

CHANGE IN EFFECTIVE DATE FOR CERTAIN CODE SECTIONS AND POLICES

Several campuses have advised General Administration that it would impose a significant burden upon them to have to revise the campus policies which are affected by the changes to Code 600 and the companion policies and Code sections so as to submit them for review by the effective date.

We believe this is a reasonable concern for the campuses and propose to you that the Code and Policy personnel changes originally scheduled to take effect January 1, 2009 be postponed until a September 1, 2009 effective date. This delay will permit the campuses more time to work with the faculty members in making these changes and securing their Board of Trustees' approvals.

The affected policies follow, and are:

Chapter VI of the Code (Code 600-611)

Code 301D

Policy 101.3.1

Policy 300.1.1

Policy 300.2.1

UNC Code

301 D. The Committee on Personnel and Tenure shall consist of seven voting members. Upon recommendation of the president, it shall review and make recommendations to the board with respect to the appointment and compensation of all vice chancellors, senior academic and administrative officers, and persons with permanent tenure. Notwithstanding the provision above, the committee shall not review or recommend the appointment and compensation of vice chancellors, senior academic and administrative officers, and persons with permanent tenure for those campuses delegated the authority to appoint and set compensation for such employees so long as the boards of trustees act consistently with the policy and compensation ranges established by the Board of Governors. Further, the committee shall advise and assist the president in the review and evaluation of tenure policies and regulations which the president shall periodically conduct, and it shall review all appeals from faculty members of the constituent institutions which involve an institution's decision to not to reappoint a faculty member, to deny tenure, to discharge a tenured faculty member, or to impose a serious sanction pursuant to the provisions of Chapter VI of this Code. It shall also review all appeals from non-faculty employees of the University who are exempt from the State Personnel Act pursuant to Section 609 C of this Code. [EFFECTIVE UNTIL ~~JANUARY~~ SEPTEMBER 1, 2009]

[EFFECTIVE ~~JANUARY~~ SEPTEMBER 1, 2009, this subsection will read:]

301 D. The Committee on Personnel and Tenure shall consist of seven voting members. Upon recommendation of the president, it shall review and make recommendations to the board with respect to the appointment and compensation of all vice chancellors, senior academic and administrative officers, and persons with permanent tenure. Notwithstanding the provision above, the committee shall not review or recommend the appointment and compensation of vice chancellors, senior academic and administrative officers, and persons with permanent tenure for those campuses delegated the authority to appoint and set compensation for such employees so long as the boards of trustees act consistently with the policy and compensation ranges established by the Board of Governors. Further, the committee shall advise and assist the president in the review and evaluation of tenure policies and regulations which the president shall periodically conduct, and it shall review all appeals from faculty members of the constituent institutions which involve an institution's decision to not to reappoint a faculty member, to deny tenure, to discharge a tenured faculty member, or to impose a serious sanction pursuant to the provisions of Chapter VI of this *Code*. It shall also review all appeals from non-faculty employees of the University who are exempt from the State Personnel Act pursuant to Section 611 of this Code.

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Note: The footnotes concerning the January 2004 version of the subsections shall be effective upon approval. All other changes shall become effective for personnel actions taken on and after **January September 1, 2009**.

SECTION 600. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY.

(1) The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. The University therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

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

(3) Faculty and students of the University of North Carolina shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

SECTION 601. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY.

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

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

SECTION 602. ACADEMIC TENURE.[7]

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

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

(3) The tenure policies and regulations of each constituent institution[8] shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion, and the conferral of

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

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

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

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

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

(b) the discharge or suspension of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires for reasons based on incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty; [THIS SUBSECTION IS EFFECTIVE UNTIL JANUARY SEPTEMBER 1, 2009]

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

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

(d) retirement for physical or mental disability. [THIS SUBSECTION IS EFFECTIVE UNTIL JANUARY-SEPTEMBER 1, 2009]

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(d) retirement.

(7) Institutional tenure policies and regulations shall provide that the appointment, reappointment, or promotion of a faculty member to a position funded in whole or in substantial part from

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sources other than continuing state budget funds or permanent trust funds shall specify in writing that the continuance of the faculty member's services, whether for a specified term or for permanent tenure, shall be contingent upon the continuing availability of such funds. The institutional tenure policies and regulations may make one or more of the following exceptions to the foregoing contingency requirement:

- (a) That such a contingency shall not be included in a promotion to a higher rank if, before the effective date of that promotion, the faculty member had permanent tenure and no such condition is attached to the tenure.
- (b) That such a contingency shall not be attached to the faculty member's contract if the faculty member held permanent tenure in that institution on July 1, 1975, and the contract was not contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.
- (c) That such a contingency may be waived for health affairs faculties because of the unusual dependence of programs in the health professions on income from sources such as clinical receipts.

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

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

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

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

[9] See Footnote 7.

[THIS VERSION OF THIS SECTION IS EFFECTIVE UNTIL ~~JANUARY~~ 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 or diminished in rank only for reasons of incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.¹⁰ These penalties may be imposed only in

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

(2) The chief academic officer of the institution, however titled, shall send the faculty member a written statement of intention to discharge the faculty member 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 days¹¹ after receiving the notice 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 without recourse to any institutional grievance or appellate procedure.

(4) 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 shall ensure that the hearing is accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge. The hearing committee shall accord the faculty member 20 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.

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

(7) The chief academic officer, or counsel, may participate in the hearing to present evidence, cross-examine witnesses, and make argument.

(8) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The committee shall make its written recommendations to the chancellor within ten days after its hearing concludes.

(9) If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, 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

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be addressed to the chair of the board. Notice of appeal shall be filed within ten days after the faculty member receives the chancellor's decision. The appeal to the board of trustees shall be decided by the full board of trustees. However, the board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members. The board of trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the faculty hearing committee, but it may, in its discretion, hear such other evidence as it deems necessary. The board of trustees' decision shall be made within 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 days after receiving the trustees' decision, file a written petition for review 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 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 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.

11 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.

[THIS VERSION OF THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER ~~JANUARY-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 from employment, suspended, or demoted in rank for reasons of:

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

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

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

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from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

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

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

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

(4) Repealed.

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

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sanction exist and are the basis for the recommended action. The committee shall make its written recommendations to the chancellor within 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later.

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

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

[THIS VERSION OF THIS SECTION IS EFFECTIVE UNTIL JANUARY-SEPTEMBER 1, 2009]

SECTION 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW.

604 A. Notice of Reappointment or Nonreappointment.

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

(a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires;

(b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and

(c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

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

604 B. Impermissible Reasons for Nonreappointment.

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, sex, religion, national origin, age, disability, or honorable service in the armed services of the United States, or (c) personal malice.

604 C. Special Faculty Appointments.

All appointments of visiting faculty, adjunct faculty, or other special categories of faculty such as lecturers, artists-in-residence, or writers-in-residence shall be for only a specified term of service. That term shall be set forth in writing when the appointment is made, and the specification of the length of the appointment shall be deemed to constitute full and timely notice of non-reappointment when that term expires. The provisions of Sections 602 (4) and 604 A shall not apply in these instances.

604 D. Subject to limitations contained in the Policies of the Board of Governors, a faculty member may appeal to the Board of Governors the decision of a chancellor not to reappoint the faculty member.

[THIS VERSION OF THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER JANUARY-SEPTEMBER 1, 2009]

SECTION 604. APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW FOR TENURE TRACK FACULTY.

604 A. Notice of Reappointment or Nonreappointment.11.1

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

(a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires; and

(b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and

(c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

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

604 B. Impermissible Reasons for Nonreappointment.

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See Policy 101.3.1 II.B. for details.

604 C. Repealed.

604 D. Review of Nonreappointment Decisions.

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

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

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

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

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

(2) Appeal to the Board of Governors. If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member

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may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, with 14 calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy.^[12]

SECTION 605. TERMINATION OF FACULTY EMPLOYMENT.

605 A. Definition.

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

605 B. Timely Notice of Termination.

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

- (a) one who has permanent tenure shall be given not less than 12 months' notice; and
- (b) one who was appointed to a fixed term and does not have permanent tenure shall be given notice in accordance with the requirements specified in Section 604 A(1).

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

(3) For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section 605 A, the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer

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shall be made by a method of delivery that requires a signature for delivery, and the faculty member will be given 30 calendar days after attempted delivery of the notice to accept or reject the offer.

605 C. Institutional Procedures.12.1

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

- (1) If it appears that the institution will experience an institutional financial exigency or needs seriously to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.
- (2) In determining which faculty member's employment is to be terminated for reasons set forth in Section 605 A, the chancellor shall give consideration to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.
- (3) An individual faculty member whose employment is to be terminated shall be notified of this fact in writing. This notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.
- (4) A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious.
- (5) The institution, when requested by the faculty member, shall give reasonable assistance in finding other employment for a faculty member whose employment has been terminated.
- (6) A faculty member whose employment is terminated pursuant to this Section 605 may appeal the reconsideration decision to the board of trustees of the constituent institution.

[THIS VERSION OF THIS SECTION IS EFFECTIVE UNTIL ~~JANUARY-SEPTEMBER 1, 2009~~]

SECTION 606. 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").

