



## **Trustee Policies and Regulations Governing Academic Tenure in the University of North Carolina at Chapel Hill**

*These policies and regulations were adopted by the Board of Trustees of The University of North Carolina at Chapel Hill on April 9, 1976, were approved by the President and the Board of Governors of The University of North Carolina on May 14, 1976; and became effective on June 18, 1976. They have been amended December 1978, June 1980, June 1982, January 1987, June 1987, February 1994, April 9, 1998, September 9, 2000, January 2004, May 2004, October 20, 2009, May 26, 2011, and July 24, 2014.*

*They were adopted by the Board of Trustees pursuant to and in subordination to Chapter Six of The Code of The University of North Carolina, which is set forth in the Appendix hereto. References in this document to any decision or action as being "final," or "without further recourse," or as being terminal by any other form of words, are made in relation to the processes of The University of North Carolina at Chapel Hill. Each is subject to any further review procedures which may be provided by law or by The Code of The University of North Carolina.*

### ***Section 1. Academic Freedom***

Academic freedom is the right of a faculty member to be responsibly engaged in efforts to discover, speak and teach the truth. It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication and to protect any member of the faculty against influences, from within or without the University, which would restrict the faculty member in the exercise of these freedoms in his or her area of scholarly interest.

The University recognizes that in his or her role as citizen, as to matters outside the area of his or her scholarly interest, the faculty member has the right to enjoy the same freedoms as other citizens, without institutional censorship or discipline, though he or she should avoid abuse of these freedoms. The faculty member should recognize that accuracy, forthrightness, and dignity befit his or her association with the University and his or her position as a person of learning. Except when officially authorized, a faculty member should not represent himself or herself as a spokesman for the University.

## *Section 2. Academic Tenure*

### **a. In general**

Academic tenure refers to the conditions and guarantees that apply to a faculty member's employment. More specifically, it refers to the protection of a faculty member against involuntary suspension, demotion, discharge, or termination from employment by the University except upon specified grounds and in accordance with specified procedures. Those grounds and procedures are exclusively as provided in Section 3 (suspension, demotion, and discharge) and Section 6 (termination for financial exigency or elimination or major curtailment of a program) hereof.

The purposes intended to be served by according the protections of academic tenure to faculty members are to secure their freedom and to aid this University in attracting and retaining faculty members of the high quality it seeks. While academic tenure may be withheld on any grounds other than those specifically stated to be impermissible under Section 4 hereof, its conferral requires an assessment of institutional needs and resources and evidence of service to the academic community, potential for future contribution, commitment to the welfare of the University, and demonstrated professional competence, including consideration of commitment to effective teaching, research, or public service.

### **b. In relation to faculty ranks**

Academic tenure, as herein defined, pertains exclusively to the employment of members of the faculty by appointment to specified faculty ranks. Such appointments may be for fixed terms of employment, automatically terminable upon their expirations; or they may be for renewable probationary terms ("probationary term appointment"); or they may be continuous until retirement or earlier resignation or death ("tenured appointment" or "appointment with permanent tenure").

The faculty ranks to which appointments may be made, and the incidents of academic tenure applicable to each, are as follows:

1. **Professor.** Either promotion or initial appointment to the rank of professor confers permanent tenure from the effective date of the promotion or appointment.
2. **Associate Professor.** A promotion at any time to the rank of associate professor confers permanent tenure from the effective date of the promotion.

Initial appointment to the rank of associate professor is ordinarily for a probationary term of five years. With the written approval of the immediate supervisor of the department<sup>1</sup> chair obtained in advance of the initiation of formal

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<sup>1</sup> "Department" is used herein as a generic term for departments, professional schools, and any other academic units to which faculty appointments are made; "chair," as a generic term for department chairs, deans of professional schools, and any other heads of academic units to which faculty appointments are made.

appointment procedures, an initial appointment to the rank of associate professor with permanent tenure may be initiated and made effective upon subsequent approval of the appointment by the regularly prescribed procedures for initiation, review and final approval.

No less than 12 months before the end of a five year probationary term appointment as associate professor, a decision shall be made and communicated in writing to the associate professor as to whether he or she will be reappointed upon expiration of the current term. This decision shall be made and communicated as provided in Section 2.c. hereof. No decision need then be made as to the rank to be had upon reappointment. If a decision is made to reappoint and no promotion has been made prior to expiration of the five year term, the associate professor is thereupon reappointed at the rank of associate professor, with permanent tenure.

3. **Assistant Professor.** Initial appointment to the rank of assistant professor is for a probationary term of four years. No less than 12 months before the end of this term a decision shall be made and communicated in writing to the assistant professor as to whether he or she will be reappointed upon expiration of the current term. The decision shall be made and communicated in the manner provided in Section 2.c. hereof. No decision need then be made as to the rank to be had upon reappointment. If a decision to reappoint is made and no promotion is then made prior to the expiration of the current term, the assistant professor is thereupon reappointed for a second probationary term of three years at the rank of assistant professor.

No less than 12 months before the end of such a second term, a decision shall be made and communicated in writing to the assistant professor as to whether he or she will be reappointed upon expiration of the current term. The decision shall be made and communicated as provided in Section 2.c. hereof. If the decision is to reappoint, the notice thereof shall also inform the faculty member whether reappointment will be at the same rank or with promotion to the rank of associate professor; and a faculty member given notice that reappointment will be at the same rank shall be then informed by his or her chair whether he or she will be reconsidered for promotion prior to the effective date of the reappointment. If a decision to reappoint is made and no promotion is then made prior to the expiration of the current term, the assistant professor is thereupon reappointed at the rank of assistant professor with permanent tenure. Reappointment at the rank of assistant professor following expiration of the second probationary term should be made only in clearly exceptional circumstances.

4. **Instructor.** This rank is appropriate for one appointed to the faculty with the expectation that in normal course he or she will progress to the professional ranks in this or another institution.

Initial appointment to the rank of instructor is for a probationary term of one year. The instructor may be reappointed successively for three further one year terms, a total of four such terms. At least 90 calendar days before the end of the first term, 180 calendar days before the end of the second term, and 12 months before the end of the third term, a decision shall be made and communicated in writing to the instructor as to whether upon expiration of that term he or she will be reappointed at the rank of instructor for another term, promoted to the rank of assistant professor, or not reappointed. At least 12 months before the end of a fourth successive term a decision shall be made and communicated in writing to the instructor as to whether upon expiration of that term he or she will be promoted to the rank of assistant professor, or not reappointed. No reappointment to the rank of instructor may be made after four years' employment at that rank. The decisions herein required and the communication thereof shall be made as provided in Section 2.c.

Promotion at any time from the rank of instructor to that of assistant professor constitutes an initial appointment at the latter rank, with the incidents described in Section 2.b.(3) hereof. An appointment or reappointment at the rank of instructor may be made on the specified condition that automatically upon the conferral of a specified academic degree the instructor shall be reappointed at the rank of assistant professor. In such cases the effective date of the appointment at the rank of assistant professor shall be retroactive to the effective date of the current appointment as instructor, or to the July 1st or January 1st immediately preceding the conferral of the specified academic degree, whichever is nearest in point of time.

5. **Fixed-term faculty and other special faculty ranks:** Appointments may be made to fixed-term faculty and other special faculty ranks with title designations "Professor of the Practice," "Lecturer," "Senior Lecturer," "Teaching Professor," "Artist in Residence," "Writer in Residence," and any of the faculty rank designations provided in paragraphs (1) through (4) of this subsection with the prefix-qualifier "Adjunct," "Clinical," or "Research," under the conditions and with the incidents herein provided. Such an appointment, utilizing any of the foregoing title designations, is appropriate for one who possesses unusual qualifications for teaching, research, academic administration, or public service from an academic base, but for whom none of the professorial ranks nor the instructor rank is appropriate because of the limited duration of the mission for which appointed, or because of concern for continued availability of special funding for the position, or for other valid institutional reasons.
  - (i) Fixed-term faculty: Faculty members covered by this paragraph 2.b.5. who are appointed to full-time salaried positions shall be appointed for a fixed term of not less than one nor more than five years. Subsequent appointments for fixed terms of up to five years' duration may be made either in direct succession or at intervals. Faculty members covered by this paragraph 2.b.5. who are appointed to part-time or intermittent

salaried positions shall be appointed for a specified term of service, as set out in the letter of appointment. All faculty appointed pursuant to this subparagraph 2.b.5.(i) shall be referred to as “fixed-term faculty.”

- (ii) Special faculty members who are unpaid may be appointed for a specified term of service or at will.

The term of appointment of any faculty member covered by this paragraph 2.b.5. who has been appointed for a specified term of service ends when that term expires, and the appointment letter constitutes full and timely notice that a new appointment will not be offered when that term expires. The term of appointment of a faculty member covered by this paragraph 2.b.5. who has been appointed to serve at will may be terminated at any time without prior notice and shall be reviewed no less frequently than every five years.

The pay, if any, and appointment status of a faculty member covered by this paragraph 2.b.5. shall be described in the letter of appointment.

