

## Chapter IV: Faculty Employment

### A. Policies of Academic Freedom & Tenure

[Updated 06/07/2011]

Approved by the Board of Governors of The University of North Carolina - May 14, 1976,  
effective June 11, 1976;

revisions approved July 20, 1979,	effective July 20, 1979;
revisions approved May 10, 1982,	effective July 1, 1982;
revisions approved November 11, 1994,	effective December 9, 1995;
revisions approved January 2001,	effective July 1, 2001;
revisions approved August 2007,	effective August 2007.

This document sets forth the official policy of The University of North Carolina at Wilmington regarding academic freedom, rights, and responsibilities, promotion, and tenure of its faculty. Fundamental in this policy are the concepts of academic freedom, rights, and responsibilities as stated in as stated in [Chapter VI of the Code](#) of The University of North Carolina. Equally fundamental is an explicit policy of promotion and tenure.

#### Article I: Freedom and Responsibility in the University Community

[Updated 06/07/2011]

- a. The University of North Carolina Wilmington 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.
- b. The University of North Carolina Wilmington shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.
- c. 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.

#### Article II: Academic Freedom and Responsibility of Faculty

[Updated 06/07/2011]

- a. It is the policy of The University of North Carolina Wilmington to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staff 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 spokespersons for The University of North Carolina Wilmington.
- b. The University of North Carolina Wilmington will neither penalize nor 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.

### Article III: Academic Tenure

[Updated 08/15/2011]

- a. The University of North Carolina Wilmington is responsible for maintaining high standards of teaching, ~~and~~ creative scholarly activities, and service; therefore, it is essential that its faculty be composed of individuals with superior professional qualifications. The educational and scholarly quality of the institution depends primarily on its faculty. Therefore, a sound policy for defining, recognizing, and impartially rewarding excellence is necessary in furthering the purposes of the institution.
- b. Academic tenure as a means to these ends is fundamental. Not only does it guarantee the freedoms espoused in Sections I and II, but it also provides a degree of economic security to make the institution attractive to persons of high ability. A sound policy of academic tenure is indispensable to the success of the institution in fulfilling its obligations to its students and to society.
- c. The tenure policies and regulations herein contained set forth the considerations upon which appointment, reappointment, promotion, and permanent tenure are to be recommended. These considerations shall include an assessment of at least the following: the faculty member's demonstrated professional competence, continued academic and professional growth, potential for future contribution, teaching effectiveness, ~~research~~ scholarly activity, outreach (when applicable) service, and the institution's needs and resources.
- d. Permanent tenure may be conferred only by action of the President and the Board of Governors of The University of North Carolina, or by such other agencies or officers as may be delegated such authority by the Board of Governors.
- e. In all instances, the tenure conferred on a faculty member is held with reference to employment by The University of North Carolina Wilmington rather than The University of North Carolina.

## Article IV: Policies on Appointment, Promotion, and Tenure

[Updated 06/07/2011]

Sections that Follow:

- a. Eligibility for Permanent Tenure
- b. Probationary Service
  - i. Definition and Length of Probationary Service
  - ii. Length and Number of Appointments in the Probationary Period
  - iii. Timely Notice
  - iv. Notice of Non-reappointment
- c. Procedures for Evaluation and Documentation
- d. Continuing Evaluation of Faculty

### a. Eligibility for Permanent Tenure

All faculty and staff members who hold the rank of assistant professor, associate professor, or professor shall be eligible for permanent tenure. Nevertheless, [Section 602\(7\)](#) of The Code of The University of North Carolina applies.

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 a faculty member's services, whether for a specified term or for permanent tenure, shall be contingent upon the continuing availability of such funds. This contingency shall not be included in a faculty member's contract in either of the following situations:

- i. 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 permanent tenure.
- ii. If the faculty member held tenure in the institution on 1 July 1975 and his/her contract was not then contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.

### b. Probationary Service

- i. Definition and Length of Probationary Service

Probationary service is that period of employment from the commencement of a faculty member's initial contract with The University of North Carolina Wilmington to the time that he/she is notified of either reappointment with permanent tenure or non-reappointment. However, years served in a special faculty appointment ([Sec. 610 of the Code](#)) shall not be counted as years of

probationary service. Moreover, leaves of absence shall not count as probationary service.

1. ~~Typically F~~faculty hired as assistant professors on the tenure track may not be granted permanent tenure without completing at least ~~2-5~~ years of probationary service ~~to build a body of work or and a record commensurate with advancement in rank. Exceptions are permissible based on previous relevant experience or exceptionally outstanding performance. Regardless, faculty hired as assistant professors on the tenure track may not be granted permanent tenure without completing at least 2 years of tenure-track service at UNCW.~~

**Comment [A1]:** M01. 2 →5 years of probationary service. Edit rejected by a vote of 28-26.

Faculty may be hired as associate professors if these individuals have a distinguished record of teaching, scholarship/research/artistic activities, and service ~~at their previous institution/s~~. Faculty hired as associate professors without tenure are required to serve at least two years of probationary service ~~to be eligible before requesting for~~ permanent tenure or promotion All full professors hired through an external search are granted permanent tenure at the time of the hire.