[THIS VERSION OF THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER ~~JANUARY-SEPTEMBER 1, 2009~~]

SECTION 606. RETIREMENT OF FACULTY.

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

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

SECTION 607. FACULTY GRIEVANCE COMMITTEE FOR CONSTITUENT INSTITUTIONS.12.2

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

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

(3) "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution. 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. [THIS SUBSECTION IS EFFECTIVE UNTIL JANUARY-SEPTEMBER 1, 2009]

[THIS SUBSECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER JANUARY-SEPTEMBER 1, 2009]

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

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

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

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

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

SECTION 608. STUDENTS' RIGHTS AND RESPONSIBILITIES.

(1) The University of North Carolina affirms that the first goal of each constituent institution is to educate the students admitted to its programs. The freedom of students to learn is an integral and necessary part of the academic freedom to which the University and its constituent institutions are dedicated. Each constituent institution shall provide, within allotted functions and available resources, opportunity for its students to derive educational benefits through developing their intellectual capabilities, encouraging their increased wisdom and understanding, and enhancing their knowledge and experience applicable to the effective discharge of civic, professional, and social responsibilities. No constituent institution shall abridge either the freedom of students engaged in the responsible pursuit of knowledge or their right to fair and impartial evaluation of their academic performance.

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

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

SECTION 609. APPELLATE JURISDICTION OF THE BOARD OF GOVERNORS.

609 A. Discretionary Review.

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

609 B. Hearings.

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

609 C. Appeals by Non-Faculty Exempt Employees

A non-faculty employee who is exempt from the State Personnel Act whose employment is terminated and who alleges that the termination was illegal or violated a Policy of the Board of Governors may appeal the decision in accordance with procedures established by the constituent institution. If the employee is a professional member of the president's staff, as provided for in Section 500 A(2) of this Code, then the employee may appeal to the president. Subject to limitations contained in the Policies of the Board of Governors, an employee who alleges that the termination of the employee's employment was illegal or in violation of Board of Governors Policy may appeal the final decision of the constituent institution, or the decision of the president, to terminate the employment to the Board of Governors.

[THIS SUBSECTION IS EFFECTIVE UNTIL JANUARY-SEPTEMBER 1, 2009]

[THIS SUBSECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER JANUARY-SEPTEMBER 1, 2009]

609 C. Repealed.

609 D. Transmission of Appeals

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

[THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER
JANUARY-SEPTEMBER 1, 2009]

SECTION 610. RIGHTS OF SPECIAL FACULTY MEMBERS

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

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

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

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

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

[THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER
JANUARY-SEPTEMBER 1, 2009]

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

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

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

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

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

(i) Notice

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

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

(ii) Equal Employment Opportunity and Protected Activity

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

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

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

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

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

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

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

(d) In reaching decisions on which its written recommendations to the president (as to an employee of General Administration) or chancellor (as to an employee of a constituent institution), as appropriate, shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The employee or former employee has the burden of proof. In evaluating the evidence, the committee shall use the standard of preponderance of the evidence (which is the same as the "greater weight of the evidence.")

CHAPTER VI - ACADEMIC FREEDOM AND TENURE

(2) Appeal to the Board of Trustees or Board of Governors.

(a) For employees of a constituent institution, if the chancellor concurs in a recommendation of the committee that is favorable to the employee, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the employee or concurs in a committee recommendation that is unfavorable to the employee, the employee may appeal within 14 calendar days after receiving the chancellor's written decision, by filing with the chancellor for transmission to the Board of Trustees a written notice of appeal, including a brief statement of the basis for the appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in sub-section (1)(b) above. The decision of the Board of Trustees is final with no further appeal.

(b) For employees of General Administration, if the president concurs in a recommendation of the committee that is favorable to the employee, the president's decision shall be final. If the president either declines to accept a committee recommendation that is favorable to the employee or concurs in a committee recommendation that is unfavorable to the employee, the employee may appeal within 14 calendar days after receiving the president's written decision, by filing with the president for transmission to the Board of Governors a written notice of appeal, including a brief statement of the basis for appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in sub-section (1)(b) above. The decision of the Board of Governors is final with no further appeal.

Adopted 03/21/03
Amended 06/18/03
Amended 02/08/08

This version of this policy applies to requests for review/appeals of all decisions not to reappoint made on or after ~~January~~ September 1, 2009

Effective Date: The June 2003 version of this policy applies to appeals of all decisions not to reappoint made on or after January 1, 2004

Review of Nonreappointment Decisions Under Section 604 of *The Code*

I. The Purpose of the Review Process Under Section 604 of *The Code*.

Within the University, important faculty personnel decisions are based on evaluations of performance rendered by a candidate's immediate colleagues and supervisors, who are in the best position to make such judgments. These assessments are not the product of mechanically applied checklists, criteria or formulas; there is no simple litmus test for outstanding teaching, research or service. Rather, these decisions must reflect careful exercises of discretion, in which the faculty colleagues draw on their own academic knowledge, experience and perceptions to evaluate the candidate's qualifications and performance. Unavoidably and appropriately, such exercises to some extent are subjective and imprecise. Thus, the academic review process seeks to obtain the collective good faith judgment of the candidate's colleagues and responsible university administrators, as the basis for decisions about advancement and reward within the academic community. Provided that these conclusions are based on considerations that are relevant to the candidate's performance and the candidate's promise to contribute to the good of the institution, they are entitled to great deference and weight.

The purpose of reviewing decisions not to reappoint is to determine whether the decision not to reappoint was materially flawed, in violation of applicable laws, policies, standards, or procedures. It is not to second-guess professional judgments based on permissible considerations. The purpose of the campus based review process is to determine (1) whether the decision was based on considerations that *The Code* provides are impermissible; and (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint. The purpose of review by the Board of Governors is to assure (1) that the campus-based process for making the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy.

II. Campus based decision

- A. **Basis for Review:** A decision not to reappoint a faculty member may be made for any reason that is not an impermissible reason. The three impermissible reasons for a

decision not to reappoint a faculty member, as stated in Section 604B of *The Code*, are, “(a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice.” A faculty member who asserts that the procedure for determining whether to reappoint the faculty member was materially flawed or that the decision was based on an impermissible reason may file a request for review from that decision in accordance with the procedure established by the constituent institution.

- B. Definition of “personal malice”:** As used in *The Code*, the term “personal malice” means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. For example, personnel decisions based on negative reactions to an employee’s anatomical features, marital status or social acquaintances are intrinsically suspect. If reappointment is withheld because of personal characteristics that cannot be shown to impinge on job performance, a wrong likely has been committed. On the other hand, if personal characteristics can be shown to impede a faculty member’s capacity to relate constructively to his or her peers, in a necessarily collegial environment, withholding advancement may be warranted. For example, the undisputed record evidence might establish that the responsible department chair declined to recommend a probationary faculty member for reappointment with tenure because of the faculty member's “unpleasant personality and negative attitude.” Disposition of such a case requires a determination of whether the personality and attitude impeded the faculty member’s job performance. While the terms “ill-will,” “dislike,” “hatred” and “malevolence” may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the prohibition. Any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions.
- C. Role of the faculty committee:** The first responsibility for resolving a faculty member's claim of an improper decision not to reappoint is through the established campus process, which, if sufficient allegations are made, includes the opportunity for a formal hearing before a duly constituted faculty committee. Such faculty committees are responsible for receiving relevant evidence, making findings of fact, and providing advice to the chancellor on the merits of the faculty member’s allegations. The role of the faculty committee is to create a clear, permanent record of the evidence presented at the hearing and to advise the chancellor whether or not the faculty member has demonstrated, by a preponderance of the evidence, that the decision not to reappoint the faculty member was materially procedurally flawed or was based in significant part on an impermissible reason. The chancellor has final administrative responsibility for deciding the issue, with the assistance of the faculty committee.
- i. Because hearings in matters of non-reappointments can present complex and difficult questions of fact, policy, and law, and because of the central role of the

faculty committee hearing in gathering and preserving the evidence upon which most subsequent decisions related to the matter will be based, it is important for the President and the chancellors to assure that faculty committee members, as well as relevant administrators and aggrieved faculty members, have access to appropriate training materials and guidance to enable them to perform their functions well.

- ii. The faculty council or senate of each constituent institution should consider whether to alter election procedures for the faculty committee so as to extend the length of service of appropriately trained committee chairs, for example to four or five years, in order to assure that each hearing has a skilled person to manage it.
- iii. Each constituent institution must decide whether to allow faculty members to have the assistance of an attorney or other advisor at the hearing and, if so, whether the advisor is permitted actively to participate in the hearing. The Board of Governors discourages constituent institutions from allowing attorneys actively to participate during the hearing. If, however, an attorney will be permitted actively to participate during the hearing on behalf of the faculty member, then the campus should provide legal counsel for the respondent administrator.

D. Preservation of evidence: It is essential that all testimony and other evidence received by a faculty committee be preserved in a form that will permit its later review by the parties to the proceeding, the chancellor, and the Board of Governors. Both the chancellor, in making the final campus decision, and the Board of Governors, in responding to requests for appellate review, must have access to a complete record of the evidence received at the hearing. While the conclusions and recommendations of the faculty committee are entitled to great deference, the chancellor is responsible for determining whether the evidence in the record supports the disposition that has been recommended by the faculty committee. Similarly, the Board of Governors, when considering an appeal from a chancellor's decision, must be able to determine whether the available evidence supports the chancellors decision.