No obligation exists on the part of the University to give any notice in advance of expiration of a current term as to whether appointment will be offered for a succeeding term. But upon request of the faculty member made in writing to the chair of the department concerned not earlier than 180 calendar days nor later than 90 calendar days before the expiration of a current term, the department chair shall within 20 calendar days thereafter communicate in writing to the faculty member a decision whether such an offer will be made, and if so, its terms. Failure to communicate a decision constitutes notice that no offer will be made.

Faculty members covered by this paragraph 2.b.5. may seek recourse to the Faculty Grievance Committee under Section 607 of the Code of the University of North Carolina during their term of employment. Faculty members covered by paragraph 2.b.5. who are paid may be suspended, demoted, discharged, or terminated during the term of their appointment only in compliance with Sections 3 or 6 hereof. However, such faculty members do not have any rights to review of a University decision not to grant a new appointment at the end of a specified fixed term, and they are not covered by Section 4 hereof.

Except as otherwise provided and modified hereinabove, the decisions herein required shall be made as provided in Section 2.c. hereof. [Amended 5/20/2004, 10/20/2009, 5/26/2011, 7/24/2014]

### **c. General provisions**

#### **(1) Initiation, review, and approval of appointments, promotions, and reappointments**

Each initial appointment with permanent tenure or for a fixed or probationary term longer than one year, each promotion in rank, and each reappointment of an instructor, assistant professor or associate professor shall be initiated by

recommendation of the chair of the department concerned after consultation with the assembled full professors of that department. Each such recommendation shall be based upon considerations of the demonstrated professional competence and the potential for future contribution of the faculty member, and of the needs and resources of the institution. Initial appointments to terms not exceeding one year may be initiated by the department chair acting on his or her own initiative. Each such recommendation shall then be reviewed in accordance with prescribed procedures for the particular action, which procedures shall provide for final approval by a designated authority. Final authority for approving any action which confers permanent tenure is in the President and Board of Governors unless by that Board delegated. Final authority for approving all other actions above enumerated is in the Board of Trustees unless delegated.

## **(2) Decisions not to reappoint upon expiration of probationary terms**

A decision not to reappoint upon expiration of a probationary term at the rank of instructor, assistant professor or associate professor may be made in the first instance by the chair of the department after consultation with the assembled full professors of the department; or it may be made, following a recommendation to reappoint by the department chair, by any other officer of administration<sup>2</sup> charged with reviewing such a recommendation. By whatever officer of administration made, a decision not to reappoint is final except as it may subsequently be reviewed in accordance with the provisions of Sections 4 and 8. Permissible and impermissible grounds for making a decision not to reappoint are as provided in Section 4.a. hereof. Each decision not to reappoint shall be communicated for information through the administrative channels prescribed for review of a recommendation to reappoint; and notice thereof shall be communicated in writing to the faculty member by the department chair within the times prescribed by Sections 2.b.(2), (3), and (4) hereof. [Amended 6/20/80]

## **(3) Failure to give timely notice**

- i. If a decision not to reappoint is timely made but not timely communicated as herein required, a one year terminal appointment commencing on the date of expiration of the current term of appointment shall be offered in writing. This offer shall serve as timely notice of nonreappointment upon expiration of the terminal year appointment.
- ii. If no decision whether to reappoint has been made at the time notice thereof is required, the Chancellor (or his or her delegate) shall, immediately upon discovery of the failure, direct the department chair concerned to initiate the consultation procedure required to make the decision. The decision shall be made within 60 calendar days after the date

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<sup>2</sup> "Officer of administration," as used herein, includes department chair.

of direction. If the decision is to recommend reappointment the department chair shall forward the recommendation through the channels provided for review of such a recommendation. If the decision is not to reappoint, the department chair shall forward notice thereof for information through the channels for review and shall forthwith give written notice of nonreappointment to the faculty member. If a recommendation to reappoint is given final approval, it operates with the same effect as would have a decision to reappoint timely made and communicated. If a final decision not to reappoint is made at any level, written notice thereof shall forthwith be given to the faculty member by the department chair. Such notice operates as an offer of a terminal appointment, commencing at the expiration of the current term of appointment and running for one year or, if the most recent term of appointment has expired, commencing with the giving of the notice and expiring one year from the beginning of the regular semester which next follows the giving of notice.

#### **(4) Timing of permanent tenure actions**

No recommendation for a promotion or reappointment which under the provisions hereof will confer permanent tenure may be initiated until the faculty member has been in the active employment of the University for at least 18 months. No such recommendation may be initiated which would have an effective date more than 18 months after its initiation. Except as thus expressly limited, promotions in rank may be made at any time during a faculty member's employment.

#### **(5) Visiting faculty members**

Persons other than regular members of the faculty may be appointed as visiting members of the faculty with rank designations, prefixed by the word "Visiting," appropriate to their status in their regular employment. Such appointments shall be for a term of not more than one year. One successive appointment for a term of not more than one year may be made. Appointments are made in accordance with the procedures for appointment of an instructor. During such terms of appointment the visiting faculty member may not be suspended, demoted, discharged, or terminated except upon the grounds and by the procedures provided respectively in Sections 3 and 6 hereof.

#### **(6) Terms and conditions of appointments**

The terms and conditions of each initial appointment and of each reappointment to the faculty shall be set out in writing. A copy thereof, signed by the Chancellor (or his or her delegate), shall be delivered to the faculty member and a copy shall be retained for the Chancellor. The general terms and conditions of such appointments, including those provided herein, shall either be set out in the

document of appointment or incorporated therein by clear reference to specified documents which shall be readily available to the faculty member.

Except as may be otherwise expressly provided in the documents of appointment, all appointments to any faculty rank are on the basis of a full-time employment obligation and confer the full incidents of academic tenure pertinent to the particular appointment. [Amended 2/18/94]

Any special terms and conditions shall be clearly stated in the written appointment. Special terms and conditions added by memorandum of amendment must be approved by signature of the Chancellor (or his or her delegate) and the faculty member, with a copy to be retained by each. Except as herein provided, no special terms or conditions may be included which vary the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions in documents of appointment is with the chair or dean recommending the appointment. [Amended 2/18/94]

**(i) Continued availability of special funding**

The appointment, reappointment, or promotion of a faculty member to a position funded in whole or in substantial part from sources other than continuing State budget funds or permanent trust funds shall specify in writing that the continuance of the faculty member's services, whether on tenured, probationary or fixed term appointment, shall be contingent upon the continuing availability of funds from sources other than continuing State budget funds or permanent trust funds. Such contingency shall not be included in a promotion to a higher rank if, before the effective date of the promotion, the faculty member had permanent tenure with no such condition attached to his or her tenure; nor shall such a contingency be attached to the appointment of a faculty member if he or she held permanent tenure in the institution on July 1, 1975, and his or her appointment was not then contingent upon the continuing availability of funds from sources other than continuing State budget funds or permanent trust funds.

Further exceptions to this requirement may be made with respect to faculty members in the Division of Health Affairs in accordance with the following policies and procedures. Each year there shall be established for each School in the Division of Health Affairs a maximum amount of funds from sources other than continuing State budget funds, permanent trust funds, and clinical income (treated for this purpose as though it were income from permanent trust funds) which may be used in compensating faculty members without including contingency clauses in their appointments. This maximum amount shall be established for each School in consultations among the Executive Vice Chancellor and Provost, the Vice Chancellor for Finance and Administration, and the dean of that School, with the approval of the Chancellor. The dean of each School may recommend that an individual appointment be made without

inclusion of a contingency clause notwithstanding it is funded in whole or in part from sources other than continuing State budget funds, permanent trust funds, or clinical income, and though it is not covered by either of the exceptions stated in the preceding paragraph, if the amount of funding from such other sources does not cause the agreed maximum for the School to be exceeded. Approval of such recommendation may be declined on any grounds deemed appropriate by the reviewing officers of administration, but in no event shall it be given if the proposed funding of the appointment would cause the maximum applicable to the School to be exceeded.

**(ii) Provisions for less than full-time employment**

Special terms for less than full-time employment with commensurate compensation, or for relief from all employment obligations for a specified period, may be included in an appointment or reappointment to any faculty rank, or may be added by written memorandum of amendment during the term of an appointment. For reasons of health, requirements of childbirth or child care, or similar compelling circumstances, such terms may, with the concurrence of the faculty member, include extensions of the period of a current probationary term of appointment at the rank of assistant professor or associate professor, and thereby the maximum probationary period, to coincide with the extent and duration of the relief from employment obligations. Extensions under this subsection (ii) may be granted in increments not to exceed 12 months, up to a maximum of 24 months (including any extensions that may have been granted under subsection (iii), below). [Amended 5/20/2004]

**(iii) Special provisions for extending the maximum probationary period**

For reasons of health, requirements of childbirth or child care, or similar compelling circumstances, a faculty member holding a probationary term of appointment at the rank of assistant professor or associate professor may request a written memorandum of amendment extending the term of the current appointment and thereby the maximum probationary period with no resulting change in normal employment obligations, in order to provide the faculty member additional time to demonstrate fully his or her professional qualifications for reappointment or permanent tenure. Extensions under this subsection (iii) may be granted in increments not to exceed 12 months, up to a maximum of 24 months (including any extensions that may have been granted under subsection (ii), above). [Amended 5/20 2004.]