2. ~~In all cases, the maximum number of years of probationary service shall be nine (9). This provision takes precedence over all subsequent references to the contract years in which decisions regarding permanent tenure shall be made.~~<sup>1</sup>

**Comment [A2]:** M02. Max 9 years of probationary service. Action pending consultation with Legal Counsel.

**Comment [A3]:** The 9-year limit language seems problematic and should be submitted for review by General Counsel.

## ii. Length and Number of Appointments in the Probationary Period

With respect to the various academic ranks, the tenure policy of the university is as follows:

1. An assistant professor shall be appointed to an initial term of four years. Before the end of the third year of this appointment, the ~~department chairperson~~ ~~department chairperson/school director~~<sup>2</sup>, shall recommend that the assistant professor be either reappointed for a second term of three years or not reappointed. Before the end of the second year of the second three-year appointment, the ~~department chairperson~~ ~~department~~

**Comment [A4]:** General Counsel is concerned with the wording here. The AAUP identifies the maximum period as 7 years of full-time status. The recommendation is to insert language identifying a 7 year maximum, but subject to modification based on FMLA or other issues.

**Comment [A5]:** Footnote 2 should be deleted, to be replaced by direct references to "department/school" and "department chairperson/school director" in the text.

<sup>1</sup> According to this provision, an assistant professor who has previously served three or more years as an instructor at this institution shall be evaluated as a candidate for permanent tenure in the third year of his/her first contract at the rank of assistant professor. An assistant professor who has previously served two years or less as an instructor at this institution shall be evaluated as a candidate for permanent tenure in the second year of his/her second contract at the rank of assistant professor according to Section B.2.b.

<sup>2</sup> Here and elsewhere as it may appear in this document, the term department and references thereunto, such as "department chairperson," "departmental member," and "department's faculty" shall refer to those established academic units, i.e., departments, within the College of Arts and Sciences and the Watson College of Education. School and references thereunto, such as "school," "school members," and "school's faculty" shall refer to the Cameron School of Business Administration. With respect to the CHHS, the college and the schools must make a decision as to who will serve as the counterpart to the department.

chairperson/school director shall, in the same manner, recommend that the assistant professor be either reappointed with permanent tenure and promoted to associate professor, or not reappointed.

2. An associate professor promoted to that rank from within this institution shall have permanent tenure. One coming to that rank from outside the institution (and not granted permanent tenure ~~with the offer at the time of appointment~~) shall be appointed to an initial term of five years; and in such cases, before the end of the fourth year, his/her department chairperson/school director, after reviewing the evidence provided by the evaluation process and consulting with all assembled departmental (see footnote 2 above with reference to department designation) senior members<sup>3</sup>, shall recommend that the associate professor be either reappointed with permanent tenure at the same or higher rank, or not reappointed.
3. A professor shall have permanent tenure.
4. Paragraphs (1), (2), and (3) shall not apply to a visiting faculty member; a faculty member, regardless of stated rank, who is employed for a limited period in the staffing of any special project; or any special faculty appointee as defined by [Section 610](#) of the Code. The Chancellor shall call to the attention of the appointee that, because of the visiting or special status of the appointment, the provisions of paragraphs (1), (2), (3), and (4) do not apply to his/her appointment.
5. Non-teaching professional personnel who hold professorial rank shall be eligible for promotion and permanent tenure and shall be subject to standards equivalent in rigor to those standards that apply to the teaching faculty.
6. If the department chairperson/school director is being considered for promotion and/or permanent tenure, the appropriate dean shall evaluate his/her performance after consulting with and taking an advisory vote of the assembled senior members (see ~~recommendation footnote~~ below in reference to the constitution of senior members) of the department. ~~A-The dean's~~ recommendation, with written justification, is transmitted ~~by the dean to the~~ Office of Academic Affairs, and by Academic Affairs to the university-wide faculty Committee on Reappointment, Tenure, and Promotion (CRTP), and the department chairperson/school director. The CRTP forwards its recommendation directly to the Provost and Vice Chancellor for Academic Affairs. The senior faculty of a department or

**Comment [A6]:** M03. Support "local decision" regardless of CRTP. No action needed after vote on M05.

**Comment [A7]:** Academic Affairs and deans can support "local decision" on the constitution of the senior faculty, but only if the CRTP is composed of tenured, full professors in its entirety.

<sup>3</sup> The composition of senior members/faculty eligible to vote in reappointment, tenure and promotion decisions is determined by each academic department/school, subject to the dean's approval, and reported by the department chairperson/school director in all RTP recommendations.

school may submit a dissenting opinion to the CRTP if a disagreement exists between the advisory vote of the assembled senior members and the dean.

**Comment [A8]:** M03.1. To accept the last sentence of section 6. Edit accepted by a vote of 43 to 4

7. A faculty member may be promoted at any time.

**Comment [A9]:** M03.2. to accept insertion of "subject to the dean's approval" in footnote 3. Edit rejected by a vote of 34 to 15.

8. The terms and conditions of each faculty appointment shall be written. A copy of the terms, signed by the Chancellor or designee, shall be delivered to the faculty member, and a copy shall be retained by the Chancellor or designee. Full information on the tenure policy of the university and on a faculty member's employment status shall be readily available to the faculty member.