The Board of Governors recommends that a professional court reporter, or a similarly reliable means, be used to enable the production of a verbatim written transcript of the hearing and properly to maintain a record of the documents received by the committee. Any such record is a part of the personnel inquiry and must be treated with appropriate confidentiality. Only the immediate parties to the controversy, the responsible administrators and attorneys, and the members of the University governing boards, and their respective committees and staffs, are permitted access to such materials.

E. 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 faculty hearing 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 committee, the Board of Governors encourages the chancellor to

communicate or consult with the hearing committee, either in person or in writing, regarding the chancellor's concerns before making a decision. The chancellor shall notify the faculty member and relevant administrators of the chancellor's decision in writing.

- F. **Notice of Appeal Rights:** A faculty member who has adequate grounds for appeal may appeal the chancellor's decision not to reappoint the faculty member to the Board of Governors. The chancellor's notice to the faculty member of the decision concerning the faculty member's case must inform the faculty member: (1) of the time limit within which the faculty member may file a notice of appeal with the President requesting review by the Board of Governors, (2) that a simple written notice of appeal with a brief statement of its basis is all that is required within the ten-day period and, (3) 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 is to be conveyed to the faculty member by a method which produces adequate evidence of delivery.
- G. To insure full understanding by all constituencies of the campus, the informational document regularly published by the institution containing faculty information (e.g., the faculty handbook) must include a summary statement of the time limits for appeal established by this policy and any other relevant time limits established by board of trustees' policy.

III. Appeals to the Board of Governors

- A. **Schedule:** If the Board agrees to consider the appeal, it will do so on a schedule established by the President, 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 Governors will issue its decision as expeditiously as is practical.
- B. **Review by the Board of Governors:** Under *The Code*, primary reliance is placed on the campus decision-making apparatus; an appeal to the Board of Governors is intended only to determine if the campus-based process or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy. The Board of Governors will exercise jurisdiction under Section 604D of *The Code* in a manner that assures that primary focus will be on the integrity of campus procedures. Three kinds of assignments of error may be raised on appeal to the Board of Governors:
 - 1. **Procedural flaws.** A faculty member may allege on appeal that the hearing conducted by the responsible faculty committee or the process followed by the chancellor, in reviewing the recommendation of the faculty committee, did not comport with institutional requirements. Examples of procedural flaws could be that the committee was not an "elected, standing committee of the faculty" in contravention of institutional rules; that identified members of the committee had

demonstrably conflicting interests which precluded, or could have precluded, their objective and fair assessment of the evidence; or that the committee improperly excluded relevant evidence that arguably would have established the faculty member's contentions. The Board normally will grant requests to review contentions that the review procedures followed by the campus in a particular case did not comport with University requirements that materially affected the credibility, reliability and fairness of such inquiries, thereby depriving the faculty member of a valid opportunity to establish his or her contentions. If a faculty member demonstrates that, because of a material procedural flaw, he or she did not receive a fair hearing or fair review by the chancellor, a remedy on appeal normally will be granted. Typically, that would consist of remanding the case for a new, properly conducted hearing or review.

2. **Sufficiency of the evidence.** A faculty member may allege on appeal that the evidence available to the decision maker, taken as a whole, established that the decision not to reappoint was based on an impermissible reason, and that the campus review committee or the chancellor clearly erred in deciding otherwise. A clearly erroneous decision is one that a reasonable person could not have reached, based on the available evidence taken as a whole and the relevant controlling laws or policies. To demonstrate that a decision was clearly erroneous, the faculty member must demonstrate that a reasonable person, viewing the evidence as a whole, could not have reached the conclusion that the decision maker reached. Such an appeal constitutes a request that the Board of Governors review the entire record of evidence generated by the faculty hearing committee (as augmented through any supplemental inquiries conducted by the chancellor) to determine whether reasonable persons could have arrived at the conclusion in question. The issue is not whether the Board of Governors would have evaluated the evidence the same way and reached the same conclusion as did the faculty committee or the chancellor; rather, the question is whether the decision reached was a reasonable one, in light of the available evidence. The Board will not routinely grant requests to review questions about the sufficiency of the evidence to sustain the conclusion reached below. However, the Board may entertain such appeals when the history of the case reveals a difference, with respect to ultimate conclusions of fact, between the responsible faculty hearing committee and the chancellor.
3. **Interpretation of applicable law or policy.** A faculty member may allege on appeal that, in disposing of the request for review, controlling law or University policy was disregarded, misinterpreted, or misapplied to the facts of the case. The Board will grant requests to review University policy or legal issues implicated by a particular decision when the question appears to require intervention by the Board to clarify the definition, interpretation or application of such law or policies.

The first step in any appeal to the Board of Governors will be an evaluation by the Board, through a designated subcommittee, of the faculty member's written statement of grounds for appeal to determine whether the issues sought to be raised warrant Board attention, as

judged by the three basic standards set out in this policy. If not, the Board may dismiss the appeal without further proceedings.

If the faculty member has made allegations that are sufficient to invoke the jurisdiction of the Board of Governors, and if the Board finds material errors in the campus decision, the case may be remanded to the campus for a new or supplemental review inquiry. The remedy available on appeal is never an award by the Board of Governors of the conferral of tenure, reappointment or promotion, absent a positive recommendation from the constituent institution.

IV. Regulations and guidelines The President may issue appropriate regulations and guidelines for effective implementation of this policy.

Effective Date: The June 2003 version of this policy applies to appeals of all decisions not to reappoint made on or after January 1, 2004.

Appendix A for Policy 101.3.1

see pdf version of this policy for Appendix A flowchart

Adopted 03/21/03
Amended 6/18/03

This version of this policy is effective until ~~January~~ September 1, 2009

APPEALS OF NONREAPPOINTMENT DECISIONS UNDER SECTION 604 OF *THE CODE*

I. The Purpose of the Appellate Process Under Section 604 of *The Code*.

Within the University, important faculty personnel decisions are based on evaluations of performance rendered by a candidate's immediate colleagues and supervisors, who are in the best position to make such judgments. These assessments are not the product of mechanically applied checklists, criteria or formulas; there is no simple litmus test for outstanding teaching, research or service. Rather, these decisions must reflect careful exercises of discretion, in which the faculty colleagues draw on their own academic knowledge, experience and perceptions to evaluate the candidate's qualifications and performance. Unavoidably and appropriately, such exercises to some extent are subjective and imprecise. Thus, the academic review process seeks to obtain the collective good faith judgment of the candidate's colleagues and responsible university administrators, as the basis for decisions about advancement and reward within the academic community. Provided that these conclusions are based on considerations that are relevant to the candidate's performance and the candidate's promise to contribute to the good of the institution, they are entitled to great deference and weight.

The purpose of reviewing decisions not to reappoint is to determine whether the decision not to reappoint was materially flawed, in violation of applicable laws, policies, standards, or procedures. It is not to second-guess professional judgments based on permissible considerations. The purpose of the campus based review process is to determine (1) whether the decision was based on considerations that *The Code* provides are impermissible; and (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for making the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy.

II. Campus based decision

- A. **Basis for Appeal:** A decision not to reappoint a faculty member may be made for any reason that is not an impermissible reason. The three impermissible reasons for a decision not to reappoint a faculty member, as stated in Section 604B of *The Code*, are, "(a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, sex, religion, national origin, age, disability, or honorable service in the armed services of the United States, or (c) personal malice." A faculty member who asserts that the procedure for determining whether to reappoint the faculty member was materially flawed or that the decision was based on an impermissible reason may file a notice of appeal from that decision in accordance with the procedure established by the constituent institution.

- B. **Definition of “personal malice”:** As used in *The Code*, the term “personal malice” means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. For example, personnel decisions based on negative reactions to an employee’s anatomical features, marital status or social acquaintances are intrinsically suspect. If reappointment is withheld because of personal characteristics that cannot be shown to impinge on job performance, a wrong likely has been committed. On the other hand, if personal characteristics can be shown to impede a faculty member’s capacity to relate constructively to his or her peers, in a necessarily collegial environment, withholding advancement may be warranted. For example, the undisputed record evidence might establish that the responsible department chair declined to recommend a probationary faculty member for reappointment with tenure because of the faculty member’s “unpleasant personality and negative attitude.” Disposition of such a case requires a determination of whether the personality and attitude impeded the faculty member’s job performance. While the terms “ill-will,” “dislike,” “hatred” and “malevolence” may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the prohibition. Any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions.
- C. **Role of the faculty committee:** The first responsibility for resolving a faculty member’s claim of an improper decision not to reappoint is through the established campus process, which, if sufficient allegations are made, includes the opportunity for a formal hearing before a duly constituted faculty committee. Such faculty committees are responsible for receiving relevant evidence, making findings of fact, and providing advice to the chancellor on the merits of the faculty member’s allegations. The role of the faculty committee is to create a clear, permanent record of the evidence presented at the hearing and to advise the chancellor whether or not the faculty member has demonstrated, by a preponderance of the evidence, that the decision not to reappoint the faculty member was materially procedurally flawed or was based in significant part on an impermissible reason. The chancellor has final administrative responsibility for deciding the issue, with the assistance of the faculty committee.
- i. Because hearings in matters of non-reappointments can present complex and difficult questions of fact, policy, and law, and because of the central role of the faculty committee hearing in gathering and preserving the evidence upon which most subsequent decisions related to the matter will be based, it is important for the President and the chancellors to assure that faculty committee members, as well as relevant administrators and aggrieved faculty members, have access to appropriate training materials and guidance to enable them to perform their functions well.
 - ii. Each constituent institution should consider whether to extend the length of service of appropriately trained committee chairs, for example to four or five years, in order to assure that each hearing has a skilled person to manage it.
 - iii. Each constituent institution must decide whether to allow faculty members to have the assistance of an attorney or other advisor at the hearing and, if so, whether the advisor is permitted actively to participate in the hearing. The Board of Governors discourages constituent institutions from allowing attorneys actively to

participate during the hearing. If, however, an attorney will be permitted actively to participate during the hearing on behalf of the faculty member, then the campus should provide legal counsel for the respondent administrator.

