

TENURE AND PROMOTION POLICIES, REGULATIONS AND PROCEDURES OF FAYETTEVILLE STATE UNIVERSITY

- Authority:** Issued by the Chancellor. Changes or exceptions to this policy may only be made by the Chancellor with approval by the Fayetteville State University Board of Trustees and the President of the University of North Carolina.
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●Policy on Regulations and Guidelines Implementing Chapter VI of The Code [UNC Policy #101.3.1]
●Regulation on Review of Intention to Discharge or Impose Serious Sanction Under Section 603of The Code [UNC Policy #101.3.1.1[R]
●Regulation on Review of Intention to Discharge or Impose Serious Sanction Under Section 603of The Code [UNC Policy #101.3.1.2[R]
●Grievances Filed Pursuant to Section 607 of The Code [UNC Policy #101.3.2]
●Delivery of Notices [UNC Policy #101.3.3]
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SECTION I FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

Fayetteville State University is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. This institution, 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.

Fayetteville State University shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth. Faculty and students of this institution 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 II
ACADEMIC FREEDOM AND
RESPONSIBILITY OF FACULTY**

It is the policy of Fayetteville State University to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of this institution. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as spokesmen for Fayetteville State University. Fayetteville State University will not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

**SECTION III
APPOINTMENT, REAPPOINTMENT, PROMOTION AND TENURE**

A. CATEGORIES OF APPOINTMENTS

1. Appointments with Permanent Tenure

- a. An appointment with permanent tenure is a continuing appointment to a professorial rank that is not affected by changes in such rank and continues until ended by resignation, by retirement, or by approved procedures as provided in Sections IV and VI of this document and Sections 602, 603, and 605 of the *Code* of the University of North Carolina (“the *Code*”).
- b. Only faculty members at the ranks of assistant professor, associate professor, and professor are eligible for permanent tenure. Administrative personnel with professorial rank shall be eligible for permanent tenure in rank as faculty members, but not in their administrative positions.
- c. Although criteria may vary, an administrative officer shall be recommended for permanent tenure by the same procedure prescribed for faculty members; i.e., a recommendation must originate within the faculty member’s academic department and receive consideration by the appropriate dean and the vice-chancellor for academic affairs. Faculty members with permanent tenure who are appointed to administrative positions shall retain tenure in the academic rank.

2. Probationary (Tenure-track) Appointments

A probationary appointment is a trial-period appointment which has as its major purpose the determination of the suitability of the faculty member for an appointment with permanent tenure. The maximum probationary period shall not exceed seven (7) years of continuous full-time service at Fayetteville State University.

3. Tenure Upon Appointment

Tenure status (only for Associate and Full Professors) may be recommended upon appointment. Faculty appointed in this manner shall not be required to serve a period of probationary service.

4. Fixed-Term Appointments

Fixed-term appointments are for a specified term of service and are automatically terminable when they expire. A fixed-term contract shall set forth in writing the length of the appointment and the ending date of the contract period. The contract itself shall be deemed to constitute full and timely notice of non-reappointment.

B. TENURE IN RELATION TO FACULTY RANK

1. Tenure, as herein described, pertains exclusively to the employment of faculty members by appointment to specified faculty ranks. Such appointments may be for stated terms of employment, automatically terminable when they expire (fixed-term appointment); or they may be for probationary terms (tenure-track appointment); or they may be continuous until retirement, death, resignation, termination, or discharge (appointment with **permanent** tenure).
2. Discharge, suspension, or demotion in rank by Fayetteville State University of a faculty member who has permanent tenure or a faculty member without permanent tenure whose fixed term has not expired may be based only upon incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to serve as a member of the faculty. (See Section IV of these policies and Section 603 of the *Code*.) *Termination* refers to separation from employment of a faculty member with permanent tenure or faculty members without permanent tenure whose probationary or fixed-term appointment has not expired for reasons of financial exigency or major curtailment or elimination of teaching, research, or public-service programs.

C. PERMANENT TENURE

1. In accordance with Section 602 (5) of the *Code*, permanent tenure may be conferred only by action of the President of the University of North Carolina or by such other agencies or officers as may be delegated such authority by the Board of Governors. The tenure conferred on a faculty member is held with reference to employment by Fayetteville State University and not to employment by the University of North Carolina.
2. Permanent tenure for faculty members is intended to secure their academic freedom and to help the institution attract and retain faculty members of high quality. While permanent tenure may be withheld on any grounds except those specifically stated to be impermissible under Section V of these policies, the general considerations upon which reappointment, promotion, and permanent tenure are to be recommended include an assessment of at least the following: (1) demonstrated professional competence, (2) potential for future contribution, and (3) institutional needs and resources.

D. PROBATIONARY (TENURE-TRACK) FACULTY

Probationary faculty ranks to which appointments may be made and the incidents of permanent tenure applicable to each are assistant professor and associate professor,

1. Assistant Professor

The rank of assistant professor is appropriate for an individual who is in his or her initial appointment and has completed requisite expectations, or one whose professional credentials warrant such an appointment.