**Comment [A10]:** This doesn't align with UNCW's two times per year RTP cycle.

**Comment [A11]:** M04: Delete b. ii. 7. Edit accepted and Section 7 is deleted by a vote of 44 to 3.

### iii. Timely Written Notice

1. For full-time faculty at the rank of assistant professor, and associate professor without permanent tenure, the minimum requirement for timely notice of reappointment or non-reappointment shall be as follows:

- i. During the first year of service at the institution, the faculty member shall be given not less than 90 calendar days notice before his/her employment contract expires;
- ii. 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/her employment expires; and
- iii. 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/her employment contract expires.

### iv. Written Notice of Non-Reappointment

1. The decision not to reappoint a faculty member when a probationary term expires shall be made by the appropriate dean<sup>4</sup> after receiving the recommendations provided above and in [\[Art. IV.c\]](#). The dean's decision not to reappoint, if it accords with negative recommendations by both the department's chairperson/school's director and the majority vote of the senior members in the department, is final except as it may be later appealed in accordance with the provisions of [\[Art. V\]](#). The dean shall notify the faculty member of the decision by a simple, unelaborated

<sup>4</sup> The "appropriate dean" for faculty members shall be the Deans in the College of Arts and Sciences, the Watson College of Education, the College of Health and Human Services and the Cameron School of Business-Administration.

written statement that the faculty member will not be reappointed. Each decision not to reappoint shall be communicated for information through the administrative channels prescribed for review had the decision been to reappoint.

2. Notice of non-reappointment shall be written. Failure to give timely notice of non-reappointment, whether the reappointment decision was timely made or made after it should have been made as required by [\[Art.IV.b.i\]](#) and [\[Art.IV.b.iii\]](#), will oblige the Chancellor thereafter to offer a terminal appointment of one academic year.

### c. Procedures for Evaluation and Documentation

- i. The gathering of information for an evaluation for reappointment, tenure, or promotion shall be the responsibility of the department chairperson/school director or appropriate dean. If the department chairperson/school director is being considered for promotion, the appropriate dean shall be responsible for evaluating his/her performance after consulting with and taking an advisory vote of the assembled senior members of the department.
- ii. A faculty Committee on Reappointment, Tenure, and Promotion to be composed of eight permanently tenured ~~faculty members~~ full professors shall be elected by the faculty to review requests for reappointment, tenure, and promotion. The committee members shall be elected for three-year terms, which terms shall be staggered. The committee shall be composed of two members from each of the four divisions designated in the "Official Senate Election Procedures for Autonomous Faculty Committees" in [Appendix B of the Senate Bylaws](#). The committee will elect its own chairperson. A quorum is a simple majority of the total committee membership. If a member of the RTP Committee is a candidate for review by that committee or has ~~a spouse a~~ conflict of interest with a faculty member under review by that committee, in accordance with [UNCW Policy 08.190 Employment of Related Persons \(Anti-Nepotism\) Policy](#), ~~who is under review by that committee~~, he or she shall be replaced on the committee by a substitute during that semester. The Senate Steering Committee shall name a substitute.
- iii. It shall be the responsibility of the deans of the colleges/school to review the departmental recommendations for reappointment, tenure, and promotion following the evaluation process as required by [\[Art. IV.b.ii\]](#). The deans forward their recommendations to Academic Affairs.
- iv. The Provost and Vice Chancellor for Academic Affairs shall convene the university Committee on Reappointment, Tenure, and Promotion for the purpose of organization and shall present the submitted recommendations for reappointment, promotion, and tenure. ~~The purpose of the CRTP is to evaluate department, school, and college recommendations for reappointment, tenure, and promotion, and to review the integrity of the RTP process.~~ -The Committee on Reappointment, Tenure, and Promotion may ~~seek additional information or clarification~~ request clarification from the department chairperson/school director. All such requests for information shall come through the chairperson of the Committee on Reappointment,

**Comment [A12]:** M05: Only FP in CRTP. Edit to change to full professors rejected by a vote of 47-6.

**Comment [A13]:** A CRTP of tenured full professors is needed to a balance if departments and schools are authorized to define senior faculty to include other than full professors.

**Comment [A14]:** M06: Accept change of conflict of interest clause. Edit accepted by a vote of 47 to 0.

**Comment [A15]:** M07? Is there a motion here?. Edit rejected by a vote of 45 to 3.

**Comment [A16]:** Not sure we finalized if we think the CRTP should do both or just clarify the evaluative nature of this committee's review...?

**Comment [A17]:** M07.1. To accept the edit "seek additional information or clarification." Edit approved by a vote of 24 to 20.

Tenure and Promotion. Such requests, with justification, and any responses shall be written, and the chairperson of the Committee on Reappointment, Tenure, and Promotion will ensure that any such correspondence and/or other documentation is inserted into the candidate's dossier before it is moved forward to the Provost and VCAA.

**Comment [A18]:** Meeting adjourned here. Starting point for meeting on October 28, 2014

If anyone in the evaluative chain receives unsolicited information about the applicant's candidacy, ~~they are~~/he must to disregard it. ~~They must share the information and its source with the candidate.~~ This requirement to disregard unsolicited information in the RTP process does not absolve administrative officers of the responsibility to act on information requiring action in accordance with UNC and UNCW policies.