- D. **Preservation of evidence:** It is essential that all testimony and other evidence received by a faculty committee be preserved in a form that will permit its later review by the parties to the proceeding, the chancellor, and the Board of Governors. Both the chancellor, in making the final campus decision, and the Board of Governors, in responding to requests for appellate review, must have access to a complete record of the evidence received at the hearing. While the conclusions and recommendations of the faculty committee are entitled to great deference, the chancellor is responsible for determining whether the evidence in the record supports the disposition that has been recommended by the faculty committee. Similarly, the Board of Governors, when considering an appeal from a chancellor's decision, must be able to determine whether the available evidence supports the chancellor's decision.

The Board of Governors recommends that a professional court reporter, or a similarly reliable means, be used to enable the production of a verbatim written transcript of the hearing and properly to maintain a record of the documents received by the committee. Any such record is a part of the personnel inquiry and must be treated with appropriate confidentiality. Only the immediate parties to the controversy, the responsible administrators and attorneys, and the members of the University governing boards, and their respective committees and staffs, are permitted access to such materials.

- E. **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 faculty hearing 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 committee, the Board of Governors encourages the chancellor to communicate or consult with the hearing committee, either in person or in writing, regarding the chancellor's concerns before making a decision. The chancellor shall notify the faculty member and relevant administrators of the chancellor's decision in writing.

- F. **Notice of Appeal Rights:** A faculty member who has adequate grounds for appeal may appeal the chancellor's decision not to reappoint the faculty member to the Board of Governors. The chancellor's notice to the faculty member of the decision concerning the faculty member's case must inform the faculty member: (1) of the time limit within which the faculty member may file a notice of appeal with the President requesting review by the Board of Governors, (2) that a simple written notice of appeal with a brief statement of its basis is all that is required within the ten-day period and, (3) 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 is to be conveyed to the faculty member by a method which produces adequate evidence of delivery.

- G. To insure full understanding by all constituencies of the campus, the informational document regularly published by the institution containing faculty information (e.g., the faculty

handbook) must include a summary statement of the time limits for appeal established by this policy and any other relevant time limits established by board of trustees' policy.

III. Appeals to the Board of Governors

- A. **Time Limits for Appeal** A faculty member who wishes to appeal the chancellor's decision must file written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within 10 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 President, 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 Governors will issue its decision as expeditiously as is practical.
- B. **Review by the Board of Governors:** Under *The Code*, primary reliance is placed on the campus decision-making apparatus; an appeal to the Board of Governors is intended only to determine if the campus-based process or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy. The Board of Governors will exercise jurisdiction under Section 604D of *The Code* in a manner that assures that primary focus will be on the integrity of campus procedures. Three kinds of assignments of error may be raised on appeal to the Board of Governors:
 1. **Procedural flaws.** A faculty member may allege on appeal that the hearing conducted by the responsible faculty committee or the process followed by the chancellor, in reviewing the recommendation of the faculty committee, did not comport with institutional requirements. Examples of procedural flaws could be that the committee was not an "elected, standing committee of the faculty" in contravention of institutional rules; that identified members of the committee had demonstrably conflicting interests which precluded, or could have precluded, their objective and fair assessment of the evidence; or that the committee improperly excluded relevant evidence that arguably would have established the faculty member's contentions. The Board normally will grant requests to review contentions that the grievance procedures followed by the campus in a particular case did not comport with University requirements that materially affected the credibility, reliability and fairness of such inquiries, thereby depriving the faculty member of a valid opportunity to establish his or her contentions. If a faculty member demonstrates that, because of a material procedural flaw, he or she did not receive a fair hearing or fair review by the chancellor, a remedy on appeal normally will be granted. Typically, that would consist of remanding the case for a new, properly conducted hearing or review.

2. Sufficiency of the evidence. A faculty member may allege on appeal that the evidence available to the decision maker, taken as a whole, established that the decision not to reappoint was based on an impermissible reason, and that the grievance committee or the chancellor clearly erred in deciding otherwise. A clearly erroneous decision is one that a reasonable person could not have reached, based on the available evidence taken as a whole and the relevant controlling laws or policies. To demonstrate that a decision was clearly erroneous, the faculty member must demonstrate that a reasonable person, viewing the evidence as a whole, could not have reached the conclusion that the decision maker reached. Such an appeal constitutes a request that the Board of Governors review the entire record of evidence generated by the faculty hearing committee (as augmented through any supplemental inquiries conducted by the chancellor) to determine whether reasonable persons could have arrived at the conclusion in question. The issue is not whether the Board of Governors would have evaluated the evidence the same way and reached the same conclusion as did the faculty committee or the chancellor; rather, the question is whether the decision reached was a reasonable one, in light of the available evidence. The Board will not routinely grant requests to review questions about the sufficiency of the evidence to sustain the conclusion reached below. However, the Board may entertain such appeals when the history of the case reveals a difference, with respect to ultimate conclusions of fact, between the responsible faculty hearing committee and the chancellor.

3. Interpretation of applicable law or policy. A faculty member may allege on appeal that, in disposing of the grievance, controlling law or University policy was disregarded, misinterpreted, or misapplied to the facts of the case. The Board will grant requests to review University policy or legal issues implicated by a particular decision when the question appears to require intervention by the Board to clarify the definition, interpretation or application of such law or policies.

The first step in any appeal to the Board of Governors will be an evaluation by the Board, through a designated subcommittee, of the faculty member's written statement of grounds for appeal to determine whether the issues sought to be raised warrant Board attention, as judged by the three basic standards set out in this policy. If not, the Board may dismiss the appeal without further proceedings.

If the faculty member has made allegations that are sufficient to invoke the jurisdiction of the Board of Governors, and if the Board finds material errors in the campus decision, the case may be remanded to the campus for a new or supplemental grievance inquiry. The remedy available on appeal is never an award by the Board of Governors of the conferral of tenure, reappointment or promotion, absent a positive recommendation from the constituent institution.

IV. Regulations and guidelines

The President may issue appropriate regulations and guidelines for effective implementation of this policy.

Effective Date: This policy applies to appeals of all decisions not to reappoint made on or after January 1, 2004.

DRAFT

Adopted 11/14/86
 Amended 10/12/90
 Amended 02/18/94
 Amended 04/21/95
 Amended 11/08/96
 Amended 07/11/97
 Amended 11/13/98
 Amended 09/10/99
 Amended 08/11/00
 Amended 04/12/01
 Amended 06/08/01
 Amended 1/11/02
 Amended 11/08/02
 Amended 3/21/03
 Amended 10/10/03
 Amended 11/12/04
 Amended 7/1/07
 Amended 02/08/08

SENIOR ACADEMIC AND ADMINISTRATIVE OFFICERS

The duties and responsibilities of the President and the chancellors, and of their respective senior staff members, and their relationships to one another, to the Board of Governors, to the Boards of Trustees, and to all other officers and agencies within and without the University are set forth in Chapter Five of *The Code of The University of North Carolina*. To complement the provisions of Chapter Five and further to clarify these duties, responsibilities, and relationships, the following regulations are adopted by the Board of Governors:

I. Definition of “Senior Academic and Administrative Officers”

- A. Senior officers of the University of North Carolina who are subject to the provisions of Section II of this policy are: the President [N.C.G.S. 116-14(a)]; the vice presidents, associate vice presidents, assistant vice presidents, and other members of the President’s professional staff designated by the Board of Governors on recommendation of the President [N.C.G.S. 116-14(b)]; the chancellors of the constituent institutions [N.C.G.S. 116-11(4)]; the vice chancellors, provosts, and deans^[1] of the constituent institutions, and the directors of major administrative, educational, research and public services activities of the constituent institutions designated by the Board of Governors [N.C.G.S. 116-11(5)].
- B. Other senior officers of the University of North Carolina who are subject to the provisions of Section III of this policy are: (1) members of the President’s professional staff other than those identified in subparagraph A above [N.C.G.S. 116-14(b)]; and (2) associate and assistant vice chancellors; associate and assistant deans; and other administrative positions within the constituent institutions, other than those identified in subparagraph A above, that have been designated by the President. [N.C.G.S. 116-11(5)].^[2]

II. Senior Academic and Administrative Officers of the University of North Carolina as Defined in Section I.A. above, Shall Be Subject to the Following Regulations.