**(iv) Extensions and special assignment**

If possible under the circumstances, any request made pursuant to subsection (ii) or (iii) above should be initiated not later than 24 months before the end of the term to which it is to apply and must be initiated before the process for

evaluating the faculty member for reappointment has begun. All such extensions must be approved by the Chancellor (or his or her delegate) before becoming effective. The total of all extensions granted under subsection (ii) and subsection (iii) above cannot exceed 24 months. [Amended 5/20/2004]

The provisions of subsections (ii) and (iii) above do not apply to informal temporary adjustments of the regularly assigned duties of faculty members by the department chair who is responsible for their direct supervision; nor to the granting by the University of extended leaves of absence with or without compensation. [Amended 2/18/94]

### **(7) Joint appointments**

A faculty member may at one time hold but one faculty appointment at the rank of professor, associate professor, or assistant professor. This appointment may be held in a single department, or, by joint appointment, in more than one department.

Joint appointments may be made in which the appointee holds in addition to a professorial rank in one department a fixed-term rank in another department, or different fixed-term ranks in different departments. A joint appointment to the faculties of more than one department may be made in accordance with the provisions of this subsection. When an initial joint appointment is to be made, the regular procedures prescribed herein for initial appointment to the rank proposed shall be followed simultaneously by the departments involved in making a joint recommendation for appointment. The joint recommendation shall designate one of the departments as the unit of base appointment, and shall set forth as special terms and conditions for inclusion in the appointing document: the basis of initial funding of the appointment; the procedures agreed to be followed by the departments in making joint decisions respecting promotion, reappointment, and tenure of the joint appointee; and the procedures to be followed by the chairs in respect of salary adjustments for the joint appointee. If the joint appointment is approved, thereafter the base department is responsible for processing personnel actions affecting the joint appointee, but in respect of each such action the recommendation put forward shall be one jointly concurred in by the departments concerned as required by their agreed procedures for joint consultation and decision.

An appointment to a single department may be converted into a joint appointment. The department chairs concerned shall jointly put forward through the regular channels for review of initial appointments a recommendation that the existing appointment be converted into a joint appointment. The joint recommendation shall include the same elements required in respect of a recommendation for initial joint appointment. Upon approval of such a recommendation, the joint appointee retains the single rank with the same incidents of academic tenure already possessed. Thereafter, all personnel actions

affecting his or her academic tenure shall be processed as provided in the case of an initial joint appointment.

**(8) Post-tenure review**

The chair of the department shall conduct periodic reviews of each tenured faculty member's performance in accordance with the requirements of the University's Post-Tenure Review Policy. Reviews must involve faculty peers, examine all aspects of the faculty member's academic performance, and be conducted no less often than every five years. The goal of the review is to promote faculty development, ensure faculty productivity and provide accountability.

Comprehensive reviews conducted for other purposes, such as consideration for promotion, may constitute a review under this Section. On petition of the chair, the Provost may grant permission to delay a review if the number of reviews to be conducted by a department during a given year would create a burden that would impair the department's educational mission, or for other compelling cause.

Faculty members may grieve matters related to post-tenure review to the Faculty Grievance Committee under Section 607 of the Code of the University of North Carolina during their term of employment. [Amended 9/29/00 and 10/20/2009]

**(9) Resignations**

A faculty member shall give prompt written notice of his or her resignation, with its effective date, to the chair of his or her department.

***Section 3. Suspension, Demotion, and Discharge of Faculty Members***

During any fixed or probationary term appointment and while on permanent tenure, a faculty member may be suspended, demoted, or discharged from employment only on the grounds and in accordance with the procedures herein provided.

**a. Grounds for suspension, demotion, or discharge**

As specified in Section 603 of the Code of the University of North Carolina, the permissible grounds for suspension, demotion, or discharge are:

1. misconduct of such a nature as to indicate that the faculty member is unfit to continue as a member of the faculty, including, but not limited to, violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either (i) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member;

2. incompetence, including, but not limited to, significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time; and
3. neglect of duty, including, but not limited to, sustained failure to meet assigned classes or to perform other significant faculty professional obligations.

**b. Procedures for discharge, demotion or suspension**

1. The Provost or his or her delegate shall send the faculty member a written notice of intention to suspend, demote, or discharge the faculty member together with a written specification of the reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by an elected standing faculty committee on hearings.
2. If, within fourteen calendar days<sup>3</sup> after he or she receives the notice and specifications referred to in paragraph (1) above, the faculty member makes no written request for a hearing, he or she may be suspended, demoted, or discharged without recourse to any further institutional procedure by a written letter from the Provost.
3. Repealed.
4. If the faculty member makes a timely written request for a hearing, the Chancellor or his or her delegate shall insure a process is in place so that the hearing is accorded before a standing committee of the faculty composed of at least five faculty members who had permanent tenure when elected by the voting members of the general faculty. The hearing shall be on the written specification of reasons for the intended discharge, suspension, or demotion. The hearing committee shall accord the faculty member thirty calendar days from the time it receives his or her written request for a hearing to prepare his or her defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The hearing committee will ordinarily endeavor to complete the hearing within ninety calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and

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<sup>3</sup> As used in Sections 3, 4, and 6, except when calendar day is specified, the word "day" shall mean any day except Saturday, Sunday, or an institutional holiday. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

despite reasonable efforts the hearing committee cannot be assembled.<sup>4</sup>  
[Amended 6/20/80 and 10/20/09]

5. The hearing shall be closed to the public unless the faculty member and the hearing committee agree that it may be open. The faculty member shall have the right to counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, to examine all documents and other adverse demonstrative evidence, and to make argument. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the University's expense.
6. The Provost, or his or her delegate and/or counsel, may participate in the hearing to present evidence, cross-examine witnesses, to examine all documents and other evidence, and to make argument.
7. In reaching decisions on which its written recommendations to the Chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written and oral arguments as the committee, in its discretion, may allow. The University has the burden of proof. In evaluating the evidence, the committee shall use the standard of "clear and convincing" evidence in determining whether the University has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action. The committee shall make its written recommendations to the Chancellor within fourteen calendar days after its hearing concludes or after the full transcript is received, whichever is later.
8. In reaching a decision, the Chancellor shall consider only the written transcript of the hearing and the report of the hearing committee. If the Chancellor intends to reject the recommendation of the hearing committee, the Chancellor shall communicate that intention to the affected faculty member and to the committee along with his or her reasons and provide an opportunity for committee response before taking final action. In such a case the committee shall reconsider its recommendation, taking account of the Chancellor's stated objections and receiving new evidence if the committee deems it necessary. The committee shall transmit its response to the Chancellor within ten days of the committee's receipt of the Chancellor's communication. After considering the committee response, the Chancellor shall issue a decision either concurring in or declining to accept the committee's recommendation. The Chancellor's decision shall be conveyed in writing to the affected faculty member and to the hearing

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<sup>4</sup> To meet this deadline, faculty are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two or more sessions.

committee. If the Chancellor concurs in a recommendation of the hearing committee that is favorable to the faculty member, his or her decision shall be final. If the Chancellor either declines to accept a hearing committee recommendation that is favorable to the faculty member or concurs in a hearing committee recommendation that is unfavorable to the faculty member, the faculty member may seek review of the Chancellor's decision by the Board of Trustees, as provided in Section 8. [Amended 6/20/80; 1/9/87; 4/9/98; 10/20/2009]

9. When a faculty member has been notified of the University's intention to discharge him or her, the Chancellor may reassign the individual to other duties or suspend him or her at any time and continue the suspension until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension shall be exceptional and shall be with full pay.

#### ***Section 4. Nonreappointment of Tenure Track Faculty Members***

##### **a. Permissible and impermissible grounds for nonreappointment**

Except as herein provided, the decision not to reappoint a tenure track faculty member upon expiration of a probationary term of appointment is committed, without further recourse, to the judgment of the officers of administration authorized to make it, acting in accordance with prescribed procedures. In exercise of their judgment, whether in the first instance or in review of a recommendation to reappoint, such officers may take into account and use as the basis of decision, in whole or in part, any factors deemed relevant to total institutional interests; except that the decision may not be based upon: (1) exercise by the faculty member of rights guaranteed by the First Amendment to the Constitution of the United States or by Article I of the Constitution of North Carolina; or (2) discrimination based upon the race, color, sex, sexual orientation, religion, creed, national origin, age, disability, or veteran status of the faculty member, or upon other forms of discrimination prohibited under policies adopted by the Board of Trustees; or (3) personal malice. For purposes of this section, 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 decision making.<sup>5</sup> [Amended 7/1/2004; 10/20/2009.]