**Comment [A19]:** M08: Accept change as edited.

**Comment [A20]:** Need a call by legal on the specific wording.

v. The chairperson of the Committee on Reappointment, Tenure, and Promotion shall submit the committee's recommendations to the Provost and Vice Chancellor for Academic Affairs.

**Comment [A21]:** Recommended wording from General Counsel: "If anyone in the evaluative chain receives unsolicited information about the applicant's candidacy, they will not consider this unsolicited information in assessing the applicant's dossier or materials. This requirement to not consider unsolicited information in the RTP process does not absolve university employees of any responsibility to act on information in accordance with UNC and UNCW policies."

vi. If the Provost and Vice Chancellor for Academic Affairs recommends reappointment, tenure, and/or promotion of a faculty member, he/she shall forward the recommendation to the Chancellor. If the Provost and Vice Chancellor for Academic Affairs ~~recommends~~/decides that the faculty member should not be reappointed when a probationary term expires, that ~~recommendation decision~~ must be reported to the Chancellor and Board of Trustees and is final except as it later may be appealed in accordance with the provisions of [Art. V] and Section 604 D of the Code. If he/she recommends that promotion or tenure not be given, he/she shall forward the recommendation to the Chancellor.

**Comment [A22]:** M09: Accept clarification between "Recommendations" v. "Decisions"

**Comment [A23]:** The language throughout this section should say "decide" when referencing the action of a person with final authority and "recommend" when it is someone further up the chain who has the final authority

vii. If the Chancellor receives a negative ~~decision recommendation~~ on reappointment from the Provost and VCAA, he/she shall report the Provost and VCAA's ~~recommendation decision~~ to the Board of Trustees at the same time that positive recommendations for reappointment are forwarded to it.

If the Chancellor concurs in a recommendation not to grant permanent tenure, he/she shall send the faculty member being considered written notification of the Chancellor's ~~recommendation decision~~, place a copy in the dossier, and report this ~~recommendation decision~~ to the Board of Trustees at the same time that positive recommendations for tenure are forwarded to it. ~~The Chancellor's recommendation not to grant tenure becomes final when the Board of Trustees approves the Chancellor's recommendation.~~ This decision not to grant tenure is final except as it may later be appealed in accordance with provisions of Section 604 D of the Code.

If the Chancellor concurs in a recommendation for tenure, he/she shall send the faculty member being considered written notification of the recommendation, place a copy in the dossier, and forward the recommendation to the Board of Trustees for final approval.

If the Chancellor does not concur in a recommendation not to grant tenure, he/she shall send the faculty member being considered written notification of the Chancellor's recommendation, place an elaborated written statement of this recommendation in the dossier, and forward it to the Board of Trustees for final approval.

If the Chancellor does not concur in a recommendation to grant tenure, he/she shall send the faculty member being considered written notification of the Chancellor's recommendation, place an elaborated written statement of the decision in the dossier, and report the Chancellor's recommendation to the Board of Trustees for final approval. The decision not to tenure is final except as it later may be appealed in accordance with the provisions of [\[Art. VI\]](#) and [604 D of the Code](#).

If the Chancellor concurs in a recommendation not to promote from associate professor to professor, he/she shall send the faculty member being considered written notification of the Chancellor's ~~recommendation~~decision, place a copy in the dossier, and report this ~~recommendation~~decision to the Board of Trustees at the same time that positive recommendations for promotion are forwarded to it.

If the Chancellor concurs in a recommendation to promote from associate professor to professor, he/she shall send the faculty member being considered written notification of the Chancellor's recommendation, place a copy in the dossier, and forward it to the Board of Trustees for final approval.

If the Chancellor does not concur in a recommendation not to promote from associate professor to professor, he/she shall send the faculty member being considered written notification of the Chancellor's recommendation, place an elaborated written statement of this recommendation in the dossier, and forward the recommendation to the Board of Trustees for final approval.

If the Chancellor does not concur in a recommendation to promote from associate professor to professor, he/she shall send the faculty member being considered written notification of the Chancellor's recommendation, place an elaborated written statement of this recommendation in the dossier, and forward the recommendation to the Board of Trustees for final approval.

#### **d. Continuing Evaluation of Faculty**

- i. In the interest of fostering continued professional growth for all faculty members, a full evaluation shall be completed at least once every four years for each faculty member with permanent tenure. It is the responsibility of the department chairperson/school director to initiate and conduct the evaluation process for all members of the department or school with permanent tenure as they come under this requirement. Appropriate recommendations resulting from this evaluation shall be formulated by the department chairperson/school director or school dean.
- ii. An evaluation of a faculty member with permanent tenure may be done in any year at his/her request.
- iii. An evaluation of a ~~department chairperson~~department chairperson/school director shall be the responsibility of the appropriate dean who shall consult with the full membership of the relevant department.

- iv. When circumstances warrant, an evaluation may be initiated by the ~~department chairperson~~department chairperson/school director, the appropriate dean, the Provost and Vice Chancellor for Academic Affairs, or the Chancellor.
- v. Copies of the evaluation and recommendations shall be given to the faculty member being evaluated, with copies forwarded to the Provost and Vice Chancellor for Academic Affairs (and the appropriate dean when evaluations are prepared for departmental chairpersons/school directors).