A. Appointments and Discontinuation of Appointments

1. All senior officers as defined in Section I.A. above, are employed in their administrative positions pursuant to this policy. Except with regard to the appointment of the President and the Chancellors, no contract or other writing (except for *The Code*) may vary these terms, nor may any oral agreement modify these provisions. The appointments of these senior officers are subject to the approval of the Board of Governors or a Board of Trustees delegated such authority by the Board of Governors.^[3] Such officers do not have tenure in their administrative positions. Except for the President and the Chancellors, they serve at the discretion of their employer and are not appointed to serve for specified periods of time. "Employer" in this context means, respectively, the official or entity designated in paragraphs (a) through (d) below. The continuance of these administrators in office therefore is at all times subject to determination by the appropriate authority, as follows:
 - (a) The President's continuance in office is determined by the Board of Governors.
 - (b) The continuance in office of members of the President's professional staff is determined by the President.
 - (c) The continuance in office of the chancellor of a constituent institution is determined by the Board of Governors, which may act to terminate such an appointment upon its own initiative or upon recommendation of the President. The Board of Governors in all instances shall consult the appropriate chair of the Board of Trustees prior to terminating the appointment of a chancellor. The President may place a chancellor on temporary leave, with or without pay, if the President has reason to believe that illness, injury, misconduct, neglect of duty, or other circumstances may interfere with the chancellor's performance of the duties of the position. Before placing a chancellor on temporary leave, the President shall consult with the Chairman of the Board of Governors, the chair of the Committee on Personnel and Tenure, and the appropriate chair of the Board of Trustees.
 - (d) The continuance in office of vice chancellors, provosts, deans, and directors of major educational, research and public services activities of the constituent institutions shall be determined by the chancellor of the institution.
 - (e) Notwithstanding the provisions of (b) and (d) above, the Board of Governors, in accordance with the provisions of Section 501B(6) of *The Code*, reserves the right to initiate action to terminate appointment of those officers when it deems such action to be necessary in the best interests of the University.

2. Senior officers of a constituent institution are subject to the direction and control of the chancellor and serve at the chancellor's discretion. They are employees at will; thus, the chancellor may not purport to confer on any such officer a period of employment of fixed duration or otherwise confer any property interest in such employment. However, such an officer may be appointed to a period of employment not to exceed a specified number of years, so long as the instrument accomplishing such an appointment states clearly that the incumbent officer is subject to removal at any time, during that period, at the option of the chancellor.
3. Tenure status as a member of the faculty of a constituent institution, held concurrently by any senior officer of the University is separate and distinct from the administrative office, and such tenure status is governed by the provisions of Chapter Six of *The Code* and by the tenure policies of the relevant constituent institution. Those tenure policies have no bearing upon and do not govern the administrative appointments covered by this policy.
4. Appointment of Chancellors
 - a. The appointment of chancellors shall be made by the Board of Governors upon the recommendation of the President, in accordance with N.C.G.S §116-11(4).
 - b. The Board of Governors may approve a contract with a chancellor as recommended by the President. The contract may specify the chancellor's term of employment, salary, benefits, and performance based deferred or supplemental compensation; provisions for the termination of the chancellor's employment; and any other terms recommended by the President.
 - c. In all other regards, the employment of chancellors is subject to *The Code*, the Policies of the Board of Governors, and the North Carolina General Statutes.
 - d. Except as specifically otherwise provided in the contract, and except as provided in ¶ II.A.1(c) of this policy, after the Board of Governors has approved a contract with a chancellor, it will be the sole responsibility of the President to implement the terms of the contract.

B. Compensation

The compensation of senior officers shall be set by the Board of Governors or a Board of Trustees delegated such authority by the Board of Governors.[4]

No chancellor and no senior academic and administrative officer may be paid, in addition to his or her salary as established pursuant to the foregoing requirements, for any services rendered to any institution-related foundation, endowment, or other entity that was established by officers of the University, that is controlled by the University, or that is tax exempt based on being a support organization for the University.

C. Equal Employment Opportunity

It is the policy and intention of the University of North Carolina that there be equal employment opportunity and freedom from unlawful discrimination in all employment

within the University. There shall be no discrimination in positions covered by this policy on the basis of race, color, creed, national origin, sex, religion, disability, age, or honorable service in the armed services of the United States.^[5] Employment in positions covered by this policy shall be conducted in accordance with all provisions of State or federal law or regulation prohibiting any such discrimination, and in accordance with applicable affirmative action plans.

D. Political Activity

Employment in positions covered by this policy shall not be adversely affected by the exercise of rights guaranteed by the First Amendment of the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in positions covered by this policy shall be subject to any limitations on political activity established by Article 5 of N.C.G.S. Chapter 126. The Board of Governors' policies concerning political activity, Policy §§300.5 *et seq.*, as they may be revised from time to time, shall apply to positions covered by this policy.

E. Holiday and Leave Entitlement

1. Holidays

A senior officer shall be subject to the same State-prescribed holidays given employees subject to the State Personnel Act.

2. Annual Leave

A senior officer shall be entitled to 26 work days of annual leave each year.^[6] The maximum number of unused days of annual leave that may be accrued and carried forward from one year to the next shall be 30 work days. Annual leave in excess of 30 days will be automatically converted to sick leave at the end of the year. A senior officer who has accrued such unused annual leave as of the date of discontinuation of employment shall be paid for such unused annual leave, subject to a maximum of 30 days.

Subject to institutional policy and approval by the employee's supervisor, a senior officer may be advanced the amount of leave that can be accrued during the remainder of the year or during a twelve-month period.

3. Sick Leave, Family and Medical Leave, Family Illness Leave, Civil Leave, Military Leave, Community Service Leave, and Special Annual Leave Bonus

A senior officer shall be entitled to such sick leave, family and medical leave, family illness leave, civil leave, military leave, community service leave, and special annual leave bonus (awarded to employees in leave earning status on 9/30/02) as may be prescribed for employees subject to the State Personnel Act. However, with respect to sick leave, subject to institutional policy and approval by the employee's supervisor, a senior officer may be advanced the amount of sick leave that can be accrued during the remainder of the year or during a twelve-month period.

4. Miscellaneous Leaves of Absence

A senior officer who desires a leave of absence for an interval of 90 days or less must obtain the approval of the President, who shall report all such arrangements to the Board of Governors. A leave of absence for a period exceeding 90 days shall require the approval of the Board of Governors.

5. Voluntary Shared Leave

A senior officer shall be subject to the same provisions concerning shared leave as are applicable to employees subject to the State Personnel Act with the exception that the donation and acceptance of such leave shall be computed on the basis of days rather than hours.

F. Educational Entitlement

A senior officer is entitled to the same opportunities as other University employees to invoke the privilege of tuition waiver conferred by N.C.G.S. § 116-143.G.

G. Statutory and Other Rules of Employment

1. Privacy of Personnel Records

A senior officer enjoys the protections of and is subject to the provisions of Article 7 of N.C.G.S. 126, entitled "The Privacy of State Employee Personnel Records."

2. Employment Preference for Veterans

A senior officer enjoys the protections of and is subject to the provisions of N.C.G.S. §§ 128-15 and 128-15.1, which provide for preference in employment for veterans of United States military service and their spouses and widows or widowers.

3. Employment of Related Persons

A senior officer is subject to the policy concerning employment of related persons, Policy §300.4.2, as it may be revised from time to time.

H. Retirement

A senior officer may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees").

III. Senior Academic and Administrative Officers of the University of North Carolina as Defined in Section I.B. above, Shall Be Subject to the Following Regulations.

A. Appointments

1. All senior academic and administrative officers as defined in Section I.B. above, are employed in their administrative positions pursuant to this policy. The authority to make appointments and determine salaries for positions within Section I.B. (1) is exercised by the Board of Governors, on recommendation of the President, or a Board of Trustees delegated such authority by the Board of Governors; for positions within Section I.B. (2), such authority is delegated by the Board of Governors to the chancellors and the respective Boards of Trustees of the constituent institutions.
2. Every appointment within a constituent institution covered by this policy shall be made by the chancellor, or the chancellor's delegate, by means of a letter of appointment that fulfills the requirements of this Section III.
3. Every letter of appointment to a position covered by this policy shall include:
 - (a) the title of the position;
 - (b) the initial salary;
 - (c) provision for periodic review of compensation^[7];
 - (d) provision consistent with Sections III.A.4. and III.A.5. below, if contingencies based on availability of funding are applicable;
 - (e) the annual leave entitlement of the employee;
 - (f) except as provided in subparagraph (h) below, notice that the employment conferred is an "employment at will" subject to continuation or discontinuation at the discretion, respectively, of the President or of the chancellor; and
 - (g) notice that the employment is subject to this policy as originally adopted and as it may be periodically revised from time to time, and a copy of the policies shall be attached to the letter of appointment.
 - (h) Contracts or letters of appointment of Directors of Athletics may be for a term of years and are governed by Policy 1100.3 and Guidance 1100.3.1 [G].
4. When a position covered by this policy is funded in whole or substantial part from sources other than continuing State budget funds or permanent trust accounts, the letter of appointment shall state that continuation of the employee's service in that position is contingent upon the continuing availability of funds from such other sources to support that position, shall specify the source of such funds, and shall state that the effect of such contingency may apply without the additional notice otherwise required by Sections III.B.1., III.B.2., and III.B.3.; provided, that the affected employee shall be informed at the earliest practicable date of the occurrence of such a funding contingency.

