enclosed for your use please find:

1. Copies of the UNCA Faculty Senate Resolution
2. UNC-CH Policy Statement on Sexual Orientation
3. UNCC Policy on Sexual Orientation
4. UNCA Policy on Sexual Orientation
5. UNCA Policy Statement: Equal Employment Opportunity
6. UNCA Catalog 1992-93: Statements on Equal Education and Employment Opportunity

Please contact me should you have questions about this request. I look forward to seeing you in April.

Thanks for your attention.

Sincerely,


Shirley C. Browning
Chairman and Professor of Economics

SCB/km
Enclosures

cc: Don Liskerski, Chair, UNCA Faculty Senate
Charlotte Goedsche, Department of Foreign Languages

C O P Y

Resolution 92-6
Governance Committee
UNC Faculty Assembly

Resolution to Faculty Assembly Chair Wilson on
Equal Opportunity Policy Statement on Sexual Orientation

Whereas, educational and employment decisions should be based on an individual's abilities and qualifications, and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance, and

Whereas, as with race, color, gender, religion, and national origin, sexual orientation has no connection with academic abilities or job performance, and

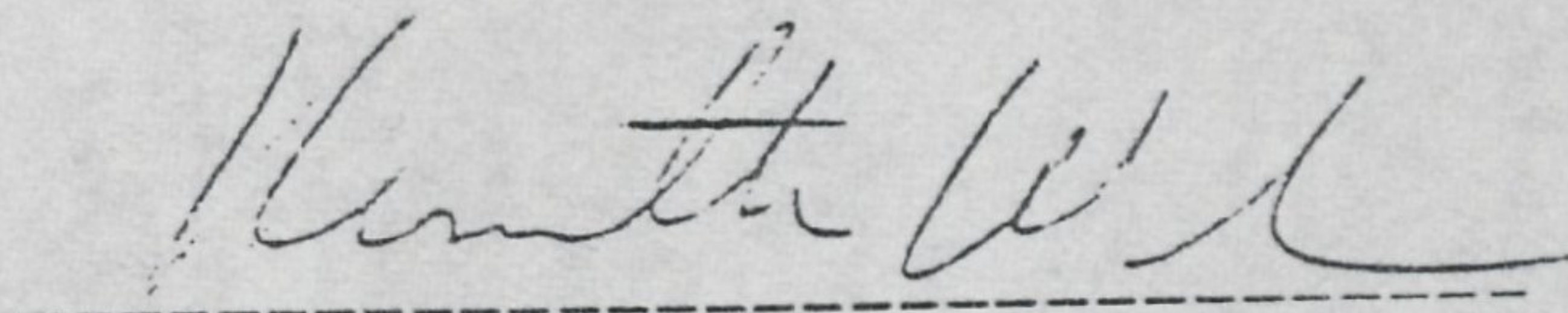
Whereas, UNC campuses should have equal opportunity policies that ensure that only relevant factors are considered and that equitable and consistent standards of conduct are applied, and

Whereas, several UNC campuses prohibit discrimination on the basis of sexual orientation in educational and employment opportunities,