## Article V: Mediation of Faculty Grievances

[Updated 06/07/2011]

The university encourages faculty to resolve grievances in an amicable fashion whenever possible. As a result, the university provides faculty the opportunity to participate in mediation conducted by trained mediators. In order to learn more about the mediation services and to access those services, a faculty member should contact the ~~Director~~Associate Vice Chancellor for Human Resources or his/her designee. Upon the filing of a grievance, the chair of the Faculty Professional Relations Committee, or in the case of a request to review a non-reappointment decision, the chair of the Faculty Hearings Panel shall determine whether the faculty member has considered mediation as an alternative dispute-resolution process and provide information about this process for the faculty member to consider. Entering into mediation will suspend the time limitations for the filing and/or the formal resolution of the grievance or a hearing for the duration of a mediation being conducted.

The university shall pay for the mediation services, without charge to the faculty member, the department/school, or any individual administrator who is a party to the mediation. Mediation is voluntary, and both parties must agree to participate in order for mediation to proceed. The decision not to participate in mediation by either party will not be held against that party in any way, and no blame will attach to either party if mediation does not produce a settlement. At any time during the process, any party may withdraw and the mediation will end. If at any time during the process it becomes evident to the mediator that the parties cannot reach an agreement, the mediator may discontinue the process.

The mediation is confidential to the extent allowed by law. If both parties agree, the parties may each have an advisor present. If mediation is successful and results in an outcome acceptable to both parties, neither party may pursue a pending grievance or a hearing or at a later date file a grievance or request for a hearing on the matters addressed in the mediation. A successful mediation may result in a written agreement signed by both parties. Any mediation which results in an agreement that obligates the university must be signed by a university official with the authority to bind the university concerning the particular agreement. No record of a failed mediation will be produced by

the mediator other than a statement written to either the chair of the Faculty Professional Relations Committee or the chair of the Faculty Hearings Panel, as appropriate, that mediation was attempted but settlement was not reached. Within five days after an unsuccessful mediation, the faculty member has the responsibility to notify the pertinent chair that he or she desires to pursue the grievance. The grievance will then be reviewed by either the Faculty Professional Relations Committee or the Faculty Hearings Panel as appropriate and in accordance with the relevant policy. The parties must agree that the mediator will not be called as a witness in any subsequent proceeding and that anything done or said by either party during a mediation process may not be used against a party in any subsequent proceeding.

## Article VI: Non-Reappointment Hearings Procedure

[Updated 06/07/2011]

Sections that Follow:

- a. Permissible and Impermissible Grounds for Non-reappointment
- b. Conference with Dean
- c. Conference with the Provost and Vice Chancellor for Academic Affairs
- d. Request for Review by Hearing Committee; Scope of Review
- e. Conduct of Hearing
- f. Preservation of Evidence
- g. Hearing Procedure
- h. Procedure After Hearing
- i. Appeal Rights

### a. Permissible and Impermissible Grounds for Non-reappointment

The decision whether to reappoint a tenure track faculty member when a probationary term appointment<sup>5</sup> 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 the institution's 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 (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 status or sexual orientation; or (3) personal malice (meaning dislike, animosity, ill-will, or hatred based on personal characteristics, traits, or circumstances of an individual; or (4) material procedural irregularities.

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<sup>5</sup> A probationary term appointment is an appointment to the rank of instructor, assistant professor, or associate professor. This procedure does not apply to faculty appointed to specified terms under the authority of [\[Art. VI.b, Sec. ii.5\]](#).

**Comment [A24]:** The deans/AA are concerned that there is lack of clear reference to how a faculty evaluatee may appeal an outcome of a tenure and/or promotion review decision. With our current language, only actions involving non-reappointment are directly referenced. We suggest an approach similar to that used by UNC-Charlotte, in which a single body handles appeals of reappointment, tenure, and promotion cases. We further recommend that the hearings committee could be modified to address this need. Having such matters be routed to the hearings committee rather than a grievance committee seems more appropriate, as all appeals may not reflect a "grievance" which carries a decidedly negative connotation. See <http://legal.uncc.edu/policies/up-102.13/#s72>

**Comment [A25]:** M10: Comment [A24] requires a motion.

#### **b. Conference with Dean**

Within five days after receiving a written notice of non-reappointment, a faculty member may in writing request a private conference with the appropriate dean to discuss the reasons for non-reappointment.<sup>6</sup> The faculty member's request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.<sup>7</sup> Within five days after the conference, the dean shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

#### **c. Conference with the Provost and Vice Chancellor for Academic Affairs**

Within five days after receiving notice that the original decision remains in effect, the faculty member may in writing request a conference with the Provost and Vice Chancellor for Academic Affairs. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.

Within ten days after the conference, the Provost and Vice Chancellor for Academic Affairs shall send a written evaluation of the matter to the faculty member and to the appropriate dean. 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 reconsidering the decision, with or without suggestions for specific procedures in doing so. Whatever form the evaluation may take, it is merely recommendatory and not binding upon the dean or final as to the faculty member.

Within five days after receiving an evaluation that disagrees with the decision or recommends its reconsideration, the dean shall give the faculty member and his/her immediate supervisor a response in writing.