5. When an employee is to serve simultaneously in both a position covered by this policy and a position of University employment not covered by this policy, with the result that two different prescriptions may appear to obtain with respect to a particular condition of employment or a right or responsibility of the employee, one position shall be designated the base position to determine the conditions of employment and the rights and responsibilities of the employee. If appointment to a position covered by this policy occurs subsequent to an appointment to a position not covered by this policy, the letter of appointment to the position covered by this policy shall embody the required designation of base employment; conversely, if appointment to a position covered by this policy precedes appointment to the other category of University employment, the letter of appointment or contract establishing the second employment shall embody the required designation of base employment. In either case, the designation of base employment shall specifically describe the different rights, duties, and compensation for each position and the relationship, if any, between the two positions.

Any funding contingency of the type referred to in Section III.A.4. shall be set forth separately for the position covered by this policy and for the other position, since the operation of any such contingencies may be independent.

When an appointment to a position covered by this policy is to be accompanied by appointment to a faculty position that is intended to be nominal or honorary, or to create a faculty affiliation not entailing significant duties or compensation, the term "adjunct," or similar nomenclature, shall be used to identify the faculty appointment.

B. Discontinuation of Employment

1. Discontinuation of appointment, with notice or severance pay

Employment within a position covered by section III of this policy that is established by the letter of appointment to be an employment at will is subject to discontinuation at any time at the discretion, respectively, of the President or of the chancellor; provided, that such a discontinuation (as distinguished from discharge for cause, Section III.B.4.) shall be subject to advance timely notice of discontinuation or the payment of severance pay, in calendar days, as follows:

- (a) during the first year of service, not less than 30 days notice prior to discontinuation of employment or the payment of severance pay for 30 days;
- (b) during the second and third years of service, not less than 60 days notice prior to discontinuation of employment or the payment of severance pay for 60 days; and
- (c) during the fourth and all subsequent years of continuous service, not less than 90 days notice prior to discontinuation of employment or the payment of severance pay for 90 calendar days.

The chancellor or the president may provide the employee with a combination of notice and severance pay that totals the respective required number of days. The determination of whether the employee shall receive notice of discontinuance of the appointment or severance pay or a combination of the two shall be in the sole discretion of the respective chancellor or the president.

2. Expiration of term appointment

Employment within a position covered by this policy that is established by the letter of appointment dated prior to December 1, 2004 to be for a stated definite term expires automatically at the conclusion of the stated term; such an appointment may be extended at the option of the employer on an employment at will basis, by written notice satisfying the requirements of Section III.A. If the employer intends not to extend the employment, (1) with respect to a term of one year or less, no notice of intent not to extend shall be required; (2) with respect to a term of more than one year but less than four years, notices of intent not to extend shall be transmitted in writing at least 60 days prior to this expiration date of the term; (3) with respect to a term of four years or more, notice of intent not to extend shall be transmitted in writing at least 90 days prior to the expiration date of the term. Failure to provide written notices as required in subsections (2) and (3) above shall result in the automatic extension of employment for a period, respectively, of either 60 days or 90 days, beyond the date the notice is given to the employee.

3. Termination of employment because of financial exigency or program curtailment or elimination

Employment within a position covered by this policy that is established by the letter of appointment to be for a stated definite term may be terminated prior to expiration of the stated term because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of a program. "Financial exigency" is defined to mean a significant decline in financial resources of the University that compels a reduction in the university's or the institution's budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or an elimination of a program shall be made, respectively, by the President or by the chancellor, with advance notice to and approval by the Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the contractual obligation to an employee within a position covered by this policy cannot be met, the employment of the individual may be terminated, subject to the following notice requirements;

- (a) during the first year of service, not less than 30 days notice prior to termination;
- (b) during the second and third years of employment, not less than 60 days notice prior to termination; and
- (c) during the fourth and all subsequent years of service, not less than 90 days notice prior to termination.

[THIS SUBSECTION IS EFFECTIVE UNTIL ~~JANUARY-SEPTEMBER 1, 2009~~]

4. Discharge for Cause

Any employee occupying a position covered by this policy may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section III.B.1.), automatic expiration of term (Section III.B.2.), and termination (Section III.B.3.). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to invocation by the affected employee of the grievance procedures of Section III.C. of this policy. When an employee occupying a position covered by this policy has been notified of the intention to discharge for cause, the President or chancellor, as applicable, may suspend the employment at any time and continue the suspension until a final institutional or presidential decision concerning discharge has been reached by the procedures adopted pursuant to paragraph C.1. below; such suspension during this time period shall be with full pay. If the final institutional or presidential decision is to discharge the employee, then the employee may be discharged without further pay without regard to whether there is an appeal to the Board of Governors in accordance with Section 609 C of *The Code*.

[THIS SUBSECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER ~~JANUARY-SEPTEMBER 1, 2009~~]

4. Discharge for Cause

Any employee occupying a position covered by this policy may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section III.B.1.), automatic expiration of term (Section III.B.2.), and termination (Section III.B.3.). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to invocation by the affected employee of the review procedures of Section III.C. of this policy. When an employee occupying a position covered by this policy has been notified of the intention to discharge for cause, the President or chancellor, as applicable, may suspend the employment at any time and continue the suspension until a presidential or chancellor decision concerning discharge has been reached; such suspension during this time period shall be with full pay. If the final presidential or chancellor decision is to discharge the employee, then the employee may be discharged without further pay without regard to whether there is an appeal to a Board of Trustees or the Board of Governors in accordance with Section 611 of *The Code*. No provision of this Policy 300.1.1 shall be interpreted to extend an employee's right to pay beyond the expiration of the employee's term of appointment while an appeal is pending under this Policy.

[THIS SUBSECTION IS EFFECTIVE UNTIL ~~JANUARY-SEPTEMBER 1, 2009~~]

C. Review of Employment Decisions and Grievances

1. The Office of the President and each constituent institution respectively shall adopt and publicize procedures applicable to relevant cohorts of employees, under which covered employees may secure review of decisions concerning discharge for cause or other disciplinary action, or of grievances concerning the interpretation and application of any provision of this policy; provided, however, that grievances concerning discontinuations or terminations of employment with notice, pursuant to Sections III.B.1, III.B.2., and III.B.3, may be brought only upon allegations of violations of applicable notice requirements or violations of any provision of Section III.D. or III.E. of this policy.
2. Decisions reached pursuant to such grievance procedures concerning the discontinuation or termination of employment may be appealed to the Board of Governors in accordance with the provisions of Section 609 C of *The Code*.

[THIS SUBSECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON OR AFTER JANUARY-SEPTEMBER 1, 2009]

C. Reviews

1. General Administration and each constituent institution respectively shall adopt and publicize procedures applicable to relevant cohorts of employees, under which covered employees may secure review of decisions concerning discharge for cause or other disciplinary action, or review concerning the interpretation and application of any provision of this policy; provided, however, that reviews concerning discontinuations, expiration of term appointments, or terminations of employment with notice, pursuant to Sections III.B.1, III.B.2., and III.B.3, may be brought only upon allegations of violations of applicable notice requirements or violations of any provision of Section III.D. or III.E. of this policy.
2. Decisions reached pursuant to such review procedures concerning the discontinuation, expiration of term appointment, termination, or discharge for cause may be appealed in accordance with the provisions of Section 611 of *The Code*.

D. Equal Employment Opportunity

It is the policy and intention of the University of North Carolina that there be equal employment opportunity and freedom from unlawful discrimination in all employment within the University. There shall be no discrimination in positions covered by this policy on the basis of race, color, creed, national origin, sex, religion, disability, age, or honorable service in the armed services of the United States.^[8] Employment in positions covered by this policy shall be conducted in accordance with all provisions of state or federal law or regulation prohibiting any such discrimination, and in accordance with applicable affirmative action plans.

E. Political Activity

Employment in positions covered by this policy shall not be adversely affected by the exercise of rights guaranteed by the First Amendment of the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in positions covered by this policy shall be subject to any limitations on political activity established

by Article 5 of N.C.G.S. Chapter 126. The Board of Governors' policies concerning political activity, Policy §300.5, *et seq.* as they may be revised from time to time, shall apply to positions covered by this policy.

F. Holiday and Leave Entitlement

1. Holidays

Employees in positions covered by this policy shall be subject to the same State-prescribed holidays given employees subject to the State Personnel Act.

2. Annual Leave^[9]

(a) Basic Leave Policy

The amount of annual leave to which a permanent full-time employee (1.00 FTE) in a position covered by this policy shall be entitled to accrue is 24 workdays per year. Annual leave is accrued at a monthly rate and is adjusted proportionately for permanent part-time employees who work halftime or more (.50 - .99 FTE). The monthly earnings amount is equal to one-twelfth of the annual rate for each month the employee works or is on approved leave with pay. Monthly leave is earned when an employee works or is on approved leave with pay at least half the working days of a month. An employing institution shall define a year as either "fiscal year" (July 1 - June 30) or "calendar year" (January 1 - December 31). (Note: Employing institutions that have previously defined a year as "contract year" may continue to do so.) The scheduling of an employee's annual leave shall be subject to the approval of the employee's supervisor. With respect to an incumbent employee who is earning more than 24 days per year as of the date this policy becomes effective, such employee shall be entitled to continue to earn leave at the current rate.