- a. The initial appointment to the rank of assistant professor shall be for a probationary term of two (2) years. At least one hundred and eighty (180) calendar days prior to the expiration of the assistant professor's initial two-year probationary term, the assistant professor shall be notified of one of the following:
 - (i) a decision to recommend that the faculty member be reappointed to a second two-year probationary term; or
 - (ii) a decision not to recommend reappointment to a second two-year probationary term. A decision not to reappoint shall be made in accordance with the procedures outlined in Section III G.4. of this policy.

- b. If the faculty member is reappointed to a second two-year probationary term, at least twelve (12) months prior to the expiration of the assistant professor's term, the assistant professor shall be notified of one of the following:
 - (i) a decision to recommend that the faculty member be reappointed to a three-year probationary term; or
 - (ii) a decision to recommend that the faculty member be reappointed with tenure at the same or higher rank; or
 - (iii) a decision not to recommend reappointment to a three-year probationary term. A decision not to reappoint shall be made in accordance with the procedures outlined in Section III G.4. of this policy.

- c. If the faculty member is reappointed to a three-year probationary term, at least twelve (12) months prior to the expiration of the assistant professor's term, the assistant professor shall be notified of one of the following:
 - (i) a decision to recommend that the faculty member be reappointed with tenure at the rank of associate professor; or
 - (ii) a decision not to recommend reappointment with permanent tenure. A decision not to reappoint shall be made in accordance with the procedures outlined in Section III G.4. of this policy.

- d. If the department has fewer than three (3) tenured faculty members to give a representative view of departmental opinion, the department's chairperson shall select additional tenured faculty members from another academic department within the department's school or college.

- e. Failure to give the required notice of a decision not to reappoint has the same effect as a decision to offer a terminal appointment for one academic year at the same rank. The decisions herein required shall be made as provided in Section III (F) of these policies.

- f. If an untenured assistant professor declines the review for reappointment to an additional probationary term or reappointment with tenure, as required in sections (a), (b) and (c) above, the faculty member shall write to the department chairperson in advance of the review period indicating that s/he will not prepare any materials for review and that s/he understands that employment will end at the conclusion of the current term appointment. Failure to participate in the review, as specified above, will be deemed to constitute the resignation and withdrawal of any request for reappointment at the end of the current probationary term. The department head shall acknowledge the resignation and withdrawal in writing, with a copy to the dean and vice chancellor for academic affairs.

- g. After the faculty member completes his or her initial two-year term, the faculty member may apply for tenure and promotion. Permanent tenure must be finally approved by the President of the University of North Carolina unless the faculty member has previously been granted tenure at Fayetteville State University. If the faculty member has been previously granted tenure, final approval of any request for promotion will be made by the university's Board of Trustees.

2. Associate Professor

The rank of associate professor is appropriate for an individual whose professional credentials warrant such an appointment. With appropriate justification, an initial appointment at the rank of associate professor may be with permanent tenure.

- a. The initial appointment to the rank of associate professor shall be for a probationary term of two (2) years. At least one hundred and eighty (180) calendar days prior to the expiration of the associate professor's initial two-year probationary term, the associate professor shall be notified of one of the following:
 - (i) a decision to recommend that the faculty member be reappointed to a three-year probationary term or
 - (ii) a decision to recommend that the faculty member be reappointed with permanent tenure at the **same or higher rank** or
 - (iii) a decision not to recommend reappointment to a three-year probationary term. A decision not to reappoint shall be made in accordance with the procedures outlined in Section III.G.4. of this policy.
- b. If the faculty member is reappointed to a three-year probationary term, at least twelve (12) months prior to the expiration of the associate professor's term, the associate professor shall be notified of one of the following:
 - (i) a decision to recommend that the faculty member be reappointed with tenure at **same or higher rank** or
 - (ii) a decision not to recommend reappointment with permanent tenure. A decision not to reappoint shall be made in accordance with the procedures outlined in Section III.G.4. of this policy.
- c. If the department has fewer than three tenured faculty members to give a representative view of departmental opinion, the chairperson shall select additional tenured faculty members from another academic department within the department's school or college to participate in the development of a recommendation.
- d. Failure to give the required notice of a decision not to reappoint has the same effect as a decision to offer a terminal appointment for one academic year at the same rank. The decisions herein required shall be made as provided in Section III.F. of these policies.
- e. After the faculty member completes his or her initial two-year term, the faculty member may apply for tenure or promotion. A promotion at any time from the rank of associate professor to that of professor confers permanent tenure. Tenure must be finally approved by the President of The University of North Carolina unless the faculty member has previously been granted tenure. In such a case, final approval of a promotion will be made by the university's Board of Trustees.

E. TENURE UPON APPOINTMENT

Faculty members whose professional credentials warrant that they be recommended for tenure, upon appointment, are not required to serve a period of probationary service prior to being recommended for tenure. Such individuals may be appointed to professorial ranks of associate professor or professor.