#### **d. Request for Review by Hearing Committee; Scope of Review**

Within fourteen calendar days after the faculty member receives notice of an unfavorable action resulting from the conference with the Provost and Vice Chancellor for Academic Affairs, he/she may request that the Faculty Hearings Panel review the decision.<sup>8</sup> This review is limited solely to determining whether the decision not to reappoint was based upon any of the grounds stated to be impermissible in [\[Art. VI.a\]](#).

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<sup>6</sup> If the initial decision not to reappoint is made by the Provost and Vice Chancellor for Academic Affairs, substitute the name of that administrative officer for dean wherever the latter phrase appears.

<sup>7</sup> Wherever it is used in Sections VI and IX, except where 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.

<sup>8</sup> See the Faculty Senate bylaws for the [composition of this committee](#).

The request for review shall be written and addressed to the chairperson of the Hearings Panel. It shall specify the grounds upon which the faculty member contends that the decision was impermissibly based, with a short, plain statement of facts that the faculty member believes supports the contention.

Such a request constitutes on a faculty member's part: (1) a representation that he/she can prove the contention, and (2) an agreement that the institution may offer in rebuttal of the contention any relevant data within its possession.

The Hearings Committee (selected from the Hearings Panel) shall consider the request and grant a hearing if it determines that (a) the request contains a contention that the decision was impermissibly based under this section, and (b) the facts suggested, if established, will support the contention. A denial of the request finally confirms the decision. If the request is granted, a hearing shall be held within ten days after the request is received; the faculty member shall be given at least five days' notice of the hearing.

#### **e. Conduct of Hearing**

The hearing shall be conducted informally and in private with only the members of the Hearings Committee, the faculty member, the appropriate dean, and such witnesses as may be called in attendance, except that the faculty member and the dean may each be accompanied by a person of his/her choice, but is not allowed to participate actively in the hearing. If a faculty member brings an attorney as an observer, the dean may be provided an attorney from or designated by the university's office of general counsel. A quorum for the hearing is a simple majority of the total committee membership. Committee members who hold an appointment in the faculty member's department or school, who will testify as witnesses, or who have any other conflict of interest are disqualified from participating in the hearing. The hearing shall be transcribed or recorded. If the faculty member requests it, a transcript of the proceedings shall be provided to the faculty member. The committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. All witnesses may be questioned by the committee members, the faculty member, the dean. Except as herein provided, the conduct of the hearing is under the committee chairperson's control.

#### **f. Preservation of Evidence**

The role of the committee is to create a clear, permanent record of the evidence presented at the hearing. The Committee must preserve all testimony and evidence received at the hearing in a form that will allow later review by the parties to the hearing, the Chancellor and the Board of Governors.

#### **g. Hearing Procedure**

The hearing shall begin with the faculty member's presentation of contentions, which shall be limited to those grounds specified in the request for a hearing and supported by such proof as he/she desires to offer. When the faculty member has concluded

this presentation, the Hearings Committee shall recess to consider whether he/she has established a prima facie case. If it determines that the contention has not been so established, it shall notify the parties to the hearing of its conclusion and thereupon terminate the proceedings. Such termination confirms the decision not to reappoint. If it determines that rebuttal or explanation is desirable, it shall so notify the parties and the hearing shall proceed. The dean may then present in rebuttal of the faculty member's contentions, or in general support of the decision not to renew, such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony.

At the end of this presentation, the Hearings Committee shall consider the matter in executive session and make findings of fact. The burden shall be upon the aggrieved faculty member to satisfy the committee that his/her contention is true by a preponderance of the evidence.

#### **h. Procedure after Hearing**

If the Hearings Committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify the faculty member, the appropriate dean, and the Provost and Vice Chancellor for Academic Affairs. Such a determination confirms the decision not to reappoint. If the Hearings Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify the faculty member, the appropriate dean, and the Provost and Vice Chancellor for Academic Affairs by a written notice that shall also include a recommendation for corrective action by the dean.

Within five days after receiving such a recommendation, the dean shall notify the faculty member, the Provost and Vice Chancellor for Academic Affairs, and the chairperson of the Hearings Committee what modification, if any, he/she will make with respect to the original decision not to reappoint.

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

#### **i. Appeals Rights**

A faculty member may file a written ~~of~~ appeal of an unfavorable decision within fourteen calendar days after receipt of the chancellor's written decision to the Board of Governors. The review shall be in accordance with the procedures set forth in the [Code Section 604D \(2\)](#) and [UNC Policy 101.3.1, Section III](#).

### **Article VII: Faculty Committee to Hear Grievances**

[Updated 06/07/2011]

- a. The Faculty Professional Relations Committee shall serve as the grievance committee provided for in [Section 607 of the Code](#). This committee shall be elected by the faculty with members elected from each professorial rank as provided in the [Bylaws of the Faculty Senate](#). No officer of administration shall

serve on the committee. For purposes of this section, officer of administration shall be deemed to include department chairpersons/school directors.

- b. The committee shall be authorized to hear, mediate, and advise with respect to the adjustment of grievances of members of the faculty including those of "special faculty" ~~member~~s as that term is defined in [Section 610 of the Code](#). 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 Provost and Vice Chancellor for Academic Affairs, the appropriate dean, department chairperson/school director, 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.
- c. "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge, or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.
- d. If any faculty member feels that he/she has a grievance, he/she may petition the Faculty Professional Relations 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. The petition shall contain any information that the petitioner considers pertinent to his/her 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.

