

**TRUSTEE POLICIES AND REGULATIONS  
GOVERNING ACADEMIC TENURE  
IN THE UNIVERSITY OF NORTH CAROLINA  
AT CHAPEL HILL**

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Chapter Six of The Code of The University of North Carolina

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*NOTE*

*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 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*

\*[Amended December 1978, June 1980, June 1982, January 1987, June 1987, February 1994, and November 2000.]

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**ACADEMIC FREEDOM, TENURE AND ACADEMIC DUE PROCESS**

**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 or discharge from, or termination of, the faculty member's 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 and discharge) and Section 6 (termination) 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 ("fixed term appointment"); or they may be for renewable probationary terms ("probationary term appointment"); or they may be continuous until compulsory 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 chairman obtained in advance of the initiation of formal 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.

In any case where an associate professor has served five years in that rank and acquires (or continues to have) permanent tenure at that rank, a review shall thereafter be made not less frequently than every third year to determine his or her qualification for promotion. The review shall be made by the chairman of the department\* concerned, in consultation with the assembled full professors of the department. ["Department" is used herein as a generic term for departments, professional schools, and any other academic units to which faculty appointments are made; "chairman," as a generic term for department chairmen, deans of professional schools, and any other heads of academic units to which faculty appointments are made.] A report of negative decisions, with supporting reasons, shall be put forward for information through the administrative channels prescribed for the review of recommendations for initial appointment of an associate professor to a five year term.

- (3) **Assistant Professor.** Initial appointment to the rank of assistant professor is for a probationary term of four years. [See Section 7.a.] 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. [See Section 7.a] 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 chairman 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.

In any case where an assistant professor acquires permanent tenure at that rank, a review shall thereafter be made not less frequently than every third year to determine his or her qualifications for promotion. The review shall be made by the department chairman concerned, in consultation with the assembled full professors of the department. A report of negative decisions, with supporting reasons, shall be put forward for information through the administrative channels prescribed for the review of recommendations for initial appointment of assistant professors.

- (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. [See Section 7.b.] 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. [See Section 7.c.]

- (5) **Fixed-term faculty ranks:** lecturer and equivalents. Appointments may be made to fixed-term faculty ranks with title designations "Lecturer," "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.

Initial appointment may be for a fixed term of from one to five years.

Subsequent appointments for fixed terms of one to five years' duration may be made either in direct succession or at intervals. Each is considered an initial 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 chairman 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 chairman 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.

The decisions herein required shall be made as provided in Section 2.c. hereof.

### **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 chairman of the department concerned after consultation with the assembled full professors of that department. [See Section 7.d.] 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 chairman 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 chairman 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 chairman, by any other officer of

administration 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. ["Officer of administration," as used herein, includes department chairmen.] 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 chairman 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 chairman concerned to initiate the consultation procedure required to make the decision. The decision shall be made within 60 calendar days after the date of direction. If the decision is to recommend reappointment the department chairman shall forward the recommendation through the channels provided for review of such a recommendation. If the decision is not to reappoint, the department chairman 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 chairman. 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, 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 chairman 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 Vice-Chancellor for Health Affairs, the Vice-Chancellor for Business and Finance, 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 to coincide with the extent and duration of the relief from employment obligations, up to a maximum of 12 months.  
[Amended 2/18/94]

(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 that the maximum probationary period be extended for a period not to exceed 12 months (including any extension that may have been granted under subsection (ii) above), 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. [Amended 2/18/94]

(iv) **Extension and special assignment**

Any request pursuant to subsection (ii) or (iii) above must be initiated not later than 24 months before the end of the term to which it is to apply and must be approved by the Chancellor. The total extension granted under subsection (ii) and subsection (iii) above cannot exceed 12 months. A request for extension initiated during the third or fourth year of an initial probationary term at the rank of assistant professor shall be granted only upon the condition that the initial appointment is renewed. [Amended 2/18/94]

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 chairman 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. [See Section 7.e.] 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 chairmen 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 chairmen 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. 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 enhance faculty performance. Comprehensive reviews conducted for other purposes, such as consideration for promotion, may constitute a review under this Section. On petition of the chairman, the Chancellor or his delegate 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 good cause. [Amended 9/11/98]

**(9) Resignations**

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

**SECTION 3. SUSPENSION, DIMINISHMENT IN RANK, AND DISCHARGE OF FACULTY MEMBERS**

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

**a. Grounds for suspension, diminishment in rank, or discharge**

The permissible grounds for suspension, diminishment in rank, or discharge are misconduct of such a nature as to indicate that the faculty member is unfit to continue as a member of the faculty, incompetence, and neglect of duty.\* [\*Retirement for reason of disability shall be in accordance with North Carolina statutes and regulations governing retirement for

faculty who are members of the state retirement system. A faculty member who is not a member of the state retirement system and who is mentally or physically disabled, but refuses to retire, may be discharged because of that disability only in accordance with the procedures of this Section 3.]

