

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

Note: All changes shall become effective for personnel actions taken on and after January 1, 2009 dated moved to September 1, 2009.

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

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

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

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

(c) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty,⁴⁰ including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either (i) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

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

(2) The chief academic officer of the institution, however titled, shall send the faculty member a written ~~statement-notice~~ of intention to discharge the faculty member ~~or impose a serious sanction together with a written specification of the reasons. The notice and specification of reasons shall be sent~~ by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to ~~both written specification of the reasons for the intended discharge and a~~ hearing by an elected standing faculty committee on hearings.

(3) If, within ~~ten~~ 14 calendar days¹⁰⁺ after receiving the notice and written specifications referred to in paragraph (2) above, the faculty member makes no written request for ~~either a specification of reasons or~~ a hearing, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure.

~~(4) **Repealed.** If, within ten days after receiving the notice referred to in paragraph (2) above, the faculty member makes written request, by a method of delivery that requires a signature for delivery, for a specification of reasons, the chief academic officer shall supply such specification in writing by a method of delivery that requires a signature for delivery, within ten days after receiving the request. If the faculty member makes no written request for a hearing within ten days after receiving the specification, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure~~

(5) If the faculty member makes a timely written request for a hearing, the ~~chief academic officer~~ chancellor shall ensure a process is in place so that the hearing is timely accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 2030 calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The hearing committee will ordinarily endeavor to complete the hearing within 90 calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.¹¹

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

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

(8) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The university has the burden of proof. In evaluating the evidence, the committee shall use the standard of "clear and convincing" evidence in determining whether the institution

has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action. The committee shall make its written recommendations to the chancellor within ~~ten~~ 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later.

(9) If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the chancellor's decision to the board of trustees. This appeal shall be transmitted through the chancellor and be addressed to the chair of the board. Notice of appeal shall be filed within ~~ten~~ 14 calendar days after the faculty member receives the chancellor's decision. The appeal to the board of trustees shall be decided by the full board of trustees. However, the board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members. The board of trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the faculty hearing committee, but it may, in its discretion, hear such other evidence as it deems necessary. The board of trustees' decision shall be made as soon as reasonably possible ~~within 45 days~~ after the chancellor has received the faculty member's request for an appeal to the trustees. This decision shall be final except that the faculty member may, within ~~ten~~ 14 calendar days after receiving the trustees' decision, by filing a written petition for review notice of appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, with the Board of Governors if the faculty member alleges that one or more specified provisions of the *Code of the University of North Carolina* have been violated. Any such ~~petition appeal~~ to the Board of Governors shall be transmitted through the president, ~~and the board shall, within 45 days, grant or deny the petition or take such other action as it deems advisable. If it grants the petition for review, the board's decision shall be made within 45 days after it has notified the faculty member that it will review the petition.~~

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

~~¹⁰ Retirement for reason of disability shall be in accordance with North Carolina statutes and regulations governing retirement for faculty who are members of the state retirement system. A faculty member who is not a member of the state retirement system and who is mentally or physically disabled, but refuses to retire, may be discharged because of that disability only in accordance with the procedures of this section.~~

~~¹⁰ Wherever it is used in this chapter, except when calendar day is specified, the word "day" shall mean any day except Saturday, Sunday or an institutional holiday. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.~~

~~¹¹ To meet this deadline, faculty are encourage 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 take two or more sessions.~~