**Comment [A26]:** M11: Comment A27 Requires a motion

**Comment [A27]:** Based on our post-retreat discussion about the desirability of a single entity charged with handling appeals of RTP matters, should post-tenure review be added to that envisioned entity's scope of responsibilities?

## Article VIII: Due Process Before Discharge or the Imposition Of Serious Sanctions

[Updated 06/07/2011]

- ~~a.~~ A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties.
- ~~b.~~
- ~~c.~~ The permissible grounds for discharge from employment, suspension or demotion in rank are only for reasons of:
  - ~~d.~~a. Incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time frame;
  - ~~e.~~b. Neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or
  - ~~f.~~c. Misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics,

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

g- These sanctions may be imposed only in accordance with the procedures set forth in [Section 603 of the Code](#). For purposes of this Code, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to non-reappointment or termination of employment.

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## Article IX: Termination of Faculty Employment

[Updated 06/07/2011]

Sections that Follow:

- a. Reasons Justifying Termination and Consultation Required
  - i. Reasons for Terminating Employment
  - ii. Consultation with Faculty and Administrative Officers
- b. Termination Procedure
  - i. Considerations in Determining Whose Employment is to be Terminated
  - ii. Timely Notice of Termination
  - iii. Type of Notice to be Given
  - iv. Termination if Reconsideration not Requested
  - v. Request for Reconsideration Hearing
  - vi. Jurisdiction of Hearings Committee in Reconsidering Termination
  - vii. Conduct of Hearing
  - viii. Hearing Procedure
  - ix. Procedure after Hearing
- c. Assistance for Faculty Members and Rights to New Positions
  - i. Institutional Assistance to Employees who are Terminated
  - ii. First Right of Refusal of New Positions

### a. Reasons Justifying Termination and Consultation Required

- i. Reasons for Terminating Employment

The employment of a faculty member with permanent tenure or of a faculty member appointed to a fixed term may be terminated by The University of North Carolina Wilmington 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 a decline in instructional 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 of the Code](#). This determination is subject to the concurrence of the President and the approval of the 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 faculty member's employment may be terminated in accordance with the institutional procedures set out in [Art IX.b] below.

ii. 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 his/her 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**

i. 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 [Art. IX.a.i], 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.

ii. Timely Notice of Termination

1. When a faculty member's employment is to be terminated because of a major curtailment or elimination of a teaching, research, or public service program that is not founded upon financial exigency, he shall be given timely notice as follows: (1) one who has permanent tenure shall be given not less than twelve months' notice; and (2) 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 [Art. IV.b.iii].
2. 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 Article, IX, Section b.ii.1 [immediately above].

iii. Type of Notice to Be Given

The Chancellor or his/her delegate shall send the faculty member whose employment is to be terminated a written statement of this fact by registered mail, return receipt requested or by another means that ensures delivery to

the faculty member and which provides proof of 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; a disclosure of pertinent financial data upon which the decision was based; a statement of the faculty member's right, upon request, to a reconsideration of the decision by a faculty committee if he/she alleges that the decision to terminate him/her rather than another faculty member was arbitrary or capricious; and a copy of this procedure on termination of employment.

iv. Termination If Reconsideration Not Requested

If, within ten days after he/she receives the notice required by [Art IX.b.iii], the faculty member makes no written request for a reconsideration hearing, his/her employment shall be terminated at the date specified in the notice given pursuant to [Art IX.b.iii], without recourse to any institutional grievance or appellate procedure.

v. Request for Reconsideration Hearing

Within ten days after receiving the notice required by [Article IX, Section b.iii](#), the faculty member may request by registered mail, return receipt requested or by another means that ensures delivery to the chancellor and which provides proof of delivery, a reconsideration of the decision to terminate his/her employment if he/she alleges that the decision was arbitrary or capricious. The request shall be submitted to the Chancellor and shall specify the grounds upon which the faculty member contends that the decision to terminate his/her employment was arbitrary or capricious and shall include a short, plain statement of facts that he/she believes support the contention.

Submission of such a request shall constitute on the faculty member's part: (1) a representation that he/she can prove the contention, and (2) an agreement that the institution may offer in rebuttal of the contention whatever relevant data it may have.

vi. Jurisdiction of Hearings Committee in Reconsidering Termination

If the faculty member makes a timely written request for a reconsideration of the decision, the Chancellor or his/her delegate shall insure that the hearing is accorded before the Faculty Hearings Committee (a subset of the Faculty Hearings Panel). The committee's jurisdiction is solely to consider whether the selection of the faculty member for termination, vis-à-vis other faculty members, was arbitrary or capricious. The committee's jurisdiction does not extend to a reconsideration of whether a financial exigency exists or a program should be curtailed or eliminated. This reconsideration hearing shall be held promptly, but the committee shall accord the faculty member five days from the time it receives his written request for a hearing to prepare for it.

vii. Conduct of Hearing

The hearing shall be conducted informally and shall be closed to the public. The faculty member and the Chancellor 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. The faculty member and the committee shall be given access, upon request, to documents of The University of North Carolina Wilmington that were used in making the decision to terminate the faculty member after the decision was made that some faculty member's employment must be terminated. The hearing shall be transcribed or recorded. Upon request, a transcript of the proceedings shall be provided the faculty member at the institution's expense. The committee may consider only such evidence that it considers fair and reliable. All witnesses may be questioned by the committee members. Except as herein provided, the conduct of the hearing shall be under the committee chairperson's control. The committee must preserve all testimony and evidence received at the hearing in a form that will allow a later review if the decision is appealed.