**b. Procedures for discharge**

- (1) The Chancellor or his or her delegate shall send the faculty member by registered mail, return receipt requested, a written statement of intention to discharge him or her. The statement shall include notice of the faculty member's right, upon request, to both written specification of the reasons for the intended discharge and a hearing by an elected standing faculty committee on hearings.
- (2) If, within ten days\* after he or she receives the notice referred to in paragraph (1) above, the faculty member makes no written request for either a specification of reasons or a hearing, he or she may be discharged without recourse to any further institutional procedure by a written letter of discharge from the Chancellor. [\*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.]
- (3) If, within ten days after he or she receives the notice referred to in paragraph (1) above, the faculty member makes written request, by registered mail, return receipt requested, for a specification of reasons, the Chancellor or his or her delegate shall supply such specification in writing by registered mail, return receipt requested, within ten days after receiving the request. If the faculty member makes no written request for a hearing within ten days after he or she receives the specification, the faculty member may be discharged without recourse to any further institutional procedure by a written letter of discharge from the Chancellor.
- (4) If the faculty member makes a timely request for a hearing, the Chancellor or his or her delegate shall insure 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. The hearing committee shall accord the faculty member twenty 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. [Amended 6/20/80; 1/9/87; 9/8/00]
- (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, and to examine all documents and other adverse demonstrative evidence. 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 Chancellor, or his or her delegate or counsel, may participate in the hearing to present evidence, cross-examine witnesses, and 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 committee shall make its written recommendations to the Chancellor within ten days after its hearing concludes.
- (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 recommendations, 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 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]
- (9) When a faculty member has been notified of the University's intention to discharge him or her, the Chancellor may 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 FACULTY MEMBERS ON PROBATIONARY TERM APPOINTMENTS\* [\*See Section 7.f.]

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

Except as herein provided, the decision not to reappoint a 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 of freedom of speech 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, sex, religion, or national origin of the faculty member; or (3) personal malice.

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

Within 10 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 officer is not known to the faculty member, the department chairman shall provide the information forthwith upon request of the faculty member. The request for conference shall be granted and the conference held forthwith, within 5 days after receipt of the request if possible. Within 5 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 chairman 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 chairman, the faculty member may, within 5 days after receipt of the notice, in writing request a conference with the officer of administration in immediate supervision of the department chairman. This request shall be granted and the conference held forthwith, within 5 days after receipt of the request if possible. Within 10 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 chairman.

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 chairman, nor final as to the faculty member.

Within 5 days after receipt of an evaluation which involves disagreement with the decision or recommendation for its reconsideration, the department chairman shall in writing notify the faculty member and his or her immediate supervisor of his or her response.

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

If the faculty member has 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 5 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 reasonable doubt upon the validity of the original decision not to reappoint.

The request for review shall be in writing and addressed to the chairman 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, this finally confirms the decision within the institution. If the request is granted, a hearing shall be held within 10 days after receipt of the request, provided that the faculty member shall be given at least 5 days notice of the hearing. [Amended 6/20/80; 1/9/87]

#### **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. Upon request of the faculty member, and with approval of the chairman of the committee, a transcript of the proceedings shall be made and provided to the faculty member. The 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 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 chairman or the member designated by the chairman for this purpose. [Amended 6/20/80]

#### **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 and thereupon terminate the proceedings. Such termination is not subject to review, except as provided in Section 8. 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]

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

#### **f. 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 him or her and the officer of administration. 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 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. [Amended 6/20/80]

Within five days after receiving the recommendation, the officer of administration shall notify the faculty member and the chairman 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 may 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. If the officer of administration who made the decision is the Chancellor, the report may be submitted to the Board of Trustees.