F. SPECIALTY (FIXED-TERM) FACULTY APPOINTMENTS

1. General Provision

Faculty members who are appointed as visiting faculty members, adjunct faculty, lecturers, artists-in-residence, writers-in-residence or other special categories are regarded as “special faculty members.” Special faculty members may be paid or unpaid.

a. Paid Specialty Faculty Appointments

Special faculty members who are paid shall be appointed for a specified term of service, as set out in writing in a fixed term contract. The term of appointment of any paid special faculty member concludes at the end of the specified period set forth in the fixed-term contract. Each fixed-term contract is considered an initial appointment and not a reappointment, except as noted below for instructors. Appointments may be for a fixed term of from one to three years. The total number of years in direct succession may not exceed six total years. Fayetteville State University is not obligated to give any notice before a current fixed-term contract expires for the fixed term contract constitutes full and timely notice that a new term will not be granted when that term expires. Fixed-term appointments do not lead to the consideration of the individual for the conferral of permanent tenure or for promotion.

b. Unpaid Specialty Faculty Appointments

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

2. Classifications of Specialty (Fixed-Term) Appointments

Fixed-term appointments may be made to the following special faculty classifications:

a. Adjunct, Lecturer, Part-time, Artist in Residence, Writer in Residence

An appointment, using any of the foregoing descriptions or title designations, is appropriate for one who has qualifications for teaching, research, academic administration, or public service but for whom neither the professorial ranks nor the instructor rank is appropriate.

b. Instructor

The instructor rank is reserved for assistant-professor candidates who are completing terminal-degree requirements. An instructor shall be appointed for a period of one year and may be reappointed successively in the same rank for a maximum of two additional one-year terms. Upon the recommendation of the department chairperson, an instructor’s rank may be changed to assistant professor

at the beginning of the academic year following the completion of the terminal-degree requirements. If an instructor is appointed to the rank of assistant professor, the time served as instructor shall not be counted as part of the probationary service toward the attainment of permanent tenure.

c. Visiting Faculty

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." The rank designation shall be appropriate to the individual's status in his or her regular employment.

3. Grievances

- a. During the term of their employment, specialty faculty members are entitled to seek recourse under Section VIII of this Policy (relating to faculty grievances).
- b. Specialty faculty members, whether paid or unpaid, are not covered by Section V of this *Policy* or Section 604 of *The Code*, and these sections do not accord such faculty members rights to additional review of a decision by the university not to grant a new appointment at the end of their specified fixed term.

G. GENERAL PROVISIONS

1. Confidentiality

Any deliberations by a department or college review committee concerning an appointment, reappointment, promotion, or the conferral of permanent tenure for a particular faculty member shall be held in closed session, with only those present whom the committee deems necessary to its deliberations.

All documents submitted or created in connection with the process of review for appointment, reappointment, promotion, or the conferral of permanent tenure, and the information contained therein, as well as information derived from any discussions that are part of the formal review, are considered confidential personnel information. All persons participating in the process of review for initial appointment, reappointment, promotion, or the conferral of permanent tenure shall treat such information as confidential. Such confidential records and information shall not be disclosed to or discussed with any person except: (1) review committee members; (2) those persons required or permitted to be consulted in accord with the requirements of university policies; or (4) those persons permitted access to such documents by law. Violation of this section may expose any faculty member, including an administrator, to the imposition of serious sanctions.

2. Terms and Conditions of Appointment

- a. The general terms and conditions of each appointment and each reappointment to the faculty shall be conveyed in writing. A copy of the terms signed by the chancellor and faculty member shall be delivered to the faculty member, and the VCAA shall retain a copy. Any other terms and conditions shall be either set out in the document of appointment or incorporated therein by clear reference to specified documents that shall be readily available to the faculty member. Each document of appointment shall state that the appointment is subject to these tenure policies and regulations and the *Code*.

- b. Any special terms and conditions shall be clearly stated in the written appointment. Except as herein provided, no special terms or conditions may be included that vary with the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions in documents of appointment shall be with the department chairperson who recommends the appointment.

3. **Review and Approval of Tenure, Promotions, and Reappointments**

Each promotion in rank and each reappointment of an assistant professor, associate professor, or professor, whether or not the reappointment recommends the conferral of permanent tenure, shall be initiated by recommendation of the departmental tenured faculty.

a. **Departmental Recommendations**

The department's chairperson shall cause to be assembled the Departmental Tenured Faculty Committee ("DTFC"). The DTFC shall be composed of all tenured faculty in the department who shall review requests for reappointment, promotion, and/or permanent tenure. If the department has fewer than three (3) tenured faculty members to give a representative view of departmental opinion, the chairperson shall select additional tenured faculty members from another academic department within the department's school or college to participate in the development of a recommendation.