For purposes of the hearing, a quorum is a simple majority of the total membership. No member of the committee who holds an appointment in the faculty member's department or school, participated directly in the decision to terminate this individual faculty member, or has any other substantial conflict of interest shall hear this case.

#### viii. 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/she desires to offer. The Chancellor or his/her representative may then present in rebuttal of the faculty member's contentions, or in general support of the decision to terminate his/her employment, such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony.

At the end of this presentation, the committee shall consider the matter in executive session and shall make its written recommendations to the Chancellor within ten days after its hearing concludes. The burden shall be on the faculty member to satisfy the committee that his/her contention is true by a preponderance of the evidence.

#### ix. Procedure after Hearing

If the committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify him/her and the Chancellor. The faculty member may then appeal the decision to terminate his/her employment to the UNCW Board of Trustees in accordance with [Section 605 C\(6\)](#) of the Code.

If the committee determines that the faculty member's contention has been satisfactorily established, it shall so notify him/her, and the Chancellor in writing. The notice to the Chancellor shall also include a recommendation for corrective action by the Chancellor.

Within ten days after receiving the recommendation, the Chancellor shall send written notice to the faculty member and the chairperson of the committee what modification, if any, he/she will make with respect to the original

decision to terminate the faculty member's employment. If the Chancellor fails to reverse the original decision, the faculty member may appeal the termination to the UNCW Board of Trustees in accordance with [Section 605\(C\)](#) of the Code. If the Chancellor concurs in a recommendation of the committee that is favorable to the faculty member, his/her decision is final.

#### **c. Assistance for Faculty Members and Rights to New Positions**

##### **i. Institutional Assistance to Employees Who Are Terminated**

The institution, when requested in writing by an employee whose employment has been terminated, shall give him/her reasonable assistance in finding other employment.

##### **ii. First Right of Refusal of New Positions**

For two years after the effective date of termination of a faculty member's contract for any reason specified in [\[Art IX.a\]](#), 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 registered mail, return receipt requested, to the faculty member's last known address, and he/she shall be given thirty calendar days after he/she receives the notice to accept the offer.

### **Article X: Retirement**

[Updated 06/07/2011]

A faculty member may retire in accordance with the provisions of [Chapter 135](#) of the North Carolina General Statutes or the Optional Retirement Plan offered by the UNC System. An eligible faculty member may participate in the university's [Phased Retirement Program](#) in accordance with the applicable policy.

### **Article XI: Policy on Leave**

[Updated 06/07/2011]

The University of North Carolina does not have a sabbatical leave program. From time to time leaves of absence ([Ch IV.I.7](#)) for faculty members are granted for valid professional or personal reasons. Leaves of absence without pay are negotiated, depending upon the individual's need and the best interest of the institution.

### **Article XII: Implementation**

[Updated 06/07/2011]

- a. These policies and regulations supersede all other institutional documents governing the matters covered herein.

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

- i. The provisions in [Ch. IV.A, Art. IV.b.ii.1] prohibiting appointment of instructors after five years at that rank shall apply only with respect to persons who, upon the effective date, have not served at the rank of instructor for four years. The provisions of that sentence shall not apply to those who, upon the effective date, have served at the rank of instructor for four or more years. It shall neither require non-reappointment nor insure reappointment when their then-current or subsequent one-year terms expire, but shall leave this decision to be made as under the policies and regulations formerly applying.
- ii. All provisions hereof requiring a ~~department chairperson~~department chairperson/school director or ~~school~~ dean to consult with the assembled senior members of the department or school, and the Provost and Vice Chancellor for Academic Affairs to consult with the assembled college review committee shall apply only with respect to personnel recommendations initiated after the effective date.
- iii. The provisions of [Ch. IV.A, Art. VI] shall apply with respect to both those who are given notice of non-reappointment within ninety calendar days before the effective date. Instructors, assistant professors, and associate professors to whom notice of non-reappointment has been given within ninety calendar days before the effective date shall have twenty calendar days after the effective date within which to initiate the procedures for review provided in [Ch. IV.A, Art. VI].
- iv. The provisions of [Ch. IV.A, Art. X] shall apply both to all persons who, upon the effective date, have attained normal retirement age and are in continued terms of employment, and to those persons who attain normal retirement age after the effective date.

**Comment [A28]:** M12: Refer to Policy 300.7

**Comment [A29]:** This section must be submitted for legal review because of the reference to "normal retirement age." There is no "normal retirement age" in this state.

**Comment [A30]:** General Counsel reports that there is no normal or mandatory retirement age for faculty in North Carolina. Counsel suggests that iv. Is not necessary because Article X lays out the state policy controlling this issue. We could, however, refer to Policy 300.7 of the UNC Policy Manual that addresses the retirement and phased retirement of faculty.