### **SECTION 5. RETIREMENT POLICY FOR MEMBERS OF THE FACULTY [See Section 7.g.] [Amended 6/26/87]**

a. Except as hereinafter provided, each member of the faculty may retire in accordance with the provisions of Chapter 135, Article 1, of the General Statutes of North Carolina (Retirement System for Teachers and State Employees).

b. Each member of the faculty who has permanent tenure and who reaches his or her seventieth birthday on and after January 1, 1987, and before January 1, 1994, shall automatically be retired from University employment (without notice) on July 1 coincident with or next following his or

her seventieth birthday, unless he or she is continued in employment pursuant to the provisions of subsection c. of this Section 5.

c. A faculty member who has permanent tenure and who reaches his or her seventieth birthday on or after January 1, 1987, but before January 1, 1994, may be continued in employment past the retirement date specified in subsection b. only when exceptional circumstances are such that the University would suffer adverse effects if the individual's service were not to be continued, and only where the salary of the individual is fully funded from sources other than continuing State budget funds. Continuation in employment may be authorized only in increments not exceeding one year and only for a maximum of halftime service. Such continuation in employment shall not extend beyond July 1 coincident with or next following the employee's seventy-second birthday. Any continuation in employment must be in accordance with the following procedure.

- (1) Each proposed appointment to continue employment beyond the retirement date specified in subsection b. shall be initiated by recommendation of the chairman or dean of the department or school concerned after consultation with the faculty member. The recommendation shall present evidence that the faculty member is capable of continuing to perform at a high level, shall set forth in detail the exceptional circumstances that justify the recommendation, and shall indicate the source(s) of funding for the proposed salary. [Amended 6/11/82]
- (2) The recommendation of the chairman for continuation shall be reviewed through the administrative channels prescribed for the review of recommendations for other fixed-term faculty appointments.
- (3) No later than 12 months prior to the retirement date specified in subsection b., and no later than 6 months following the start of any subsequent term of employment, the faculty member shall be notified in writing by his or her chairman if his or her continuation is not to be effected, or by the Chancellor that his or her continuation has been approved. Failure to give notice as herein required is not a basis for continuing employment.
- (4) If the faculty member's department chairman determines that the continuation of employment should not be effected, he or she shall so notify the faculty member in writing. For his or her information, a copy of the notice given the faculty member shall be sent to the chairman's immediate supervisor.

The faculty member may request a review of the chairman's determination by the chairman's immediate supervisor. This request must be in writing and may set forth any exceptional circumstances relating to adverse effects upon the University to be expected should the faculty member not be continued which the faculty member considers relevant to the determination. The supervisor may concur with the chairman's determination, in which case his or her concurrence is a final determination, or he or she may determine that the matter should be reviewed through the normal channels to final review by the Chancellor. In the latter case, he or she shall so notify the faculty member's chairman, who shall thereupon put the matter forward into the regular administrative review channels. Concurrence with the chairman's determination at any level of administrative

review is a final determination, and review thereupon terminates at that level. If there is concurrence at all levels of administrative review that the chairman's determination should be reversed, the faculty member is thereupon continued in employment for the succeeding year in accordance with the regular conditions of year-to-year continued employment.

## 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 9/8/00]

### 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 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 20 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 20 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 20 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 20 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 chairman 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 of 30 calendar days for acceptance. 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 20 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 chairman 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 10 days after receipt of the request, provided that the faculty member shall be given at least 5 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, and with approval of the chairman of the hearing committee, a transcript of the proceeding shall be made and provided to the faculty member. 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 chairman of the hearings committee or the member designated by the chairman 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 and the Board of Governors of The University of North Carolina:

- a. The first two sentences of Section 2.b.(3) shall apply only with respect to those persons whose initial appointment at the rank of assistant professor shall be made after the effective date. With respect to any person who, upon the effective date, is serving under an initial three-year appointment at the rank of assistant professor, the probationary term of such appointment shall continue to be three years, the decision as to whether he or she will be reappointed upon expiration of such term shall be made and communicated in writing to him or her prior to the end of the second year of such term, and the remaining provisions of Section 2.b.(3) shall be applicable.
- b. The provisions of the fifth sentence of the second paragraph of Section 2.b.(4) shall apply only with respect to persons who, upon the effective date, shall not have been serving at the rank of instructor for as long as three years. As to persons who, upon the effective date, shall have been serving at the rank of instructor for three or more years, the provisions of said sentence shall have no application; neither requiring nonreappointment nor insuring reappointment upon expiration of their then-current or subsequent one-year terms, but leaving this decision to be made as under the policies and regulations formerly applying.
- c. The provisions of the last sentence of Section 2.b.(4) shall apply only with respect to cases arising thereunder after the effective date.
- d. All provisions hereof requiring that a department chairman consult with the assembled full professors of the department shall apply only with respect to personnel recommendations initiated by the department chairman after the effective date.
- e. The provisions of the first sentence of Section 2.c.(7) shall apply only with respect to joint appointments made after the effective date.

- f. The provisions of Section 4 shall apply, not only with respect to persons to whom notices of nonreappointment shall be given subsequent to the effective date, but also with respect to persons to whom such notices shall have been given within the period of 60 calendar days next preceding the effective date. Instructors, assistant professors, and associate professors to whom notices of nonreappointment shall have been given within the period of 60 calendar days next preceding the effective date shall have 20 calendar days after the effective date within which to initiate the procedures for review provided in Section 4.
- g. The provisions of Section 5 shall apply with respect to all persons who, upon the effective date, have attained normal retirement age and are in continued terms of employment, as well as to those persons who shall attain normal retirement age after the effective date.

The policies and regulations herein set forth, with the exception of those contained in Section 6, shall not be applied to alter existing incidents of academic tenure\* to the disadvantage of any person who shall have been a member of the faculty immediately prior to the effective date. [\*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."]

## 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 §4(c) rejecting a request for a hearing.
- (4) A decision by the hearings committee under §4(e) terminating a hearing at the conclusion of the faculty member's proof.
- (5) A decision by the hearings committee under §4(f) determining that the faculty member has not established his or her contention.
- (6) A decision by the Chancellor under §4(f) declining to take appropriate action recommended by the hearings committee in connection with a decision favorable to the faculty member.
- (7) A decision by the hearings committee under §6(1)(1) rejecting a request for a hearing.

- (8) A decision by the hearings committee under §6(1)(2) terminating a hearing at the conclusion of the faculty member's proof.
- (9) A decision by the hearings committee under §6(1)(3) determining that the faculty member has not established his or her contention.
- (10) A decision by the Chancellor under §6(1)(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 Chairman of the Board of Trustees. The request must be filed within ten 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 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 within 45 calendar days after receipt of the request for review by the Chairman of the Board. This decision shall be final, except that the faculty member may, within ten days after receiving notice of the decision, file a written petition for review 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 by the Board of Trustees in conducting its review. All such petitions shall be transmitted to The Board of Governors through the President. [Amended 6/20/80; 1/9/87]

## APPENDIX

**ACADEMIC FREEDOM AND TENURE**

## CHAPTER SIX OF THE CODE

## THE UNIVERSITY OF NORTH CAROLINA

As adopted by the Board of Governors on 13 June 1975

**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 spokesmen 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 their 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.**

(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.

(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\* 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. [\*Because of the unique character and mission of the North Carolina School of the Arts, the requirement that the institution adopt tenure policies will be satisfied at that institution 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, the faculty employment policies of that School. Wherever the phrase "tenured faculty" is used in this Chapter, it shall mean, for that school, a faculty member holding a fixed-term contract.]

The tenure policies and regulations of each institution, which shall include the complete text of Chapter Six 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, his potential for future contribution and institutional needs and resources.

(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.

(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 or suspension of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires for reasons based on incompetence, neglect of duty or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty;
- (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 a permanent tenure,

or of a faculty member who has been appointed to a specified term of service before that term expires; and

- (d) retirement for age or physical or mental disability.

(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 contract of a faculty member if he held permanent tenure in that institution on July 1, 1975, and his contract was not contingent upon the continuing availability of sources other than continuing state budget or 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 605B (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 and the Board of Governors. The President periodically shall review and reevaluate these policies and regulations and report his 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 or suspended from employment or diminished in rank only for reasons of incompetence, neglect of duty or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.\* [\*Retirement for reason of disability shall be in accordance with North Carolina statutes and regulations governing retirement for faculty who are members of the state retirement system. A faculty member who is not a member of the state retirement system and who is mentally or physically disabled, but refuses to retire, may be discharged because of that disability

only in accordance with the procedures of this section.] These penalties may be imposed only in accordance with the procedures prescribed in this section. For purposes of these regulations, 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 Chancellor or his delegate shall send the faculty member by registered mail, return receipt requested, a written statement of intention to discharge him. The statement shall include notice of the faculty member's right, upon request, to both written specification of the reasons for the intended discharge and a hearing by an elected standing faculty committee on hearings.