##### **b. Administrative conferences following decision not to reappoint**

Within 14 calendar days after receiving written notice of nonreappointment, a faculty member may in writing request a private conference with the officer of administration who made the decision, to discuss the reasons for nonreappointment. If the identity of the

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<sup>5</sup> See section 101.3.1.II.B of the UNC Policy Manual for details.

officer is not known to the faculty member, the department chair shall provide the information forthwith upon request of the faculty member. The request for conference shall be granted and the conference held forthwith, within 7 calendar days after receipt of the request if possible. Within 7 calendar days after completion of the conference the officer of administration shall give a simple unelaborated written notice to the faculty member as to whether the original decision remains in effect.

If the notice is that the original decision remains in effect, the faculty member may proceed as follows. When the decision not to reappoint was made by an officer of administration in review of the recommendation of a department chair to reappoint, the faculty member may thereupon proceed, in accordance with succeeding subsections, to request review by the standing committee of the faculty charged with reviewing discharges under Section 3 hereof.

When the decision was made in the first instance by the department chair, the faculty member may, within 7 calendar days after receipt of the notice, in writing request a conference with the officer of administration in immediate supervision of the department chair. This request shall be granted and the conference held forthwith, within 7 calendar days after receipt of the request if possible. Within 14 calendar days after completion of the conference, the reviewing officer of administration shall in writing communicate his or her evaluation of the matter to the faculty member and to the department chair.

The evaluation may be in the form of an unelaborated concurrence with the decision; an expression of disagreement with the decision, with or without supporting reasons; or a recommendation for reconsideration of the decision, with or without suggestions for specific procedures to be followed upon reconsideration. Whatever form the evaluation may take, it is merely recommendatory and not binding upon the department chair, nor final as to the faculty member.

Within 7 calendar days after receipt of an evaluation which involves disagreement with the decision or recommendation for its reconsideration, the department chair shall in writing notify the faculty member and his or her immediate supervisor of his or her response.

A faculty member's failure to abide by the timelines specified herein shall finalize the reappointment decision and terminate the faculty member's otherwise available recourse to further review by the hearing committee, the Chancellor, and/or the Board of Governors.

**c. Request for review by hearing committee; scope of review**

If the faculty member has timely requested and participated in the administrative conferences provided in subsection b. and has received notice of unfavorable action resulting therefrom, the faculty member may within 14 calendar days after receipt of such notice request a review of the decision by the standing committee of the faculty charged (under Section 3 hereof) with conducting hearings on faculty discharges. Such review

may be had solely to determine whether the decision not to reappoint was (1) based upon any of the grounds stated to be impermissible in subsection a. of this Section 4, or (2) affected by material procedural irregularities. Whether procedural irregularities occurred shall be determined by reference to those procedures which were in effect when the initial decision not to reappoint was made and communicated. The hearing committee shall ask the Chancellor to certify what procedures were then in effect if that is a matter of dispute. For purposes of this Section 4, "material procedural irregularities" means departures from prescribed procedures governing reappointment that cast doubt upon the integrity of the original decision not to reappoint.

The request for review shall be in writing and addressed to the chair of the hearing committee. It shall specify the grounds upon which it is contended that the decision was impermissibly based or affected by material procedural irregularities, and shall include a short and plain statement of facts which the faculty member believes support the contention.

Submission of such a request constitutes on the part of the faculty member: (1) a representation that he or she can support his or her contention by factual proof, and (2) an agreement that the institution may offer in rebuttal of his or her contention any relevant data within its possession.

The hearing committee shall consider the request and shall grant a hearing if it determines after a preliminary review that the request contains a contention that the decision was impermissibly based or affected by material procedural irregularities and that the facts suggested, if established, might support the contention. If the request is not granted, the committee shall make a recommendation to the Chancellor to uphold the decision not to reappoint. If the request is granted, a hearing shall be held within 14 calendar days after receipt of the request, provided that the faculty member shall be given at least 7 calendar days' notice of the hearing. [Amended 6/20/80; 1/9/87; 10/20/09]

#### **d. Conduct of hearing**

The question before the committee shall be decided by the committee. However, the committee may delegate the duty of conducting a hearing to a panel of at least three members. The hearing shall be conducted informally and in private; only the members of the committee, the faculty member, the officer of administration who made the decision, and such witnesses as may be called shall attend except that the faculty member and the officer of administration may each be assisted or, in their absence, represented by a spokesman designated in writing so to act. Committee members who hold appointments in the faculty member's department or school or who will testify as witnesses, or who have any other conflict of interest are disqualified. A professional court reporter, or similarly reliable means, shall be used to enable the production of a verbatim written transcript of the hearing and to maintain a record of the documents received by the committee. Upon the request of the faculty member, a transcript of the proceedings shall be made and provided to the faculty member at the University's expense. The committee may consider only such evidence and such written and oral arguments as is presented at

the hearing, and need consider only such evidence or argument offered which it considers fair and reliable. All witnesses may be questioned by members of the committee, the faculty member, and the officer of administration or the respective spokesmen of the faculty member and the officer of administration. Except as herein provided, the conduct of the hearing is under the control of the committee chair or the member designated by the chair for this purpose. [Amended 6/20/80, 10/20/2009]

**e. Hearing procedure**

The hearing shall begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for hearing and supported by such proof as he or she desires to offer. When he or she has concluded this presentation, the hearing committee shall recess to consider whether the proof offered in support of the contention establishes the contention unless it be now rebutted or unless the decision not to reappoint be now otherwise explained. If it determines that the contention has not been so established, it shall so notify the parties to the hearing, terminate the proceedings, and make a recommendation to the Chancellor to uphold the decision not to reappoint. If it determines that rebuttal or explanation is desirable, it shall so notify the parties and the hearing shall proceed. The officer of administration may then present in rebuttal of the faculty member's contentions, or in general support of the decision not to reappoint, such testimonial or documentary proofs as he or she desires to offer, including his or her own testimony. [Amended 6/20/80, 10/20/2009]

At the end of such presentation, the hearing committee shall consider the matter in executive session. The burden of proof is upon the aggrieved faculty member to satisfy the committee by the preponderance of the evidence (which is the same as the greater weight of the evidence) that his or her contention is true. [Amended 6/20/80, 10/20/2009]

**f. Procedure after the committee reaches a decision.**

If the hearing committee determines not to grant the faculty member a hearing or determines, following a hearing, that the contention of the faculty member has not been established, it shall make a recommendation to the Chancellor to uphold the decision not to reappoint.

If the hearing committee determines that the contention of the faculty member has been satisfactorily established, it shall so notify him or her and the officer of administration by a written notice that shall also include a recommendation for corrective action by the officer of administration.

Within seven calendar days after receiving the recommendation, the officer of administration shall notify the faculty member and the chair of the hearing committee what modification, if any, he or she will make with respect to the original decision not to reappoint.

If the officer of administration fails to make a recommended modification in the original decision, the hearing committee shall submit a report to the Chancellor containing the committee's findings and recommendation and what it considers to be appropriate action by the Chancellor to resolve the matter satisfactorily.

The Chancellor shall make a determination based on a thorough review of (1) the record evidence from the hearing, if a hearing was held, and (2) the report of the hearing committee. The Chancellor shall notify the faculty member and the officer of administration of the decision and, if the decision is adverse to the faculty member, shall inform the faculty member of the faculty member's right to request review of the decision by the Board of Governors, as provided in Section 9. The notice of decision shall be conveyed to the faculty member by a method that produces adequate evidence of delivery.

[Amended 6/20/80; 1/1/04, 10/20/09]

### ***Section 5. Retirement Policy for Members of the Faculty***

Each member of the faculty may retire in accordance with the provisions of Chapter 135 of the General Statutes of North Carolina.

### ***Section 6. Termination of Faculty Employment for Reasons of Financial Exigency or Program Change***

#### **a. Definitions**

Within this Section 6 the following terms have the meanings indicated:

1. "Termination" means the termination of employment of a faculty member during the course of a tenured, probationary, or fixed term appointment for reasons of financial exigency or program change.
2. "Financial exigency" means a significant decline in the financial resources of the University that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in its current operations budget.
3. "Program change" means elimination or major curtailment of a teaching, research, or public service program.
4. "Faculty committee" or "committee" means a committee to be constituted by the faculty of the University which shall consist of not fewer than twelve members of the faculty holding tenured or probationary appointments when elected by the faculty on a basis broadly representative of the various divisions and sub-units of

the University, and which is empowered hereby to discharge the functions prescribed for it in this Section 6. [Amended 9/9/00]

**b. General grounds for termination**

Termination of faculty employment may be effected because of (i) demonstrable, bona fide financial exigency, or (ii) program change for demonstrable, bona fide institutional reasons, on the basis of a decision by the Chancellor, concurred in by the President and approved by the Board of Governors, that for either cause the University's contractual obligation to one or more faculty members cannot be further met. Such a decision by the Chancellor may be made, and any resulting termination effected, only in accordance with the procedure provided in this Section 6.