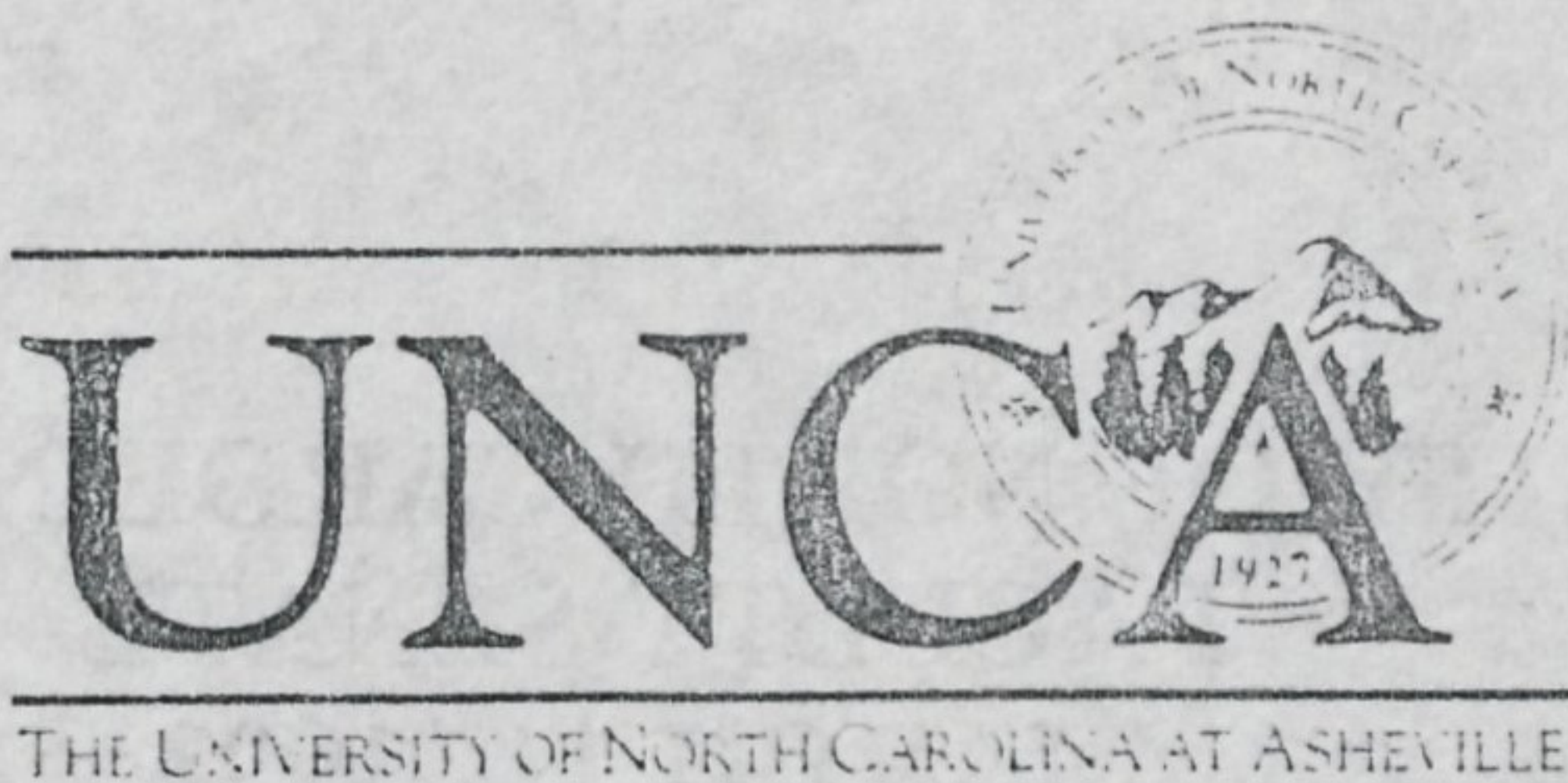
Therefore, Be It Resolved, that the Chair of the Faculty Assembly encourage in writing the Senate and Council Chairs of those UNC campuses that have not amended their Equal Opportunity Policies to include a prohibition against discrimination on the basis of sexual orientation in educational and employment opportunities to solicit their Senates or Councils to support amending their campus policies to include this prohibition.



George H. Wahl, Jr., Secretary
UNC Faculty Assembly



Ken Wilson, Chair
UNC Faculty Assembly



March 12, 1993

Kenneth Wilson, Chair
UNC Faculty Assembly
Department of Sociology
East Carolina University
Greenville, NC 27858

Robin Dorff, Chair
UNC Faculty Assembly Committee on
Faculty Welfare
Department of Political Science
N.C. State University
Raleigh, NC 27695

George Bailey, Chair
UNC Faculty Assembly Committee on
Faculty Governance
Department of Philosophy
East Carolina University
Greenville, NC 27858

Gentlemen:

On Thursday, March 11, 1993, the UNCA Faculty Senate passed a Resolution requesting the UNC Faculty Assembly urge President Spangler to issue a directive to all campuses in the UNC System that have not yet done so to: 1) adopt a policy forbidding discrimination on the basis of sexual orientation among faculty, staff and students, and 2) create procedures for pursuing complaints of such discrimination. It is the case that only a few of the campuses in the UNC System have policies directed towards these matters.