The maximum number of unused days of annual leave that may be carried forward from one year to the next shall be 30 workdays. Annual leave in excess of 30 days will be automatically converted to sick leave at the end of the year.

(b) Transfer of Accrued Annual Leave

An employing institution must establish campus-wide uniform guidelines regarding the transfer of accrued annual leave from a UNC constituent institution or State or local governmental agency whose leave is currently transferable in accordance with the policy prescribed for employees subject to the State Personnel Act [See State Personnel Manual, Section 5-1]. Upon discontinuation of employment from the employing institution, the employee may

either elect a payout of accrued annual leave [see (d) below] or transfer the remaining balance of any unused annual leave to another State or local governmental agency, subject to the receiving agency's approval.

(c) Advancement of Annual Leave

Subject to institutional policy and approval by the employee's supervisor, an employee may be advanced the amount of leave that can be accrued during the remainder of the year or during a twelve-month period. If an employee separates from the employing institution and has taken more annual leave than has been accrued, the employing institution must determine the amount of leave that the employee must repay to the institution and make deductions from the employee's final salary check accordingly.

(d) Payout of Accrued Annual Leave

An employee in a position covered by this policy who has accrued unused annual leave upon discontinuation of employment from the employing institution and who either does not elect or is not eligible to transfer such accrued leave to another State or local governmental agency, shall be paid for such unused annual leave. The amount paid to an employee who has been employed an aggregate of 24 months or less by one or more State or local governmental agencies is equal to one day for each month worked less the number of days of annual leave taken during the employment period. An employee who has been employed for more than 24 months shall be paid subject to a maximum of 30 such days. Each institution shall establish guidelines for payout of leave if a change in employment status occurs and such employee is no longer covered by this policy.

3. Sick Leave, Family and Medical Leave, Family Illness Leave, Civil Leave, Military Leave, Community Service Leave and Special Annual Leave Bonus

Employees in positions covered by this policy shall be subject to the same policies concerning sick leave, family and medical leave, family illness leave, civil leave, military leave, community service leave, and special annual leave bonus (awarded to employees in leave earning status on 9/30/02) as may be prescribed for employees subject to the State Personnel Act. However with respect to sick leave, subject to institutional policy and approval by the employee's supervisor, an employee may be

advanced the amount of sick leave that can be accrued during the remainder of the year or during a twelve-month period.

4. Leave of Absence Without Pay

Employees in positions covered by this policy may request a leave of absence without pay, subject to approval of such leave by the President or by the chancellor, as applicable.

5. Voluntary Shared Leave

Employees in positions covered by this policy shall be subject to the same provisions concerning shared leave as are applicable to employees subject to the State Personnel Act with the exception that the donation and acceptance of such leave shall be computed on the basis of days rather than hours.

G. Educational Entitlement

Employees in positions covered by this policy are entitled to the same opportunities as other University employees to invoke the privilege of tuition waiver conferred by N.C.G.S. § 116-143.

H. Statutory and Other Rules of Employment

1. Privacy of Personnel Records

Employees in positions covered by this policy enjoy the protections of and are subject to the provisions of Article 7 of N.C.G.S. 126, entitled "The Privacy of State Employee Personnel Records."

2. Employment Preference for Veterans

Employees in positions covered by this policy enjoy the protections of and are subject to the provisions of N.C.G.S. §128-15 and 128-15.1, which provide for preference in employment for veterans of United States military service and their spouses and widows or widowers.

3. Employment of Related Persons

Employees in positions covered by this policy are subject to the policy concerning employment of related persons. Policy §300.4.2 as it may be revised from time to time.

I. Retirement

Employees in positions covered by this policy may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees").

[1] Deans at the North Carolina School of Science and Mathematics fall within Section I.B. of this Policy.

[2] Other officers include (a) members of the chancellor's professional staff; (b) those responsible for the administrative direction of separately designated divisions or departments of institutional activity commonly associated with institutions of higher education; (c) those positions whose primary responsibility is to attract external funds for and/or market the University; and, (d) other officers holding positions characterized by active, continuing involvement in formulating, interpreting, and implementing institutional policy and exercising substantial independence of administrative authority and discretion in areas such as program planning and design and allocation of resources.

[3] Pursuant to NCGS §116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the President of the University. See Policy 200.6, *Delegation Authority to the President of the University*, adopted 11/13/06.

[4] See Footnote 3 above.

[5] Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by State or federal law, may be applied to positions covered by this policy.

[6] For the purposes of determining leave under this policy, "year" shall be defined by the employing institution as either a "fiscal year" (July 1 – June 30) or a "calendar year" (January 1 – December 31). Institutions currently defining a "year" as a "contract year" may continue to do so.

[7] Subject to any compensation policies adopted by the Board of Governors or the Board of Trustees.

[8] Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by State or Federal law, may be applied to positions covered by this policy.

[9] Effective July 1, 2001.

Adopted 02/13/81
Amended 09/14/84
Amended 05/08/87
Amended by AM 254
Amended 02/18/94
Amended 04/12/01
Amended 03/21/03
Amended 02/08/08

EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT

I. Scope and Applicability of Employment Covered by These Policies

A. Scope of category

Employment positions with constituent institutions of the University that are covered by these policies (hereinafter "covered positions") are those positions that are not subject to the State Personnel Act (N.C.G.S. Chapter 126) and are not otherwise categorized. This category does not include: (1) faculty positions subject to institutional tenure regulations; (2) positions within administrative categories of employment subject to N.C.G.S. §116-11(4), N.C.G.S. §116-11(5), or N.C.G.S. §116-14; (3) positions within the "physicians or dentists" category under N.C.G.S. §126-5 with faculty appointments; and (4) University students who are employed incident to their status as students, as in graduate teaching assistantships or work-study positions. Those areas of institutional activity (as identified in the Uniform Chart of Accounts) that may include covered positions are:

Instruction
Organized Research
Agricultural Research
Agricultural Extension Service
Public Service
Academic Support
Student Services
Student Health Service Physicians (without faculty appointments)
Institutional Support
Area Health Education Centers
Library

B. Applicability of Policies

These policies apply to all permanent covered positions.

II. Appointments to Covered Positions

- A. Every appointment to a covered position within a constituent institution shall be made by the chancellor by means of a letter of appointment that fulfills the requirements of this Section II.^[1]
- B. Every letter of appointment to a covered position shall include: (1) the title of the position; (2) the initial salary; (3) provision for periodic review of compensation^[2]; (4) provision consistent with Sections II.C. and II.D., below, if contingencies based on availability of funding are applicable; (5) the annual leave entitlement of the employee; (6) notice that the employment conferred is either for a stated definite term or is an "employment at will" subject to continuation or discontinuation at the discretion of the chancellor; and (7) notice that the employment is subject to these policies (viz., institutional policies adopted pursuant to Section IX of these policies), as originally adopted and as they may be periodically revised from time to time, and a copy of the institutional policies shall be attached to the letter of appointment.
- C. When a covered position is funded in whole or substantial part from sources other than continuing State budget funds or permanent trust accounts, the letter of appointment shall state that continuation of the employee's service in that position is contingent upon the continuing availability of funds from such other sources to support that position, shall specify the source of such funds, and shall state that the effect of such contingency may apply without the additional notice otherwise required by Section III.A., III.B., and III.C.; provided, that the affected employee shall be informed at the earliest practicable date of the occurrence of such a funding contingency.
- D.
 - 1. When an employee is to serve simultaneously in both a covered position and a position of University employment not covered by these policies, with the result that two different prescriptions may appear to obtain with respect to a particular condition of employment or a right or responsibility of the employee, one position shall be designated the base position to determine the conditions of employment and the rights and responsibilities of the employee. If appointment to a covered position occurs subsequent to appointment to a position not covered by these policies, the letter of appointment to the covered position shall embody the required designation of base employment; conversely, if appointment to a covered position precedes appointment to the other category of University employment, the letter of appointment or contract establishing the second employment shall embody the required designation of base employment. In either case, the designation of base employment shall specifically describe the different rights, duties, and compensation for each position and the relationship, if any, between the two positions.
 - 2. Any funding contingency of the type referred to in Section II.C. shall be set forth separately for the covered position and for the other position, since the operation of any such contingencies may be independent.
 - 3. When an appointment to a covered position is to be accompanied by appointment to a faculty position that is intended to be nominal or honorary, or to create a faculty

affiliation not entailing significant duties or compensation, the term "adjunct," or similar nomenclature, shall be used to identify the faculty appointment.

III. Discontinuations of Employment in Covered Positions

A. Discontinuation of appointment with notice or severance pay

Employment within a covered position that is established by the letter of appointment to be an employment at will is subject to discontinuation at any time at the discretion of the chancellor; provided, that such a discontinuation (as distinguished from discharge for cause, Section III.D.) shall be subject to advance timely notice of discontinuation or the payment of severance pay, in calendar days, as follows: (1) during the first year of service, not less than 30 days notice prior to discontinuation of employment or the payment of severance pay for 30 days; (2) during the second and third years of service, not less than 60 days notice prior to discontinuation of employment or the payment of severance pay for 60 days; and (3) during the fourth and all subsequent years of continuous service, not less than 90 days notice prior to discontinuation of employment or the payment of severance pay for 90 days.