- (i) The DTFC shall select a committee coordinator who shall conduct meetings and be responsible for communicating recommendations to the department's chairperson.
- (ii) The chairperson shall forward the DTFC's recommendation together with her or his recommendation to the dean.

b. **College/School Recommendations**

Annually, the chairperson of the faculty senate shall ensure that an election is held for the selection of the members of the College/School Tenured Faculty Committee ("CTFC"). The CTFC shall be composed of one (1) tenured faculty member from each department and one (1) tenured associate professor and one (1) tenured professor within the college/school. The CTFC shall review requests for reappointment, promotion, or permanent tenure. If there are no tenured faculty members in a department, then the department will have no representation on the CTFC. The CTFC shall select a committee coordinator who shall conduct the meetings and be responsible for communicating the CTFC's recommendations to the dean. The members of the committee shall serve three-year terms and may not serve more than two (2) consecutive terms. Members shall serve overlapping terms. All terms shall commence on August 1. For the first election, one-third (1/3) of the committee members shall be elected to a one-year term; one-third (1/3) to a two year term; and one-third (1/3) to a three-year term.

- (i) Upon receipt of the recommendations from the chairperson, the dean shall cause to be assembled the CTFC who shall review requests for reappointment, promotion, or permanent tenure. Upon the completion of its review, the CTFC shall forward its recommendations to the dean.

- (ii) Once the dean has received the CTFC's recommendations, the dean shall forward all recommendations received, together with her or his recommendation to the Vice Chancellor for Academic Affairs ("VCAA").

c. VCAA/Chancellor Recommendations

The VCAA shall attach her or his recommendation and then forward all recommendations to the Chancellor. If the Chancellor concurs in a recommendation that will confer permanent tenure, s/he shall consult with the university's Board of Trustees ("Trustees") and, unless dissuaded, forward the recommendation to the President of the University of North Carolina for final approval. All other favorable recommendations by the Chancellor in regard to reappointments and promotions shall be forwarded by the Chancellor to the Trustees for final approval unless the Trustees delegate such authority to the Chancellor.

d. Communication of a Recommendation/Final Decision

Each recommendation and the final decision shall be communicated for information through the channels prescribed for review. The communication shall be in the form of a simple, unelaborated written statement. A copy of the communication shall be provided to the affected faculty member.

4. Decision Not to Reappoint Upon Expiration of Probationary Terms

- a. A decision not to reappoint upon the expiration of a probationary term, except as provided in paragraph d. below, shall not be made until the faculty member has received two (2) negative decisions from two of the following five groups or individuals: DTFC, department chair, CTFC, dean and VCAA.
- b. The process shall begin with the review by the DTFC, followed by reviews by the department chairperson, CTFC, dean, and VCAA. When there have been two (2) negative decisions, the review process shall cease and the decision not to reappoint shall be final except as it may be later reviewed in accordance with the provisions of Section V. The administrator or committee coordinator who made the second negative decision shall notify the faculty member of the decision not to reappoint by a simple unelaborated statement. Such statement shall be provided to the faculty member within five (5) days¹ of the administrator's or committee coordinator's decision. Each decision not to reappoint shall be communicated for information through the same administrative channels prescribed for review had the decision been to reappoint.
- d. If the initial decision not to reappoint is made by the chancellor, the faculty member who is not to be reappointed may seek review of that decision in accordance with the procedure set out in Section 604D. of The *Code*.

5. Continued Availability of Special Funding

- a. 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-

¹ Wherever it is used in this document, 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.

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 following exceptions to the foregoing contingency requirements may be made:

- (i) 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 was attached to the tenure; or
- (ii) That such a contingency shall not be attached to the faculty member's contract if the faculty member held permanent tenure in the institution on July 1, 1975 and her or his contract was not then contingent upon the continuing availability of sources other than continuing state-budget or permanent-trust funds.

b. If a faculty member's appointment is terminated because of the non-availability of these funds, every reasonable effort will be made to give notice as set forth in Section VI.B.2.a. This notice shall include the pertinent data upon which the termination is based.

6. Provision for Less Than Full-Time Employment

- a. 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 a written amendment during the term of an appointment. 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.
- b. These provisions do not apply to informal temporary adjustments of the regularly assigned duties of faculty members by the department chairperson who is responsible for their direct supervision or to the university's granting of extended leaves of absence with or without compensation.

7. **Resignation.** A faculty member shall give prompt written notice of her or his resignation with its effective date to the department chairperson.

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

- A. A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged from employment, suspended without pay, or demoted in rank for reasons of:
 - 1. incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time;

2. neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or
3. misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either (a) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (b) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

These sanctions may be imposed only in accordance with the procedures prescribed in this section. For purposes of 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 nonreappointments (Section V) or terminations of employment (Section VI).

B. PROCEDURES FOR THE IMPOSITION OF DISCHARGE OR SERIOUS SANCTIONS

1. The Provost and Vice Chancellor for Academic Affairs shall send the faculty member a written statement of intention to discharge the faculty member or impose a serious sanction together with a written specification of the reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by the faculty Hearing and Reconsideration Committee (H&R Committee). When the faculty member has been notified of the University's intention to discharge the faculty member, the Chancellor shall have the sole discretion to either reassign the faculty member to other duties or to place the faculty member on administrative leave with pay. Placement of a faculty member on administrative leave with pay shall be in exceptional circumstances, such as to avoid disruption in the work place or protect the safety of members of the campus community
2. If, within fourteen (14) calendar days after receiving the notice and written specifications referred to in paragraph (1) above, the faculty member makes no written request for a hearing, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure.
3. If the faculty member makes a timely written request for a hearing, the Chancellor shall ensure that the hearing is accorded before the H&R Committee. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The H&R Committee shall accord the faculty member thirty (30) calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The H&R Committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The H&R Committee should endeavor to complete the hearing within ninety (90) calendar days, except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the H&R Committee cannot be assembled.²

²To meet this deadline, the H & R Committee is encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may require two or more sessions.