I was asked to forward this to the Faculty Assembly and urge immediate action. As a result this is mailed to Ken as Chair of the Assembly and Robin and George as Chairs of the Assembly Committees most likely to deal with issues of this type. I strongly urge you to develop an appropriate resolution at our April 1993 meeting.

THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE
FACULTY SENATE
MARCH 11, 1993

RESOLUTION

Whereas: For the past five years North Carolina has had the highest number of documented hate crimes against gays and lesbians in the nation, according to statistics from the National Gay and Lesbian Task Force,

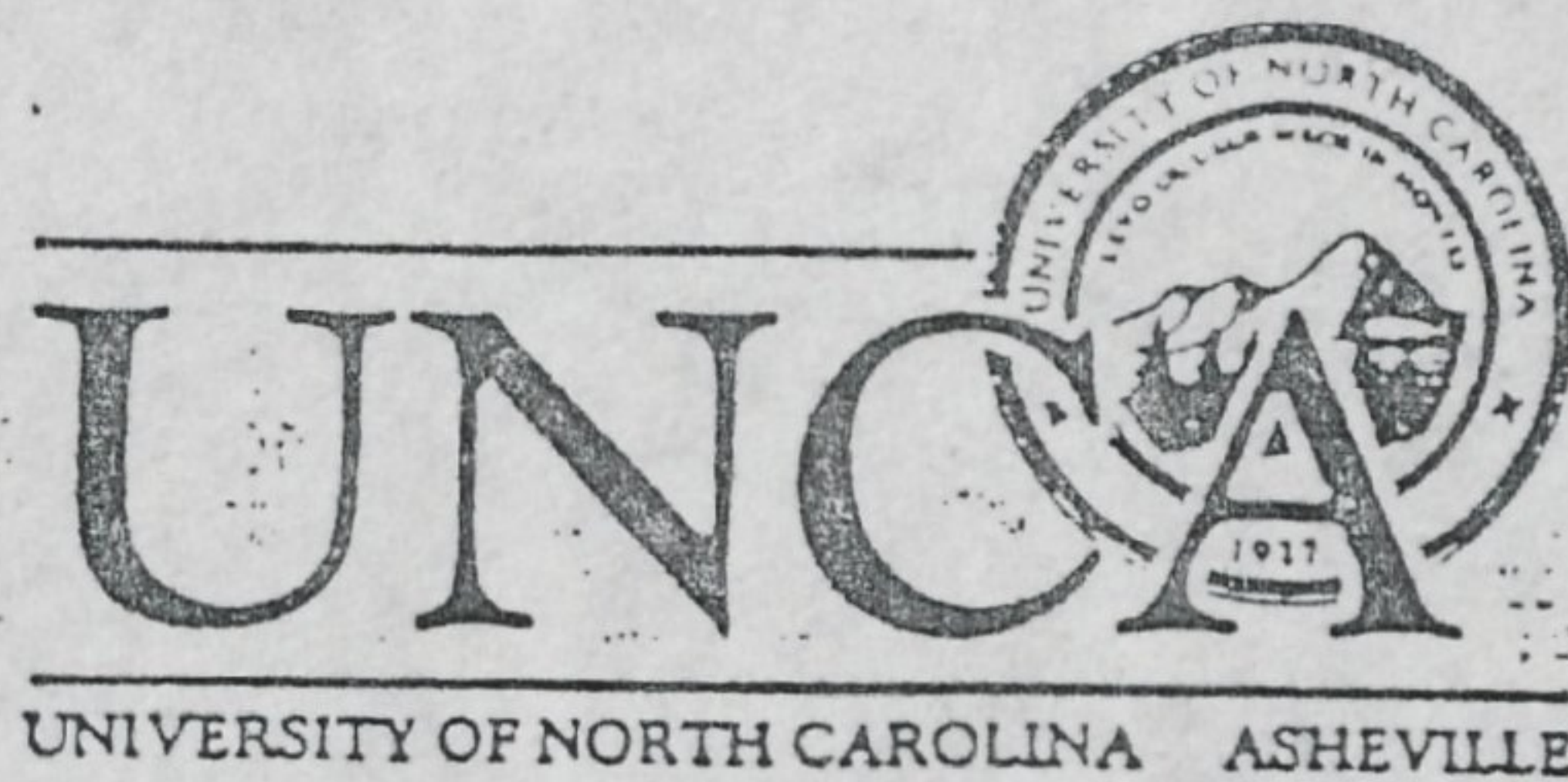
Whereas: It is not illegal in North Carolina to terminate a gay or lesbian employee solely because of his or her sexual orientation,