**c. Chancellor's preliminary determination and statement**

If it should appear to the Chancellor that a state of financial exigency exists or is imminent, or a program change has occurred or should seriously be considered, and that termination of the employment of one or more faculty members may be a required consequence of either circumstance, he or she shall forthwith prepare a statement which identifies with reasonable particularity the state of financial exigency or the program change, and which outlines in terms as specific as the circumstances permit the options for institutional response readily apparent to the Chancellor at the time, including any options which would or might involve terminations of faculty employment. This statement shall be transmitted forthwith to the faculty committee, with request for its action in accordance with the provisions of subsection d. hereof. Simultaneously, a summary of the statement shall be published by any means reasonably calculated to bring it to the attention of all members of the faculty in residence, together with a statement that the subject has been referred to the faculty committee for action. Pending committee action, the Chancellor shall undertake, either directly or by delegate, to obtain advice and recommendations in respect of the matters addressed in the statement from all those officers of administration and faculty whose units might reasonably be expected to be affected by the adoption of any identified option involving terminations.

**d. Committee action**

Acting in accordance with procedures which may be prescribed for it by the faculty, the committee shall address the matters identified in the Chancellor's statement with a view to giving its advice and recommendations thereon to the Chancellor. In this function the committee acts as representative of the interests of the faculty at large in both its individual concerns and its concerns for the educational program of the University. The committee may obtain further information reasonably available to the Chancellor and any clarifications of the situation by the Chancellor which are reasonably possible in the light of information then available. Not later than 30 calendar days after receipt of the statement, the committee shall submit to the Chancellor its written report. The report shall contain advice and recommendations addressed to the precise circumstance and optional responses identified in the Chancellor's statement and may suggest other

responses or courses of action for consideration or adoption by the Chancellor. The report may be accompanied by any communications and other data considered by the committee.

**e. Chancellor's decision**

Within 30 calendar days after receipt of the report, and having due regard for the advice and recommendations received from the committee and from the officers of administration, the Chancellor shall determine whether any option involving terminations must be retained as a possible institutional response. If he or she determines that it is not necessary, in view of other available options, to give further consideration to any option involving terminations, he or she shall so notify the committee and the faculty. If he or she determines that, on the basis of all information then available, it will be necessary to take action which will or reasonably might involve terminations, he or she shall request concurrence in that decision by the President and approval by the Board of Governors to take such action, and shall notify the committee and the faculty of this decision.

**f. Chancellor's proposal for action following Board of Governors' approval of terminations**

Within 30 calendar days after receipt of notice of approval of his or her request by the Board of Governors, if the Chancellor still considers that action involving terminations is or may be required, he or she shall transmit to the faculty committee a statement which (i) designates the particular departments in which terminations are to be effected and the factors which are to be used by each of the designated departments in determining the number, and (ii) suggests the criteria to be used by the designated departments in selecting individual faculty members for termination of employment. Simultaneously, the Chancellor shall publish by any means reasonably calculated to bring it to the attention of all members of the faculty in residence a notice that a proposed course of action involving terminations of faculty employment has been referred to the faculty committee for action.

**g. Committee action**

Acting in accordance with procedures which may be prescribed for it by the faculty, the committee shall address the proposal contained in the Chancellor's statement with a view to giving its advice and recommendations thereon. Not later than 30 calendar days after receipt of the statement, the committee shall submit to the Chancellor its written report containing advice and recommendations addressed to the proposed course of action and to the criteria for determining individual faculty members for terminations of employment. It may concur in whole or in part, suggest other courses of action for consideration, or advise modifications in the proposed course of action or in the criteria for individual faculty member selection.

#### **h. Chancellor's action following committee report**

If following receipt of the committee's report, and having due regard for its contents, the Chancellor still considers that action involving terminations is required, he or she shall not later than 30 calendar days after receipt of the report so notify the committee, the chief officers of administration in the affected departments, and, by general notice, the faculty of the University. The notice to the committee and to the officers of administration shall prescribe the specific action required of each department and the criteria to be used by each in initiating termination procedures for individual faculty members. The criteria specified by the Chancellor shall include as the primary consideration the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the University, and shall also include tenure status, length of service in the University, and any other factors deemed relevant by the Chancellor. No final action affecting departments not previously designated for terminations shall be directed until the modified proposal shall have been re-referred to the faculty committee for its response as in the case of the original referral.

#### **i. Individual terminations**

Within 60 calendar days after receipt of notice from the Chancellor that terminations are to be effected within a department, the chair of the department, after consultation with the assembled full professors of the department and after taking such other procedures as may have been provided by the faculty of the University, shall initiate the required terminations by recommendations with respect to particular faculty members. These recommendations shall then be reviewed in accordance with the administrative procedures within the institution for reviewing appointments to the respective ranks held by the particular faculty members.

#### **j. Notice to individual faculty members**

1. **Contents.** Upon approval by the Chancellor of a recommendation for termination of employment, the faculty member shall be notified in writing of the termination. The notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.
2. **Timeliness.** When termination is based upon program change unrelated to financial exigency, a faculty member on tenured appointment shall be given not less than twelve months notice in advance of its effective date, and a faculty member on probationary or fixed term appointment shall be given not less than 90 calendar days notice during the first year of service, not less than 180 calendar days notice during the second year of service, and not less than twelve months notice after two or more years of continuous service.

When termination is based upon financial exigency, the University shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limit of available resources, to give the same advance notice as is required for terminations based upon program change alone.

#### **k. Obligations with respect to reemployment or other employment**

For a period of two years after the effective date of a termination pursuant to the provisions of this Section 6, the University shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by registered mail, return receipt requested, and shall provide a period for acceptance of 30 calendar days following attempted delivery. When requested by the person whose employment has been terminated, the University shall give reasonable assistance in finding other employment for him or her.

### **1. Review of individual terminations**

#### **1. Request for hearing**

Within 30 calendar days after receipt of a notice of termination, a faculty member may request a review of the action by the standing committee of the faculty charged with conducting hearings on discharges of faculty members (under Section 3 hereof). Review may be had solely to determine whether the decision to terminate was arbitrary or capricious.

The request for review shall be in writing, addressed to the chair of the hearing committee. It shall specify the grounds upon which it is contended that the decision was arbitrary or capricious, and shall include a short and plain statement of facts which the faculty member believes support the contention.

Submission of such a request constitutes on the part of the faculty member (i) a representation that he or she can support his or her contention by factual proof, and (ii) an agreement that the University may offer in rebuttal of his or her contention any relevant data within its possession.

The hearing committee shall consider the request and shall grant a hearing if it determines that the request contains a bona fide contention that the decision to terminate was arbitrary or capricious, and that the facts suggested, if established, might support the contention. A decision not to grant the request is not subject to review, except as provided in Section 8. If the request is granted, a hearing shall be held within 14 calendar days after receipt of the request, provided that the faculty member shall be given at least 7 calendar days' notice of the hearing. [Amended 6/20/80]

#### **2. Conduct of hearing**

The question before the committee shall be decided by the committee. However, the committee may delegate the duty of conducting a hearing to a panel of at least three members. The hearing shall be conducted informally and in private; only the members of the committee, the faculty member, an officer of administration designated by the Chancellor, and such witnesses as may be called shall attend, except that the faculty member and the Chancellor's delegate may each be assisted or, in their absence, represented by a spokesman designated in writing so to act. Hearing committee members who hold appointment in the department of the faculty member, or who will testify as witnesses or who have any other conflict of interest are disqualified. Upon request of the faculty member, a transcript of the proceeding shall be made and provided to the faculty member at University expense. The hearing committee may consider only such evidence as is presented at the hearing, and need consider only that offered which it considers fair and reliable. All witnesses may be questioned by the members of the committee, the faculty member, and the Chancellor's delegate, or the respective spokesmen of the faculty member and the Chancellor's delegate. Except as herein provided, the conduct of the hearing is under the control of the chair of the hearings committee or the member designated by the chair for this purpose. [Amended 6/20/80]

The hearing shall begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for hearing and supported by such proof as he or she desires to offer. When this presentation is concluded, the hearing committee shall recess to consider whether the proof offered in support of the contention establishes the contention unless it be now rebutted. If it determines that the contention has not been so established, it shall so notify the parties and conclude the proceedings, which action is not subject to review except as provided in Section 8. If it determines that rebuttal is desirable, it shall so notify the parties and the hearing shall proceed. The Chancellor's delegate may then present, in rebuttal of the faculty member's contention or in general support of the decision to terminate, such testimonial or documentary proofs as he or she desires to offer, including his or her own testimony. [Amended 6/20/80]

At the conclusion of the presentation by the Chancellor's delegate the hearing committee shall consider the matter in executive session. The burden is upon the faculty member to satisfy the committee by clear, cogent, and convincing evidence that his or her contention is true. [Amended 6/20/80]

### **3. Procedure after hearing**

If the hearing committee determines that the contention of the faculty member has not been established, it shall, by a simple unelaborated

statement, so notify the faculty member and the Chancellor. Such a determination is not subject to review, except as provided in Section 8. If the hearing committee determines that the contention of the faculty member has been established, it shall so notify the faculty member and the Chancellor by a written notice which shall also include a recommendation for corrective action to be taken by the Chancellor. [Amended 6/20/80]

### ***Section 7. Effectiveness***

Except as otherwise provided below, all provisions of these policies and regulations shall become operative (with respect to all existing as well as future faculty appointments) on the effective date, which shall be the date 35 calendar days after the day on which these policies and regulations shall have been approved by the President of The University of North Carolina:

The policies and regulations herein set forth shall not be applied to alter existing incidents of academic tenure<sup>6</sup> to the disadvantage of any person who shall have been a member of the faculty immediately prior to the effective date.