4. The hearing shall be closed to the public unless the faculty member and the H & R Committee agree that it may be open. The faculty member shall have the right to legal 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.
5. The Provost and Vice Chancellor for Academic Affairs, or designee and/or legal counsel, may participate in the hearing to present evidence, cross-examine witnesses, examine all documents and other evidence, and to make arguments.
6. The H&R Committee shall make written recommendations to the Chancellor within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. In reaching its written recommendations to the Chancellor, the H&R Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the H & R Committee, in its discretion, may allow. The university has the burden of proof. In evaluating the evidence, the H&R Committee shall use the standard of "clear and convincing" evidence in determining whether the university has met its burden of showing that permissible grounds for discharge or serious sanctions exist and are the basis for the recommended action.
7. Following receipt of the H & R Committee's written recommendations, the decision as to whether to discharge or impose serious sanction on the faculty member is the Chancellor's. If the Chancellor decides to discharge the faculty member, the University's obligation to continue paying the faculty member's salary shall cease upon issuance of the Chancellor's decision. If the Chancellor decides to impose one or more serious sanctions upon the faculty member, the University may impose such sanctions upon issuance of the Chancellor's decision.

If the Chancellor concurs in a recommendation of the H & R Committee that is favorable to the faculty member, the Chancellor's decision shall be final, with no appeal available.

If the Chancellor either declines to accept the H & R Committee's recommendation that is favorable to the faculty member or concurs in the H & R Committee's recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the university's Board of Trustees (Trustees).

C. APPEALS OF DECISION IMPOSING DISCHARGE OR SERIOUS SANCTIONS

If the faculty member elects to appeal the Chancellor's decision to the Trustees, this appeal shall be transmitted through the Chancellor and be addressed to the Trustees' Chair. Notice of appeal shall be filed with the Trustees by certified mail, return receipt requested, or by another means that provides proof of delivery, within fourteen (14) calendar days after the faculty member receives the Chancellor's decision.

An appeal must contain a brief statement that alleges one or more of the following as the basis for the appeal:

1. that the process for making the decision was materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered;
2. that the result reached by the Chancellor was clearly erroneous; or
3. that the decision was contrary to controlling law or policy.

The appeal to the Trustees shall be decided by the full Board of Trustees. However, the Trustees may delegate the duty of conducting an initial review to a standing or ad hoc committee of at least three (3) members. The Trustees, or its committee, shall consider the appeal on the record of the proceedings, and may, in its discretion, consider written or oral arguments, subject to any policies, regulations or guidelines as may be adopted by the Board of Governors, president, or Trustees. The Trustees' decision shall be made as soon as reasonably possible after the Chancellor has received the faculty member's request for an appeal to the Trustees. This decision shall be the end of the University's appeals process.

SECTION V

NON-REAPPOINTMENT AND REQUIREMENTS OF NOTICE FOR OF FACULTY MEMBERS WITH PROBATIONARY (TENURE-TRACK) APPOINTMENTS

A. NOTICE OF NON-REAPPOINTMENT

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:

1. During the first year of service at the University, the faculty member shall be given not less than ninety (90) calendar days' notice before the employment contract expires; and
2. During the second year of continuous service at the institution, the faculty member shall be given not less than one-hundred and eighty (180) calendar days' notice before the employment contract expires; and
3. After two or more years of continuous service at the institution, the faculty member shall be given not less than twelve (12) months' notice before the employment contract expires.

Notice of non-reappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of non-reappointment will oblige the Chancellor thereafter to offer a terminal appointment of one academic year.

B. IMPERMISSIBLE GROUNDS FOR NON-REAPPOINTMENT

The decision whether to reappoint a faculty member when a probationary (tenure-track) term appointment expires may be based on any factor considered relevant to the total institutional interests, but it must consider the faculty member's demonstrated professional competence, potential for future contributions, and institutional needs and resources. These considerations may form, in whole or in part, the basis of the ultimate decision, except that a decision not to reappoint may not be based upon any of the following:

1. the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution;
2. discrimination based upon the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by the Trustees; or
3. personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual.