(3) If, within ten days\* after he receives the notice referred to in paragraph (2) above, the faculty member makes no written request for either a specification of reasons or a hearing, he may be discharged without recourse to any institutional grievance or appellate procedure. [\*Wherever it is used in this Chapter, 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.]

(4) If, within ten days after he receives the notice referred to in paragraph (2) above, the faculty member makes written request, by registered mail, return receipt requested, for a specification of reasons, the Chancellor or his delegate shall supply such specification in writing by registered mail, return receipt requested, within ten days after receiving the request. If the faculty member makes no written request for a hearing within ten days after he receives the specification, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure.

(5) If the faculty member makes a timely written request for a hearing, the Chancellor or his delegate shall insure that the hearing is 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. The hearing committee shall accord the faculty member twenty days from the time it receives his written request for a hearing to prepare his 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.

(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 and to examine all documents and other adverse demonstrative evidence. 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 Chancellor, or his delegate or counsel, may participate in the hearing to present evidence, cross-examine witnesses and 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 committee shall make its written recommendations to the Chancellor within ten days after its hearing concludes.

(9) If the Chancellor concurs in a recommendation of the committee that is favorable to the faculty member, his 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 Chairman of the Board. Notice of appeal shall be filed within ten 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 within forty-five days 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 ten days after receiving the Trustees' decision, file a written petition for review with the Board of Governors if he alleges that one or more specified provisions of the Code of The University of North Carolina have been violated. Any such petition to the Board of Governors shall be transmitted through the President, and the Board shall, within forty-five days, grant or deny the petition or take such other action as it deems advisable. If it grants the petition for review, the Board's decision shall be made within forty-five days after it has notified the faculty member that it will review the petition.

(10) When a faculty member has been notified of the institution's intention to discharge him, the Chancellor may suspend him 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 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW.

##### 604 A. Notice of Reappointment or Nonreappointment.

(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. 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 his 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 his 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 his 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.

#### 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) discrimination based upon the faculty member's race, sex, religion or national origin or (c) personal malice.

#### 604 C. Special Faculty Appointments

All appointments of visiting faculty,\* adjunct faculty or other special categories of faculty such as lecturers, artists-in-residence or writers-in-residence shall be for only a specified term of service. [\*Visiting faculty shall include any person who is appointed to a term of less than one academic year.] That term shall be set forth in writing when the appointment is made, and the specification of the length of the appointment shall be deemed to constitute full and timely notice of nonreappointment when that term expires. The provisions of Sections 604 A and 602 (4) shall not apply in these instances.

### 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 605 C(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.

#### 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 twelvemonths' 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 requirement 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 faculty member's contract for any of the reasons specified in Section 605, 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 registered mail, return receipt requested, and the faculty member will be given thirty calendar days after he receives the notice to accept or reject the offer.

#### 605 C. Institutional Procedures.

The institution shall establish regulations governing termination procedure. 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 his 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 he 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 501 C(4).

#### SECTION 606. RETIREMENT OF FACULTY [Amended 5/8/87]

(1) Each member of the faculty who does not have permanent tenure may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees").

(2) Each member of the faculty who has permanent tenure shall retire on July 1 coincident with or next following his or her seventieth birthday, except as provided in subsection (3), below.

(3) A faculty member who has permanent tenure may be continued in employment beyond the retirement date specified in subsection (2) upon recommendation of the Chancellor and approval of the Board of Trustees; provided, that such continuation in employment may be accomplished only through a term appointment or a series of term appointments, with each such term appointment not to exceed one year in duration.

(4) Subsections (2) and (3) of this Section are repealed as of December 31, 1993.

#### SECTION 607. FACULTY GRIEVANCE COMMITTEE FOR CONSTITUENT INSTITUTIONS.

(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 chairmen 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 feels that he has a grievance, he 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 his 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 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 Six, 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.