Whereas: The stigma associated with homosexuality is still so great in North Carolina that it is common for gay and lesbian faculty, staff and students to make a secret of their sexual orientation,

Whereas: Closeted gay and lesbian faculty, staff and students cannot be expected to take action on their campuses toward the adoption of policies which would prohibit discrimination on the basis of sexual orientation,

Whereas: Educational and employment decisions should be based on the abilities and qualifications of individuals and should not be based on irrelevant factors, including personal characteristics, that have no connection with academic abilities or job performance,

Therefore: The UNCA Faculty Senate formally resolves to urge the Faculty Assembly to adopt a resolution urging President Spangler to issue a directive to all campuses in the system that have not yet done so to 1) adopt a policy forbidding discrimination on the basis of sexual orientation among faculty, staff and students, and 2) create procedures for pursuing complaints of such discrimination.



C O P Y

Policy Statement
Equal Employment Opportunity

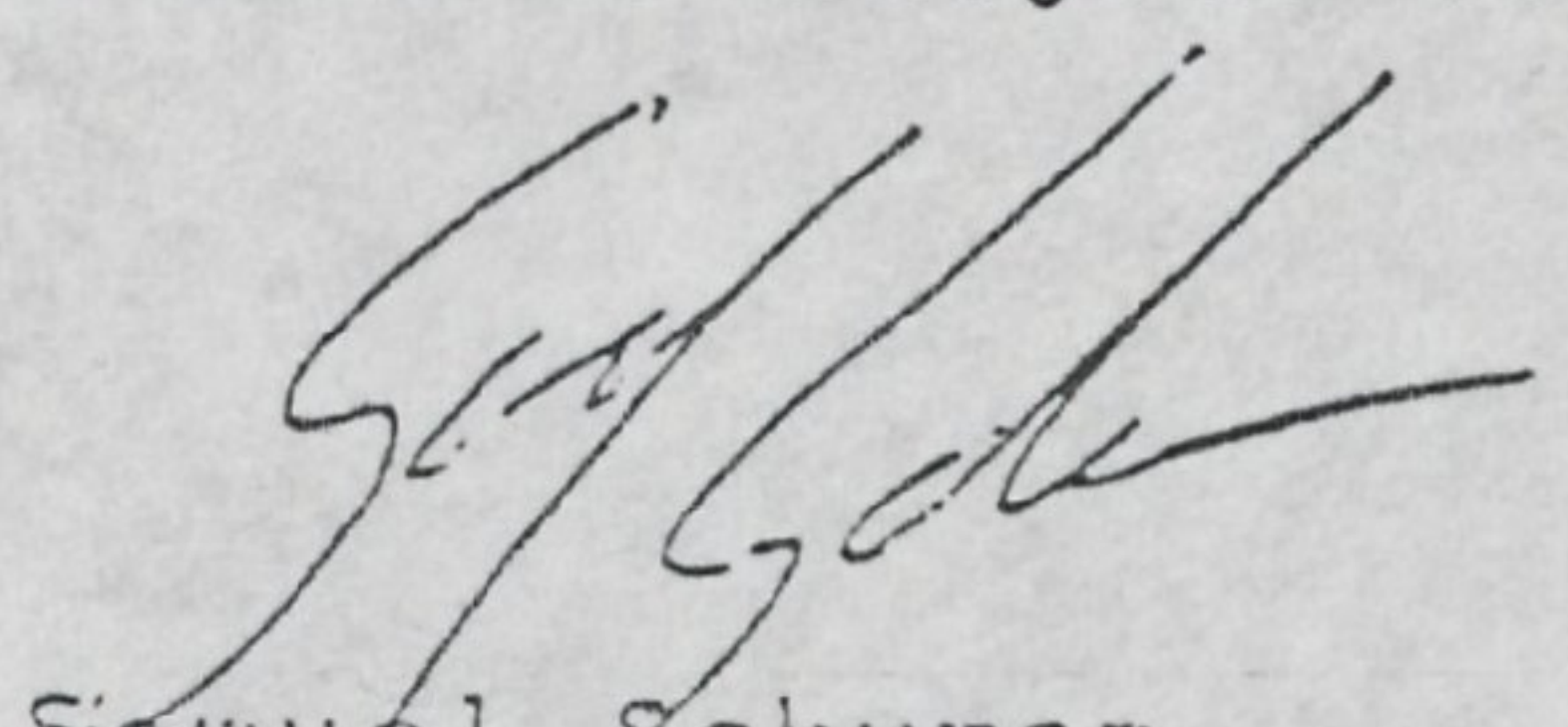
It is the policy of the University of North Carolina at Asheville to provide equal employment opportunities for all University employees and for all applicants without regard to race, religion, color, national origin, sex, age, sexual orientation, veteran status or handicap. In furtherance of this policy, the University shall take positive measures to ensure that equal opportunity is applied to all personnel policies and practices including, but not limited to, recruitment, hiring, training, promotion, performance appraisal, compensation, termination, and layoffs.