C. INTERVIEW WITH ADMINISTRATOR OR COMMITTEE COORDINATOR

A probationary (tenure-track) faculty member who is notified of a non-reappointment decision, pursuant to section III.G.4. shall be granted, upon request, an interview to discuss the decision with the administrator or committee coordinator who made the initial decision not to reappoint. The faculty member shall request the interview, within fourteen (14) calendar days of receiving a written notice of non-reappointment, with either the administrator or committee coordinator who made the initial negative decision. The interview shall be held within five (5) days after receipt of the request, if possible. Within five (5) days after the interview, the administrator or committee coordinator shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

D. SUBSEQUENT INTERVIEW

If the initial decision not to reappoint remains the same, the faculty member shall also, upon request, be granted a subsequent interview to discuss the decision with the administrator or committee coordinator who made the second negative decision not to reappoint. The faculty member shall request the interview within fourteen (14) calendar days of receiving the decision of the administrator or committee coordinator referenced in Paragraph V.B, and the interview shall be held within five (5) days after receipt of the request, if possible. Within five (5) days after the interview, the administrator or committee coordinator shall give the faculty member a simple, unelaborated, written statement as to whether the original decision will remain in effect.

E. NO REQUEST FOR INTERVIEW MADE BY THE FACULTY MEMBER

If, within fourteen (14) calendar days after the faculty member receives the notice of non-reappointment the faculty member makes no written request for an interview, the faculty member's employment shall be terminated at the date specified in the notice and without recourse to any institutional grievance or appellate procedure.

F. SCOPE OF REVIEW BY HEARING AND RECONSIDERATION COMMITTEE

If, after holding the interviews described in paragraphs V.C. and V.D. above, the original decision not to reappoint remains in effect, the faculty member has the right to have the case considered for review by the Hearing and Reconsideration Committee (H & R Committee). In order for the faculty member's case to be considered by the H & R Committee, the faculty member must contend that the decision not to reappoint was based upon one of the impermissible grounds listed in paragraph A above. This review shall be limited solely to determining whether the decision not to reappoint was based upon (1) any of the aforementioned impermissible grounds, and (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint

If a hearing is granted, the H & R Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The faculty member shall have the burden of proof. In evaluating the evidence, the H & R Committee shall use the standard of preponderance of the evidence (which is the same as the greater weight of the evidence.)

G. REQUEST FOR REVIEW BY HEARING AND RECONSIDERATION COMMITTEE

The request for review by a faculty member to the H & R Committee shall be written and addressed to the chairman of the committee. The request shall be made within fourteen (14) calendar days of receiving the administrator's or committee coordinator's decision referenced in paragraph V.D. above. The request shall specify the grounds upon which the faculty member contends that the

decision was impermissibly based. Review of the faculty members' request for a hearing shall be conducted in accordance with the process outlined in the document entitled *Procedures for the Conduct of Hearings in Non-Reappointment Cases*.

H. PROCEDURES FOLLOWING THE CONCLUSION OF THE HEARING

1. Committee's Decision

The H&R Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the H&R Committee, in its discretion, may allow. In evaluating the evidence, the H&R Committee shall use the standard of preponderance of the evidence (which is the same as the greater weight of the evidence).

The H&R Committee shall advise the chancellor, in writing, whether or not the faculty member has met the burden of proof. In advising the Chancellor, the H&R Committee may submit a report to the Chancellor which includes not only its findings, but also any recommendation(s).

2. Chancellor's Decision

The Chancellor must base his or her decision on a thorough review of (a) the record evidence from the hearing and (b) if provided, the report of the H & R Committee. While the Chancellor should give appropriate deference to the advice of the H & R Committee, the final campus-based decision is the Chancellor's. If the Chancellor concurs in a recommendation of the H & R Committee that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor is considering taking an action that is inconsistent with the recommendation of the H & R Committee, the Chancellor should communicate or consult with the H & R Committee, either in person or in writing, regarding his or her concerns before making a decision. The Chancellor shall notify the faculty member and relevant administrators of the Chancellor's decision in writing.

3. Appeal to the Trustees

If the Chancellor concurs in a recommendation of the H & R Committee that is favorable to the faculty member, the Chancellor's decision shall be final with no appeal available.

If the Chancellor either declines to accept the H & R Committee's recommendation that is favorable to the faculty member or concurs in an H & R Committee's recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision by filing a written notice of appeal with the Trustees. This appeal shall be transmitted through the Chancellor and be addressed to the Trustees' chair. The notice of appeal must be submitted in accordance with the *Board of Trustees Appellate Policy and Procedures*.

SECTION VI TERMINATION OF FACULTY EMPLOYMENT

A. REASONS JUSTIFYING TERMINATION AND CONSULTATION REQUIRED

1. Reasons for Terminating Employment

The employment of a faculty member with permanent tenure or of a faculty member appointed to a fixed or probationary term may be terminated by Fayetteville State

University 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 VI.A(2). This determination is subject to concurrence by the president and approval by the UNC Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the institution's contractual obligation to a faculty member cannot be met, the employment of the faculty member may be terminated in accordance with the institutional procedures set out in subsection B below.

2. Consultation with Faculty and Administrative Officers

When it appears that the institution will experience an institutional financial exigency or when it is considering a major curtailment in or elimination of a teaching, research, or public service program, the chancellor or the chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

B. TERMINATION PROCEDURE

1. Considerations in Determining Whose Employment is to be Terminated

In determining which faculty member's employment is to be terminated for the reasons set forth in subsection A (1), consideration shall be given 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.