### ***Section 8. Review by the Board of Trustees***

This section shall apply to review by the Board of Trustees of the following decisions made pursuant to these policies and regulations:

- (1) A decision by the Chancellor under §3.b.8. declining to accept a recommendation of the hearings committee favorable to the faculty member.
- (2) A decision by the Chancellor under §3.b.8. concurring in a hearings committee recommendation unfavorable to the faculty member.
- (3) A decision by the hearings committee under §6.l.1. rejecting a request for a hearing.
- (4) A decision by the hearings committee under §6.l.2. terminating a hearing at the conclusion of the faculty member's proof.

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<sup>6</sup> As used here, the phrase "existing incidents of academic tenure" means those characteristics of academic ranks set out in Section 4-2(b) of the "Code Provisions Governing The University of North Carolina, Bylaws of the Board of Trustees, and Duties of the University Officers—1970."

EDITOR'S NOTE: This footnote references a document that appears to have been revoked or substantially revised between the restructuring of The University of North Carolina in 1972 and adoption of the current edition of The Code of the Board of Governors of The University of North Carolina in 1988. A currently effective counterpart has not been identified.

- (5) A decision by the hearings committee under §6.l.3. determining that the faculty member has not established his or her contention.
- (6) A decision by the Chancellor under §6.l.3. declining to take corrective action recommended by the hearings committee in connection with a decision favorable to the faculty member.

Requests for review by the Board of Trustees of the decisions enumerated above shall be transmitted through the Chancellor and addressed to the Chair of the Board of Trustees. The request must be filed within fourteen calendar days after the date of communication to the faculty member of notice of the decision sought to be reviewed. The question under review shall be decided by the full Board of Trustees. However, the Board may delegate the duty of conducting a hearing to a committee of at least three members. The Board of Trustees, or its committee, will conduct its review on the written transcript of the hearing, the report of the hearing committee, and the decision of the Chancellor, but it may, in its discretion, hear such other evidence as it deems necessary. In all cases, review shall be limited to the question of whether the Chancellor or the hearings committee, as the case may be, committed clear and material error in reaching the decision under review. The Board shall make its decision as soon as reasonably possible after receipt of the request for review by the Chair of the Board. This decision shall be final, except that, with respect to a decision by the Chancellor under § 3.b.8 declining to accept a recommendation of the hearings committee favorable to the faculty member or a decision by the Chancellor under § 3.b.8. concurring in a hearings committee recommendation unfavorable to the faculty member, the faculty member may, within fourteen calendar days after receiving notice of the decision, file a written notice of appeal with The Board of Governors alleging with particularity the specific provisions of The Code of The University of North Carolina which the faculty member alleges to have been violated. All such appeals shall be transmitted to The Board of Governors by certified mail, return receipt requested, or by another means that provides proof of delivery, through the President. [Amended 6/20/80; 1/9/87; 1/1/04; 10/20/09]

### ***Section 9. Review by the Board of Governors***

In addition to appeals to the Board of Governors provided for in Section 8 hereof, a decision by the Chancellor not to reappoint a faculty member may be reviewed by The Board of Governors. Review by the Board of Governors is intended only to determine if the campus-based process or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy. Requests for review by The Board of Governors shall be made in accordance with the requirements of The Code of The Board of Governors of The University of North Carolina and the UNC Policy Manual, including the requirement that the request be submitted to the President by certified mail, return receipt requested, or by other method that produces adequate evidence of delivery, within 14 calendar days after the faculty member's receipt of the adverse decision. [Added 1/1/04, Amended 10/20/2009]

## **Appendix**

### *Provisions of The Code of the Board of Governors of The University of North Carolina Pertaining to Academic Tenure*

## **CHAPTER VI            ACADEMIC FREEDOM AND TENURE**

### **SECTION 600            FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY.**

(1)        The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes.    The University therefore 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

(2)        The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

(3)        Faculty and students of the University of North Carolina shall share in 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.

### **SECTION 601.            ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY.**

(1)        It is the policy of the University of North Carolina to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institutions.    Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with the University and their position as men and women of learning.    They should not represent themselves, without authorization, as spokespersons for the University of North Carolina or any of its constituent institutions.

(2)        The University and its constituent institutions shall not penalize or discipline members of its faculties because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

## SECTION 602.

## ACADEMIC TENURE.<sup>7</sup>

(1) To promote and protect the academic freedom of its faculty, the board of trustees of each constituent institution shall adopt policies and regulations governing academic tenure. Policies adopted by a board of trustees regarding academic tenure and promotion shall be effective upon review by the senior vice president for academic affairs and the vice president and general counsel, and approved by the president. The chancellor shall review the constituent institution's tenure policies periodically, but at least every five years, and shall report to the president whether or not amendments or revisions are appropriate. The chancellor shall involve the faculty in this review.

(2) In all instances, the tenure conferred on a faculty member is held with reference to employment by a constituent institution, rather than to employment by the University of North Carolina.

(3) The tenure policies and regulations of each constituent institution<sup>8</sup> shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion, and the conferral of permanent tenure shall be made. The length of terms of appointment that do not carry permanent tenure and those faculty ranks or titles whose holders shall be eligible for permanent tenure shall be prescribed. The institutional policies and regulations also shall prescribe the intervals at which the review of candidates for reappointment and promotion, including the conferral of permanent tenure, shall occur. The tenure policies and regulations of each institution, which shall include the complete text of Chapter VI of *The Code*, shall be published by the institution and distributed to its faculty members.

(4) The tenure policies and regulations of each institution shall set forth the general considerations upon which appointment, reappointment, promotion, and permanent tenure are to be recommended. The institutional regulations shall provide that these considerations shall include an assessment of at least the following: the faculty member's demonstrated professional competence, the faculty member's potential for future contribution, and institutional needs and resources.

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<sup>7</sup>Pursuant to NCGS §116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors delegates certain authorities to the President of the University. See Policy 200.6, *Delegation Authority to the President of the University*, adopted 11/13/06, amended 06/08/07.

<sup>8</sup>Because of the unique character and mission of the University of North Carolina School of the Arts and of the North Carolina School of Science and Mathematics, the requirement that the institution adopt tenure policies will be satisfied at those institutions by an employment system based on renewable contracts, which system need not provide for the traditional faculty ranks. Wherever the phrase "tenure policies and regulations" is used in this chapter, it shall mean, for the School of the Arts and for the School of Science and Mathematics, the faculty employment policies of those schools. Wherever the phrase "tenured faculty" is used in this chapter and in the Policies of the Board of Governors, it shall mean, for those schools, a faculty member holding a fixed-term contract.

(5) The institutional policies and regulations shall specify that permanent tenure may be conferred only by action of the president and the Board of Governors, or by such other agencies or officers as may be delegated such authority by the Board of Governors.<sup>9</sup>

(6) Institutional tenure policies and regulations shall distinguish among the following:

(a) the nonreappointment (or nonrenewal) of a faculty member at the expiration of a specified term of service;

(b) the discharge from employment of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires only for reasons of (i) incompetence, (ii) neglect of duty, or (iii) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, as specified in Code Section 603;

(c) the termination of employment for reasons of institutional financial exigency or major curtailment or elimination of a teaching, research, or public-service program of a faculty member who has permanent tenure, or of a faculty member who has been appointed to a specified term of service before that term expires; and

(d) retirement.

(7) Institutional tenure policies and regulations shall provide that the appointment, reappointment, or promotion of a faculty member to a position funded in whole or in substantial part from sources other than continuing state budget funds or permanent trust funds shall specify in writing that the continuance of the faculty member's services, whether for a specified term or for permanent tenure, shall be contingent upon the continuing availability of such funds. The institutional tenure policies and regulations may make one or more of the following exceptions to the foregoing contingency requirement:

(a) That such a contingency shall not be included in a promotion to a higher rank if, before the effective date of that promotion, the faculty member had permanent tenure and no such condition is attached to the tenure.

(b) That such a contingency shall not be attached to the faculty member's contract if the faculty member held permanent tenure in that institution on July 1, 1975, and the contract was not contingent upon the continuing availability of sources other than continuing state budget or

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<sup>9</sup>See Footnote 8 on previous page.

permanent trust funds.

(c) That such a contingency may be waived for health affairs faculties because of the unusual dependence of programs in the health professions on income from sources such as clinical receipts.

If a faculty member's appointment is terminated because of the nonavailability of these funds, the institution will make every reasonable effort to give the same notice as set forth in Section 605 B (1). This notice shall include the pertinent data upon which the termination is based.

(8) The tenure policies and regulations of each institution shall be subject to approval by the president. The president periodically shall review and re-evaluate these policies and regulations and report findings and recommendations, if any, to the Committee on Personnel and Tenure and through the committee to the Board of Governors.