This policy specifically emphasizes that personnel policies and practices are to be conducted in a work environment free from discrimination and sexual harassment.

Furthermore, it is the policy of the University to comply fully with G.S. 126.6 as amended and other State statutes, policies of the Personnel Commission, and The Code of the University of North Carolina (Section 106); applicable federal laws, i.e. the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, Executive Order 11246, the Age Discrimination Act of 1973 as amended; and other laws, regulations and guidelines relating to equal employment opportunity.

Allegations of violations of this policy shall be brought to the attention of the University Affirmative Action Officer, Mr. Andy Brantley. No member of the University management team or supervisor shall take retaliatory actions against persons making such allegations. Further it is the responsibility of all those with supervisory responsibilities to assure that the content, spirit and intent of this policy are carried out to the fullest extent.

Any University employee found in violation of this policy shall be subject to the appropriate disciplinary proceedings.


Samuel Schuman
Chancellor

UNCA • (704) 251-6600

The University of North Carolina at Asheville • One University Heights • Asheville, NC 28804-3299

The University of North Carolina is composed of the seven public higher education institutions in North Carolina and is an equal opportunity institution.

C O P Y

THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

FACULTY SENATE

Senate Document Number 4091S

Date of Senate Approval 4/11/91

Signature of Senate Chair Lisa Friedmanberg Date 4-16-91

Action of Vice Chancellor:

Approval [Signature] Date 4/17/91

Denied _____ Date _____

Reasons for denial and suggested modifications:

Statement of Faculty Senate Action:

Policy on Sexual Orientation

It is the policy of The University of North Carolina at Asheville that an individual's sexual orientation is irrelevant to educational and employment decisions. Any non-faculty employee of The University of North Carolina at Asheville having a complaint of discrimination because of sexual orientation should notify the immediate supervisor or the Director of Personnel. A faculty member should notify the Vice Chancellor for Academic Affairs. A student should notify the Vice Chancellor for Student Affairs. At any time, a student or employee may call the Affirmative Action Officer or the Counselling Center. The Senate requests that the Vice Chancellor for Academic Affairs arrange with other chancellors a consistent procedure for pursuing complaints of discrimination.

Rationale

The University of North Carolina at Asheville believes that educational and employment decisions should be based on the

abilities and qualifications of individuals and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance. Among the traditional factors which are generally "irrelevant" are race, sex, religion, and national origin. It is the policy of The University of North Carolina at Asheville that the sexual orientation of an individual be treated in the same manner. Such a policy ensures that only relevant factors are considered and that equitable and consistent standards of conduct and performance are applied.

THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

HISTORY OF UNCA

The University of North Carolina first opened its doors in 1927 as Buncombe County Junior College, a two-year institution of higher learning for local students who wanted more than high school diplomas. In 1930, the name of the school was changed to Biltmore Junior College. Six years later, the institution became Asheville-Biltmore College.

A-B College received its first state funds in 1955. Two years later, it was the first institution to qualify for state support under the provisions of the Community College Act. The junior college became a state senior institution authorized to grant baccalaureate degrees on July 1, 1963, its declared mission being the development of high quality public liberal arts education. Exactly six years later, A-B College joined the widely respected, 16-campus University of North Carolina system as the University of North Carolina at Asheville. UNCA is fully accredited by the Commission on Colleges of the Southern Association of Colleges and Schools. Consistent with its long-held liberal arts mission, UNCA was recently reclassified as a "Liberal Arts I University," making it the only public liberal arts institution in the state.

The University offers four-year undergraduate degree programs in the arts and humanities, the natural and social sciences, and selected pre-professional and professional programs firmly grounded in a broad liberal arts base. Students pursuing Bachelor of Arts degrees explore widely diverse liberal arts disciplines while gaining solid theoretical and practical knowledge of their major fields of study. Undergraduates enrolled in the Bachelor of Fine Arts and Bachelor of Science degree programs focus more intensely on one specific discipline.

THE UNIVERSITY'S MISSION

The University of North Carolina at Asheville is unique within the state's system of public higher education in its primary commitment to undergraduate liberal arts education of superior quality for serious and able students.

In keeping with its liberal arts mission, UNCA's core curriculum emphasizes the central role of humane values in thought and action, respect for different cultures and perspectives, and the lifelong pursuit of truth and knowledge. Students explore the connections that exist among traditional liberal arts disciplines through interdisciplinary studies, enabling them to view the world — past, present and future — from a multifaceted perspective. They learn to think critically, respond creatively and communicate effectively — assets in any field or graduate degree program. Moreover, they receive solid disciplinary foundations, from course offerings to internship opportunities, in preparation for meaningful careers and professions.

The University promotes innovation in curriculum and considers a distinguished faculty dedicated to undergraduate teaching its greatest resource. A wide variety of co-curricular programs encourages students to go beyond classroom discussions and required readings to explore their interests and develop their abilities. The University also actively supports scholarship and creative activities among faculty and students alike.

Small by choice, the University brings together students and faculty of diverse cultural and geographic backgrounds in a supportive learning community — people who share the belief that liberal arts education is the best foundation for any career and a lifetime of learning.

UNCA is committed to serving the community in ways that complement its educational mission and makes its resources available to students at all stages of life through a variety of special programs. The Master of Liberal Arts Program is designed for college-educated adults seeking personal growth and intellectual challenge. The Asheville Graduate Center offers a

number of graduate degree programs for advanced professional studies from other institutions within the University of North Carolina system. Several area Leadership Programs enable participants to explore local issues in depth, develop leadership skills, and network with others who are interested in making a difference in the community. The nationally recognized North Carolina Center for Creative Retirement provides educational opportunities for people of retirement age and fosters intergenerational learning between seniors and UNCA students.

The ultimate aim of the University is to provide students with opportunities to acquire the knowledge, skills and broad perspective necessary to pursue their professional goals, find meaning in their lives, and take their place as contributing citizens of an ever-changing society.

THE UNIVERSITY'S COMMITMENT TO EQUAL OPPORTUNITY

The University of North Carolina at Asheville is committed to equality of educational and employment opportunity for applicants, students and employees. As such, the University does not discriminate based on race, color, national origin, religion, sex, age, sexual orientation or handicap. UNCA is open to people of all races and actively seeks to promote continued racial integration by recruiting and enrolling a large number of African Americans and other minorities. As a Liberal Arts institution it is important that we create a learning community that reflects the diversity and multi-culturalism of our changing world.

The University supports the federal laws protecting members of its community, including Titles VI and VII of the Civil Rights Act of 1964 as amended, Executive Order 11246, the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1988, the American with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act, NC G.S. 126-16 and 126-17 and other applicable federal and state laws.