2. Timely Notice of Termination

a. Curtailment or Elimination of a Program. 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:

- (i) One who has permanent tenure shall be given not less than twelve (12) months' notice; and
- (ii) One who was appointed to a fixed term and does not have permanent tenure shall be given notice in accordance with the requirements specified in Section 604 A of Chapter Six of *The Code* of the University of North Carolina.

b. Financial Exigency. When a faculty member's employment is to be terminated because of financial exigency, the institution shall 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 VI.B.2.a.

3. Type of Notice to be Given

The university's chief academic officer shall send the faculty member whose employment is to be terminated a written statement of this fact by a method of delivery that requires a signature for delivery. This notice shall include a statement of the conditions requiring termination of the faculty member's 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. This notice shall also include a statement of the faculty member's right, upon request, to a reconsideration of the decision by the Hearing and Reconsideration Committee if the faculty member alleges that the decision to terminate the faculty member was arbitrary or capricious. This reconsideration shall be limited solely to determining whether the decision to terminate was arbitrary or capricious.

4. Termination If Reconsideration Not Requested

If, within ten (10) days after the faculty member receives the termination notice required by Section VI.B.3., the faculty member makes no written request for a reconsideration hearing, the faculty member's employment shall be terminated at the date specified in the notice given pursuant to Section VI.B.3. and without recourse to any institutional grievance or appellate procedure.

5. Request for Reconsideration Hearing.

Within ten (10) days after receiving the notice required by Section VI.B.3., the faculty member may request by a method of delivery that requires a signature for delivery, a reconsideration of the decision to terminate his or her employment if the faculty member alleges that the decision was arbitrary or capricious. The request for review by the Hearing and Reconsideration Committee shall be written and addressed to the chairman of the committee. The request shall specify the grounds upon which the faculty member contends that the decision to terminate the faculty member's employment was arbitrary or capricious and shall include a short, plain statement of facts that the faculty member believes support the contention. Submission of such a request shall constitute on the part of the faculty member: (1) a representation that the faculty member can prove the contention, and (2) an agreement that the institution may offer in rebuttal of the faculty member's contention whatever relevant data it may have. .

C. PROCEDURES FOLLOWING THE CONCLUSION OF THE HEARING

1. Committee's Decision

If the Hearing and Reconsideration Committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify the faculty member and the university's chief academic officer. Such a determination confirms the decision to terminate the faculty member's employment. If the Hearing and Reconsideration Committee determines that the faculty member's contention has been satisfactorily established, it shall submit a report to the chancellor containing the committee's findings and recommendation and what it considers to be appropriate action by the chancellor to resolve the matter.

2. The Chancellor's Decision

The chancellor must base his or her decision on a thorough review of (i) the record evidence from the hearing and (ii) the report of the Hearing and Reconsideration Committee. While the chancellor should give appropriate deference to the advice of the faculty committee,

the final campus-based decision is the chancellor's. If the chancellor is considering taking an action that is inconsistent with the recommendation of the Hearing and Reconsideration Committee, the chancellor should communicate or consult with the Hearing and Reconsideration Committee, either in person or in writing, regarding his or her concerns before making a decision. The chancellor shall notify the faculty member and relevant administrators of the chancellor's decision in writing.

3. Notice of Appeal Rights

A faculty member who has adequate grounds for appeal may appeal the chancellor's decision to terminate the faculty member to the Board of Trustees. The chancellor's notice to the faculty member of the decision concerning the faculty member's case shall inform the faculty member: (a) of the time limit within which the faculty member may file a notice of appeal with the chancellor requesting review by the Board of Trustees, (b) that a simple written notice of appeal with a brief statement of its basis is all that is required within the fourteen (14) calendar day period and, (c) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. The notice of the decision shall be conveyed to the faculty member by a method which produces adequate evidence of delivery.

4. Appeal to the Board of Trustees

A faculty member who wishes to appeal the chancellor's decision must file written notice of appeal with the Board of Trustees, by submitting such notice to the chancellor, by a method of mail or delivery that requires a signature for delivery, within fourteen (14) calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement of the basis for the appeal. If the Board agrees to consider the appeal, it will do so on a schedule established by the chancellor, subject to any instructions received from the committee or sub-committee of the Board which has jurisdiction of the subject matter of the appeal. If the faculty member fails to comply with the schedule established for perfecting and processing the appeal, the Board in its discretion may extend the period for complying with the schedule or it may dismiss the appeal. The Board of Trustees will issue its decision as expeditiously as is practical.

D. ASSISTANCE FOR FACULTY MEMBERS AND RIGHTS TO NEW POSITIONS

1. The institution, when requested in writing by a faculty member whose employment has been terminated, shall give the faculty member reasonable assistance in finding other employment.
2. For two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section VI.A., the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by a method of mail or delivery that requires a signature for delivery, to the address last given by the faculty member, and the faculty member shall have thirty (30) calendar days, calculated from the date of attempted delivery of the notice, to accept the offer.

SECTION VII RETIREMENT OF FACULTY

Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees"). Tenure ceases on the effective date of retirement or resignation.

Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes. Tenure ceases on the effective date of retirement or resignation.