**SECTION 603. DUE PROCESS BEFORE DISCHARGE OR THE IMPOSITION OF SERIOUS SANCTIONS.**

(1) A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged from employment, suspended, or demoted in rank for reasons of:

(a) incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time;

(b) neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or

(c) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either (i) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

These sanctions may be imposed only in accordance with the procedures prescribed in this section. For purposes of this Code, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to nonreappointment (Section 604) or termination of employment (Section 605).

(2) The chief academic officer of the institution, however titled, shall send the

faculty member a written notice of intention to discharge the faculty member or impose a serious sanction together with a written specification of the reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by an elected standing faculty committee on hearings.

(3) If, within 14 calendar days after receiving the notice and written specifications referred to in paragraph (2) above, the faculty member makes no written request for a hearing, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure.<sup>10</sup>

(4) Repealed.

(5) If the faculty member makes a timely written request for a hearing, the chancellor shall ensure a process is in place so that the hearing is timely accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 30 calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The hearing committee will ordinarily endeavor to complete the hearing within 90 calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.<sup>11</sup>

(6) The hearing shall be closed to the public unless the faculty member and the hearing committee agree that it may be open. The faculty member shall have the right to counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, to examine all documents and other adverse demonstrative evidence, and to make argument. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the institution's expense.

(7) The chief academic officer, or designee, and/or counsel, may participate in the hearing to present testimony of witnesses and other evidence, to cross-

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<sup>10</sup>In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

<sup>11</sup>To meet this deadline, faculty are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that they hearing may take two or more sessions.

examine witnesses, to examine all documents and other evidence, and to make argument.

(8) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The university has the burden of proof. In evaluating the evidence, the committee shall use the standard of “clear and convincing” evidence in determining whether the institution has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action. The committee shall make its written recommendations to the chancellor within 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later.

(9) If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor’s decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the chancellor's decision to the board of trustees. This appeal shall be transmitted through the chancellor and be addressed to the chair of the board. Notice of appeal shall be filed within 14 calendar days after the faculty member receives the chancellor's decision. The appeal to the board of trustees shall be decided by the full board of trustees. However, the board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members. The board of trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the faculty hearing committee, but it may, in its discretion, hear such other evidence as it deems necessary. The board of trustees' decision shall be made as soon as reasonably possible after the chancellor has received the faculty member’s request for an appeal to the trustees. This decision shall be final except that the faculty member may, within 14 calendar days after receiving the trustees' decision, file a written notice of appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, with the Board of Governors if the faculty member alleges that one or more specified provisions of the *Code of the University of North Carolina* have been violated. Any such appeal to the Board of Governors shall be transmitted through the president.

(10) When a faculty member has been notified of the institution's intention to discharge the faculty member, the chancellor may reassign the individual to other duties or suspend the individual at any time until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension shall be exceptional and shall be with full pay.

**SECTION 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW FOR TENURE TRACK FACULTY.<sup>12.1</sup>**

604 A. Notice of Reappointment or Nonreappointment.<sup>12.2</sup>

(1) The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given.<sup>12.3</sup> For full-time faculty at the rank of instructor, assistant professor, associate professor, or professor, the minimum requirement for timely notice shall be as follows:

- (a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires; and
- (b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and
- (c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

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<sup>12.1</sup>Because of the unique character and mission of the University of North Carolina School of the Arts and of the North Carolina School of Science and mathematics, regular faculty holding fixed-term contracts at those institutions are entitled to the rights afforded in this Section.

<sup>12.2</sup>***Prior to January 1, 2004, Section 604 A read as follows:***

(1) The decision not to reappoint a faculty member at the expiration of a fixed term o service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given. For full-time faculty at the rank of instructor, assistant professor, associate professor, or professor, the minimum requirement for timely notice shall be as follows:

- (a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires;
- (b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and
- (c) after two or more years of continuous service at the institution, the faculty member shall be given not less than twelve months' notice before the employment contract expires.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of nonreappointment will oblige the chancellor thereafter to offer a terminal appointment of one academic year.

<sup>12.3</sup>Faculty at North Carolina School of Science and Mathematics shall be given notice no later than January 15 during the first year of continuous regular service and no later than December 15 during the second or any subsequent year of continuous regular service.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of nonreappointment will oblige the chancellor thereafter to offer a terminal appointment of one academic year.

604 B. Impermissible Reasons for Nonreappointment.

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) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See Policy 101.3.1 II.B. for details.

604 C. Repealed.

604 D. Review of Nonreappointment Decisions.

(1) Campus Based Review. Subject to limitations contained in this Code and the Policies of the Board of Governors, each constituent institution shall have a procedure whereby a tenure track faculty member may seek review of the decision of the constituent institution not to reappoint the faculty member. Such procedures shall at a minimum provide for the following:

(a) A reasonable time of no less than 14 calendar days within which after receiving the notice of nonreappointment, the faculty member may request review of the decision by appropriate faculty committee and administrative officers. If the faculty member does not request review of the notice of non-reappointment in a timely fashion as specified by campus tenure policies, the nonreappointment is final without recourse to any further review by faculty committees, the institution, or the Board of Governors.

(b) If the faculty member files a request for review in a timely fashion, the chancellor shall ensure a process is in place so that a hearing is timely accorded before an elected standing committee of the institution's faculty.

(c) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The faculty member shall have the burden of proof. In evaluating the evidence the committee shall use the standard of preponderance of the evidence (which is the same as the greater weight of the evidence.)

(d) The purpose of the campus based review process is to determine (1) whether the decision was based on considerations that *The Code* provides are impermissible; and (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint.

(2) Appeal to the Board of Governors. If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, with 14 calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy.<sup>12.4</sup>

## **SECTION 605. TERMINATION OF FACULTY EMPLOYMENT.**

### **605 A. Definition.**

The tenure policies and regulations of each institution shall provide that the employment of faculty members with permanent tenure or of faculty members appointed to a fixed term may be terminated by the institution because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of a teaching, research, or public-service program. "Financial exigency" is defined as a significant decline in the financial resources of the institution that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public-service program shall be made by the chancellor, after consulting with the academic administrative officers and faculties as required by Section 605C (1), subject to the concurrence by the President and then approval by the Board of Governors. If the financial exigency or curtailment or elimination of program is such that the institution's contractual obligation to a faculty member may not be met, the employment of the faculty member may be terminated in accordance with institutional procedures that afford the faculty member a fair hearing on that decision.<sup>13</sup>

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<sup>12.4</sup>See Policy 101.3.1 for additional information

<sup>13</sup>Because of the unique character and mission of the North Carolina School of Science and Mathematics, when the employment of a faculty member is to be terminated during or at the conclusion of a fixed-term contract because of

605 B. Timely Notice of Termination.

(1) When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public-service program and such curtailment or elimination of program is not founded upon financial exigency, the faculty member shall be given timely notice as follows:

(a) one who has permanent tenure shall be given not less than 12 months' notice; and

(b) one who was appointed to a fixed term and does not have permanent tenure shall be given notice in accordance with the requirements specified in Section 604 A(1).

(2) When a faculty member's employment is to be terminated because of financial exigency, the institution will make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in Section 605 B(1).

(3) For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section 605 A, the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by a method of delivery that requires a signature for delivery, and the faculty member will be given 30 calendar days after attempted delivery of the notice to accept or reject the offer.

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major curtailment or elimination of a teaching, research, or public-service program that is not founded upon financial exigency, written notice shall be given no later than the November 1 prior to termination. When faculty employment is to be terminated during or at the conclusion of a fixed-term contract because of financial exigency, the School shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give notice no later than the November 1 prior to termination. Terminations at the end of a fixed term contract for the reasons stated above in this footnote are not subject to Section 604 of *The Code*, but instead are subject to Section 605.

605 C. Institutional Procedures.<sup>13.1</sup>

The institution shall establish regulations governing termination procedures. These regulations shall include provisions incorporating the following requirements:

(1) If it appears that the institution will experience an institutional financial exigency or needs seriously to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

(2) In determining which faculty member's employment is to be terminated for reasons set forth in Section 605 A, the chancellor shall give consideration to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

(3) An individual faculty member whose employment is to be terminated shall be notified of this fact in writing. This notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.

(4) A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious.

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<sup>13.1</sup>Prior to January 1, 2004, Section 605 C read as follows:

(1)If it appears that the institution will experience an institutional financial exigency or needs seriously to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

(2)In determining which faculty member's employment is to be terminated for reasons set forth in Section 605A, the chancellor shall give consideration to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

(3)An individual faculty member whose employment is to be terminated shall be notified of this fact in writing. This notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.

(4) A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious.

(5) The institution, when requested by the faculty member, shall give reasonable assistance in finding other employment for a faculty member whose employment has been terminated.

(6) The faculty member may appeal the reconsideration decision in the manner provided by Section 501C (4).

(5) The institution, when requested by the faculty member, shall give reasonable assistance in finding other employment for a faculty member whose employment has been terminated.

(6) A faculty member whose employment is terminated pursuant to this Section 605 may appeal the reconsideration decision to the board of trustees of the constituent institution.