For more information about the University's commitment to Equal Opportunity, contact Andy Brantley, Director of Personnel, The University of North Carolina at Asheville, One University Heights, Asheville, NC 28804-3299, or telephone 704/251-6605.

THE CAMPUS

The University occupies a wooded, 265-acre hilltop one mile from downtown Asheville, a thriving city that is a unique blend of modern living and mountain culture. The Blue Ridge and Great Smoky mountains ring the city, offering something for every outdoor enthusiast and nature lover.

D. Hiden Ramsey Library sits at the center of the UNCA campus and is the heart of its academic life. The library houses more than 180,000 volumes on open shelves, approximately 55,000 government documents, roughly 230,000 volumes in microform and several hundred audio and video tapes. The LS2000 computer catalog and control library system indicates the current availability of all titles and permits users to search UNCA's library holdings, as well as those of Western Carolina University and Appalachian State University. Library resources include a wide variety of source materials relating to Jewish history in the Southeast and the culture of the Southern Highlands. The library also maintains a curriculum materials collection. The public service staff provides individual assistance in accessing the library's many resources, and offers instruction in research skills. Library facilities include attractive and comfortable areas for general reading, faculty studies, student carrels, and specially equipped sections for viewing and listening.



THE UNIVERSITY OF NORTH CAROLINA
AT
CHAPEL HILL
27599-9100

7-13-
September 5,
number 1271

PAUL HARDIN
CHANCELLOR

September 4, 1990

103 SOUTH BURN
CAMPUS BOX 7
(919) 962-1365

TO: Deans, Directors, and Department Chairs
FROM: Paul Hardin *Paul*
SUBJECT: Policy Statement on Sexual Orientation.

I write to let you know that I have issued the following policy statement on sexual orientation for The University of North Carolina at Chapel Hill.

The University of North Carolina at Chapel Hill believes that educational and employment decisions should be based on individuals' abilities and qualifications and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance. Among the traditional factors which are generally "irrelevant" are race, sex, religion, and national origin. It is the policy of The University of North Carolina at Chapel Hill that an individual's sexual orientation be treated in the same manner. Such a policy ensures that only relevant factors are considered and that equitable and consistent standards of conduct and performance are applied.

Any employee of The University of North Carolina at Chapel Hill having a complaint of discrimination because of sexual orientation should notify the immediate supervisor or the Employee Counseling Service in the Office of the Associate Vice Chancellor for Human Resources. A student should notify the Office of the Dean of Students. At any time, a student or employee may call the Employee Counseling Service, the Affirmative Action Officer, or the University Ombudsman for counseling and advice.

This policy prohibiting discrimination on the basis of sexual orientation does not apply to the University's relationships with outside organizations, including the federal government, the military, ROTC, and private employers.

I would appreciate it if you would bring this matter to the attention of your faculty and staff. This matter deserves our careful attention, and I thank you for your assistance.

The University of North Carolina at Chapel Hill is a constituent institution
of THE UNIVERSITY OF NORTH CAROLINA

POLICY STATEMENT #98

THE UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE
POLICY ON SEXUAL ORIENTATION

The University of North Carolina at Charlotte believes that educational and employment decisions should be based on the abilities and qualifications of individuals and should not be based on irrelevant factors, including personal characteristics, that have no connection with academic abilities or job performance. Among the traditional factors which are generally "irrelevant" are race, sex, religion, and national origin. It is the policy of The University of North Carolina at Charlotte that the sexual orientation of an individual be treated in the same manner. Such a policy ensures that only relevant factors are considered and that equitable and consistent standards of conduct and performance are applied.

An employee of The University of North Carolina at Charlotte having a complaint of discrimination because of sexual orientation should notify the Director of Personnel. A student should notify the Office of the Dean of Students.

This policy prohibiting discrimination on the basis of sexual orientation in educational and employment decisions of The University of North Carolina at Charlotte does not prohibit the University from establishing relationships with outside organizations that do not adhere to such a policy.

(Issued by the Chancellor January 25, 1991.)