SECTION VIII FACULTY GRIEVANCES

- A. Section 607 of the Code of the University of North Carolina provides a process for faculty members to seek redress concerning employment-related grievances. The function of the grievance procedure is to attempt to reach a consensual resolution of the dispute and, if that fails, to determine whether the contested decision was materially flawed, in violation of applicable policies, standards or procedures. The grievance process is not intended to second-guess the professional judgment of officers and colleagues responsible for making administrative decisions.
- B. Grievances shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.
- C. The faculty grievance process is a process available to current members of the faculty of the university. A faculty member whose employment ends during the pendency of a grievance proceeding is not entitled to continue to pursue the grievance. If the employment of a faculty member is terminated after the grievance is filed, the chancellor may, however, in the chancellor's discretion, determine that it is in the best interest of the institution to continue the grievance process.
- D. As a prerequisite to accessing the formal grievance process outlined in Section 607 of the *Code*, a faculty member must utilize the mediation process delineated in the university's *Mediation Policy for Faculty and EPA Non-Faculty Employees*. Following the termination of mediation for any reason other than a settlement, the faculty member will have twenty (20) days to petition the Grievance Committee for redress.
- E. In petitioning the Grievance Committee for redress, the faculty member shall set forth in writing the nature of the grievance and against whom the grievance is directed. It shall contain any information that the faculty member considers pertinent to the case. The Grievance 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. If, after reviewing the petition, the Grievance Committee determines that a hearing should not be granted, it shall so advise the faculty member, the dean, department chair, or other respondent administrator and the chancellor. If a decision is made to grant a hearing, the process outlined for conducting a hearing in the *Procedures for the Conduct of Hearings in Faculty Grievance Cases* shall be followed.
- F. In order to prevail in the grievance process, a faculty member must establish that the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings

within the academic community about the rights, privileges and responsibilities attending university employment.

G. PROCEDURES FOLLOWING THE CONCLUSION OF THE HEARING

1. Grievance Committee's Decision

If, after hearing the matter, the Grievance Committee determines that no adjustment in favor of the faculty member is appropriate, it shall so advise the faculty member, the dean, department chair, or other respondent administrator and the chancellor. If, after hearing the matter, the Grievance Committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the Grievance Committee shall so advise the faculty member, department chair, dean or other respondent administrator. If the relevant administrator does not make the recommended adjustment or a different adjustment satisfactory to the faculty member, within a reasonable period of time, the Grievance Committee shall advise the chancellor of its recommendation that an adjustment is appropriate.

2. The Chancellor's Decision

The chancellor shall base his or her decision on the recommendation of the Grievance Committee and the record from the faculty grievance hearing. The chancellor may, in his or her discretion, consult with the Grievance Committee before making a decision. The decision of the chancellor is the final administrative decision. The chancellor shall notify the faculty member and the respondent administrator in writing of the chancellor's decision. The notification shall include a notice of appeal rights, if any, and, if the decision is appealable, it shall contain the information specified in paragraph VII. F. 3. below.

3. Notice of Appeal Rights

A faculty member who has adequate grounds for appeal may appeal the chancellor's decision to the Board of Trustees. The chancellor's notice to the faculty member of the decision concerning the faculty member's case shall inform the faculty member: (a) of the time limit within which the faculty member may file a notice of appeal with the chancellor requesting review by the Board of Trustees, (b) that a simple written notice of appeal with a brief statement of its basis is all that is required within the fourteen (14) calendar day period and, (c) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. The notice of the decision shall be conveyed to the faculty member by a method of mail or delivery that requires a signature for delivery.

4. Grievance Decisions Which May Be Appealed

- a. If the Grievance Committee's decision did not advise that an adjustment in favor of the grievant was appropriate, then the decision of the chancellor is final and may not be appealed.
- c. If neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the Grievance Committee in favor of the aggrieved faculty member, then the faculty member may appeal to the university's Board of Trustees. The decision of the Board of Trustees is final.

5. Appeal to the Board of Trustees

A faculty member who wishes to appeal the chancellor's disposition of his or her grievance must file written notice of appeal with the Board of Trustees, by submitting such notice to the chancellor, by a method of mail or delivery that requires a signature for delivery, within fourteen (14) calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement of the basis for the appeal. If the Board agrees to consider the appeal, it will do so on a schedule established by the chancellor, subject to any instructions received from the committee or sub-committee of the Board which has jurisdiction of the subject matter of the appeal. If the faculty member fails to comply with the schedule established for perfecting and processing the appeal, the Board in its discretion may extend the period for complying with the schedule or it may dismiss the appeal. The Board of Trustees will issue its decision as expeditiously as is practical.

**SECTION IX
EFFECTIVE DATE**

- A.** Section IIID of these policies and regulations are applicable only to faculty appointed to probationary terms on or after July 1, 2007. All other sections of these policies and regulations supersede all other institutional documents governing the matters covered herein.

- B.** The Chancellor shall review these policies and regulations periodically, but at least every five (5) years, and shall report to the president whether or not amendments or revisions are appropriate. The chancellor shall involve the faculty in this review.