## **SECTION 606. RETIREMENT OF FACULTY.**

Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes.

## **SECTION 607. FACULTY GRIEVANCE COMMITTEE FOR CONSTITUENT INSTITUTIONS.<sup>13.2</sup>**

(1) The chancellor of each constituent institution shall provide for the establishment of a faculty grievance committee. The faculty grievance committee shall be elected by the faculty with members elected from each professorial rank. No officer of administration shall serve on the committee. For purposes of this

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<sup>13.2</sup>Prior to January 1, 2004 Section 607 read as below:

(1)The chancellor of each constituent institution shall provide for the establishment of a faculty grievance committee. The faculty grievance committee shall be elected by the faculty with members elected from each professorial rank. No officer of administration shall serve on the committee. For purposes of this section, "officer of administration" shall be deemed to include department chairs and department heads.

(2)The committee shall be authorized to hear, mediate, and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance, to mediate voluntary adjustment by the parties, and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be given to the chancellor only after the dean, department head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.

(3)"Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

(4)If any faculty member has a grievance, the faculty member may petition the faculty grievance committee for redress. The petition shall be written and shall set for the in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the petitioner considers pertinent to the case. The committee shall decide whether the facts merit a detailed investigation so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition.

(5)If, before this section is established, the faculty of an institution has adopted a faculty grievance procedure that in its judgment is adequate to its needs, it may retain that procedure in place of the one specified above. [This section became effective July 1, 1975.]

section, "officer of administration" shall be deemed to include department chairs and department heads.

(2) The committee shall be authorized to hear and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance, to facilitate voluntary adjustment by the parties, and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be given to the chancellor only after the dean, department head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.

(3) "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

(4) If any faculty member has a grievance, the faculty member may petition the faculty grievance committee for redress. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the petitioner considers pertinent to the case. The committee shall decide whether the facts merit a detailed investigation so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition.

(5) If, before this section is established, the faculty of an institution has adopted a faculty grievance procedure that in its judgment is adequate to its needs, it may retain that procedure in place of the one specified above.

(6) If neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the faculty grievance committee in favor of the aggrieved faculty member, then the faculty member may appeal to the board of trustees of the constituent institution. The decision of the board of trustees is final.

## **SECTION 608. STUDENTS' RIGHTS AND RESPONSIBILITIES.**

(1) The University of North Carolina affirms that the first goal of each constituent institution is to educate the students admitted to its programs. The freedom of students to learn is an integral and necessary part of the academic freedom to which the University and its constituent institutions are dedicated. Each constituent institution shall provide, within allotted functions and available resources, opportunity for its students to derive educational benefits through developing their intellectual capabilities, encouraging their increased wisdom and understanding, and enhancing their knowledge and experience applicable to the

effective discharge of civic, professional, and social responsibilities. No constituent institution shall abridge either the freedom of students engaged in the responsible pursuit of knowledge or their right to fair and impartial evaluation of their academic performance.

(2) All students shall be responsible for conducting themselves in a manner that helps to enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.

(3) In applying regulations in the area of student discipline, each constituent institution shall adhere to the requirements of due process as set forth in Section 502 D(3) of this *Code*.

**SECTION 609. APPELLATE JURISDICTION OF THE BOARD OF GOVERNORS.**

609 A. Discretionary Review.

Nothing contained in Chapter VI, or any other chapter of the *Code*, shall be construed to limit the right of the Board of Governors to make such inquiry and review into personnel actions as it may from time to time deem appropriate.

609 B. Hearings.

The Board of Governors may in its sole discretion conduct hearings. Any hearing, whether before the full board or a designated standing or special committee of the board, shall be limited to such matters as the Board of Governors shall deem appropriate.

609 C. Repealed.

609 D. Transmission of Appeals

All appeals addressed to or requests for hearings by the Board of Governors, from whatever source, shall be transmitted through the president.

**SECTION 610. RIGHTS OF SPECIAL FACULTY MEMBERS**

(1) Faculty members who are appointed as visiting faculty members, adjunct faculty, lecturers, artists-in-residence, writers-in-residence or other special categories are regarded as “special faculty members” for purposes of the University Code. Special faculty members may be paid or unpaid.

(2) Special faculty members who are paid shall be appointed for a specified term of service, as set out in writing in the letter of appointment. The term of appointment of any paid special faculty member concludes at the end of the specified period set forth in the letter of appointment, and the letter of appointment constitutes full and timely notice that a new term will not be granted when that term expires.

(3) Special faculty members who are not paid may be appointed for a specified term of service or at will. Their pay and appointment status should be set out in the letter of appointment.

(4) During the term of their employment, special faculty members are entitled to seek recourse under Section 607 of the University Code (relating to faculty grievances).

(5) Special faculty members, whether paid or unpaid, are not covered by Section 604 of the University Code, and that section does not accord them rights to additional review of a decision by a constituent institution not to grant a new appointment at the end of a specified fixed term.

**SECTION 611. REVIEW OF PERSONNEL ACTIONS AFFECTING SPECIFIED EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT (EPA)**

(1) Review Processes. Certain non-faculty employees, as described in subsection (1)(b) below, who are exempt from the State Personnel Act, may seek review under procedures provided for by this section in the event that the employee is discontinued, terminated, or discharged from employment, suffers other adverse personnel action, or is not appointed following the end of a term appointment. Each constituent institution shall develop procedures applicable to employees of the constituent institution, and General Administration shall develop procedures applicable to those of its employees who are covered by this section. Such procedures shall, at a minimum, provide for the following:

(a) A reasonable time within which a covered employee or former employee may file a request for review, after receiving notice of a personnel action covered by this section. If a covered person does not timely file a written request for review, then the personnel action is final without recourse to any institutional review, appeal or grievance procedure.

(b) Covered persons may seek review of personnel actions based on allegations that:

(i) Notice

(A) For Senior Academic and Administration Officers defined only in UNC Policy 300.1.1 I.B., for discontinuations, expiration of term appointments, or terminations of employment with notice, such review may be sought only upon allegations of violations of applicable notice requirements set out in policies 300.1.1. III.B. 1., 2., and 3. of the University Policy Manual; and

(B) For other employees exempt from the State Personnel Act, as described only in UNC Policy 300.2.1, for discontinuations, expiration of term appointments, or terminations of employment with notice, such review may be sought only upon allegations of violations of applicable notice requirements set out in policies 300.2.1 III. A., B., and C. of the University Policy Manual; or

(ii) Equal Employment Opportunity and Protected Activity

(A) For the Senior Academic and Administrative Officers defined in sub-section (i) above, for violations of any provision of sub-sections III.D. or E. of Policy 300.1.1 of the University Policy Manual, and

(B) For the other employees exempt from the State Personnel Act defined directly above in sub-section (ii), for violations of any provision of sections V. or VI. of Policy 300.2.1 of the University Policy Manual; or

(iii) Discharge for Cause, Other Discipline, Policy Interpretation/Application

(A) For the Senior Academic and Administrative Officers defined in sub-section (i) above, for discharge for cause or other disciplinary action, or for interpretation and application of a policy provision, all pursuant to and limited by policy 300.1.1 III.C. of the University Policy Manual, and

(B) For the other employees exempt from the State Personnel Act defined above in sub-section (ii), for discharge for cause or other disciplinary action, or for interpretation and application of a policy provision, all pursuant to and limited by policy 300.2.1 IV. of the University Policy Manual; or

except that for both groups such review may be sought only if the employee alleges the discharge, discipline, or policy interpretation or application was illegal or violated a policy of the Board of Governors.

(c) If the employee or former employee timely files a written request for review, the president (as to an employee of General Administration) or chancellor (as to an employee of a constituent institution), shall ensure a process is in place so that a hearing is timely accorded before a hearing committee.

- (d) In reaching decisions on which its written recommendations to the president (as to an employee of General Administration) or chancellor (as to an employee of a constituent institution), as appropriate, shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The employee or former employee has the burden of proof. In evaluating the evidence, the committee shall use the standard of preponderance of the evidence (which is the same as the “greater weight of the evidence.”)
- (2) Appeal to the Board of Trustees or Board of Governors.
- (a) For employees of a constituent institution, if the chancellor concurs in a recommendation of the committee that is favorable to the employee, the chancellor’s decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the employee or concurs in a committee recommendation that is unfavorable to the employee, the employee may appeal within 14 calendar days after receiving the chancellor’s written decision, by filing with the chancellor for transmission to the Board of Trustees a written notice of appeal, including a brief statement of the basis for the appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in sub-section (1)(b) above. The decision of the Board of Trustees is final with no further appeal.
- (b) For employees of General Administration, if the president concurs in a recommendation of the committee that is favorable to the employee, the president’s decision shall be final. If the president either declines to accept a committee recommendation that is favorable to the employee or concurs in a committee recommendation that is unfavorable to the employee, the employee may appeal within 14 calendar days after receiving the president’s written decision, by filing with the president for transmission to the Board of Governors a written notice of appeal, including a brief statement of the basis for appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in sub-section (1)(b) above. The decision of the Board of Governors is final with no further appeal.