The determination of whether the employee shall receive notice of discontinuation of the appointment or severance pay shall be in the sole discretion of the respective chancellor or the president.

B. Expiration of term appointment

Employment within a covered position that is established by the letter of appointment to be for a stated definite term expires automatically at the conclusion of the stated term; such an appointment may be renewed or extended at the option of the employer, by written notice satisfying the requirements of Section II. If the employer intends not to renew or extend the term contract, (1) with respect to a term of one year or less, no notice of intent not to renew shall be required; (2) with respect to a term of more than one year but less than four years, notice of intent not to renew shall be transmitted in writing at least 60 days prior to this expiration date of the term; (3) with respect to a term of four years or more, notice of intent not to renew shall be transmitted in writing at least 90 days prior to the expiration date of the term. Failure to provide written notice as required in subsections (2) and (3) shall result in the automatic extension of employment for a period, respectively, of either 60 days or 90 days, beyond the scheduled expiration date of the term.

C. Termination of employment because of financial exigency or program curtailment or elimination

Employment within a covered position that is established by the letter of appointment to be for a stated definite term may be terminated prior to expiration

of the stated term because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of a program. "Financial exigency" is defined to mean a significant decline in financial resources of the University that compels a reduction in the institution's budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or an elimination of a program shall be made by the chancellor, with advance notice to and approval by the President and the Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the contractual obligation to an employee within a covered position cannot be met, the employment of the individual may be terminated, subject to the following notice requirements; (1) during the first year of service, not less than 30 days notice prior to termination; (2) during the second and third years of employment, not less than 60 days notice prior to termination; and (3) during the fourth and all subsequent years of service, not less than 90 days notice prior to termination.

[THIS SUBSECTION IS EFFECTIVE UNTIL ~~JANUARY~~ SEPTEMBER 1, 2009]

D. Discharge for cause

Any employee occupying a covered position may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section III.A.), automatic expiration of term (Section III.B.) and termination (Section III.C.). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to invocation by the affected employee of the grievance procedures of Section IV. of these policies. When an employee occupying a covered position has been notified of the intention to discharge him for cause, the chancellor may suspend his employment at any time and continue the suspension until a final decision concerning discharge has been reached by the procedures prescribed herein; the power to suspend shall be invoked only in exceptional circumstances and such suspension shall be with full pay.

[THIS SUBSECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON AND AFTER ~~JANUARY~~ SEPTEMBER 1, 2009]

D. Discharge for cause

Any employee occupying a covered position may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section III.A.), automatic expiration of term (Section III.B.) and termination (Section III.C.). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform

effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to invocation by the affected employee of the review procedures of Section IV. of these policies. When an employee occupying a covered position has been notified of the intention to discharge him or her for cause, the president or chancellor may suspend the employment at any time and continue the suspension until the president or chancellor, as applicable, makes a decision concerning discharge; any suspension shall be with full pay. If the final presidential or chancellor decision is to discharge the employee, then the employee may be discharged without further pay without regard to whether there is an appeal to a Board of Trustees or the Board of Governors in accordance with Section 611 of *The Code*. No provision of this Policy 300.2.1 shall be interpreted to extend an employee's right to pay beyond the expiration of the employee's term of appointment while an appeal is pending under this Policy.

[THIS SECTION IS EFFECTIVE UNTIL ~~JANUARY~~ SEPTEMBER 1, 2009]

IV. Review of Employment Decisions and Grievances

Each constituent institution shall adopt and publicize procedures under which employees in covered positions may secure review of decisions concerning discharge for cause or other disciplinary action, or of grievances concerning the interpretation and application of any provision of these policies; provided, however, that grievances concerning discontinuations or terminations of employment with notice, pursuant to Sections III.A., III.B., or III.C., may be brought only upon allegations of violations of applicable notice requirements or violations of any provision of Section V. or VI. of these policies. Decisions reached pursuant to such grievance procedures concerning the discontinuation or termination of employment may be had in accordance with the provisions of Section 609 C of *The Code*.

[THIS SECTION IS EFFECTIVE FOR PERSONNEL ACTIONS TAKEN ON AND AFTER
~~JANUARY~~ SEPTEMBER 1, 2009]

IV. Reviews

- A. Each constituent institution and General Administration shall adopt and publicize procedures under which employees in covered positions may secure review of decisions concerning discharge for cause or other disciplinary action, or review concerning the interpretation and application of any provision of this policy; provided, however, that reviews concerning discontinuations, expiration of term appointments, or terminations of employment with notice, pursuant to Sections III.A., III.B., or III.C., may be brought only upon allegations of violations of applicable notice requirements or violations of any provision of Section V. or VI. of these policies.
- B. Decisions reached pursuant to such review procedures concerning the discontinuation, expiration of term appointment, or termination of employment may be had in accordance with the provisions of Section 611 of *The Code*.

V. Equal Employment Opportunity

It is the policy and intention of the University of North Carolina that there be equal employment opportunity and freedom from unlawful discrimination in all employment within the University, as set out in Section 103 of *The Code*.^[3] Employment in covered positions shall be conducted in accordance with all provisions of state or federal law or regulation prohibiting any such discrimination, and in accordance with applicable affirmative action plans.

VI. Protected Activity

Employment in covered positions shall not be adversely affected by the exercise of rights guaranteed by the First Amendment to the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in covered positions shall be subject to any limitations on political activity established by Article 5 of N.C.G.S. Chapter 126. The Board of Governors' policies concerning political activity, Policy §300.5.1., *et seq.*, as they may be revised from time to time, shall apply to positions covered by those policies.

VII. Holiday and Leave Entitlement

A. Holidays

Employees in covered positions shall be subject to the same State-prescribed holidays given employees subject to the State Personnel Act.

B. Annual Leave^[4]

1. Basic Leave Policy

The amount of annual leave to which a permanent full-time employee (1.00 FTE) in a position covered by these regulations shall be entitled to accrue is 24 workdays per year. Annual leave is accrued at a monthly rate and is adjusted proportionately for permanent part-time employees who work halftime or more (.50 - .99 FTE). The monthly earnings amount is equal to one-twelfth of the annual rate for each month the employee works or is on approved leave with pay. Monthly leave is earned when an employee works or is on approved leave with pay at least half the working days of a month. An employing institution shall define a year as either "fiscal year" (July 1 - June 30) or "calendar year" (January 1 - December 31). (Note: Employing institutions that have previously defined a year as "contract year" may continue to do so.) The scheduling of an employee's annual leave shall be subject to the approval of the employee's supervisor. With respect to an incumbent employee who is earning more than 24 days per year as of the date this policy becomes effective, such employee shall be entitled to continue to earn leave at the current rate.

The maximum number of unused days of annual leave that may be carried forward from one year to the next shall be 30 workdays. Annual leave in excess of 30 days will be automatically converted to sick leave at the end of the year.

2. Transfer of Accrued Annual Leave

An employing institution must establish campus-wide uniform guidelines regarding the transfer of accrued annual leave from a UNC constituent institution or State or local governmental agency whose leave is currently transferable in accordance with the policy prescribed for employees subject to the State Personnel Act (See State Personnel Manual, Section 5-1). Upon discontinuation of employment from the employing institution, the employee may either elect a payout of accrued annual leave [see (4) below] or transfer the remaining balance of any unused annual leave to another State or local governmental agency, subject to the receiving agency's approval.

3. Advancement of Annual Leave

Subject to institutional policy and approval by the employee's supervisor, an employee may be advanced the amount of leave that can be accrued during the remainder of the year or during a twelve-month period. If an employee separates from the employing institution and has taken more annual leave than has been accrued, the employing institution must determine the amount of leave that the employee must repay to the institution and make deductions from the employee's final salary check accordingly.

4. Payout of Accrued Annual Leave

An employee in a position covered by these regulations who has accrued unused annual leave upon discontinuation of employment from the employing institution and who either does not elect or is not eligible to transfer such accrued leave to another State or local governmental agency, shall be paid for such unused annual leave. The amount paid to an employee who has been employed an aggregate of 24 months or less by one or more State or local governmental agencies is equal to one day for each month worked less the number of days of annual leave taken during the employment period. An employee who has been employed for more than 24 months shall be paid subject to a maximum of 30 such days. Each institution shall establish guidelines for payout of leave if a change in employment status occurs and such employee is no longer covered by this policy.

C. Sick Leave, Family and Medical Leave, Family Illness Leave, Civil Leave, Military Leave, and Community Service Leave, and Special Annual Leave Bonus

Employees in positions covered by these regulations shall be subject to the same policies concerning sick leave, family and medical leave, family illness leave, civil leave, military leave, community service leave, and special annual leave bonus (awarded to employees in leave earning status on 9/30/02) as may be prescribed for employees subject to the State Personnel Act. However, with respect to sick leave, subject to institutional policy and approval by the employee's supervisor, an employee may be advanced the amount of sick leave that can be accrued during the remainder of the year or during a twelve-month period.

D. Leave of Absence Without Pay

Employees in positions covered by these regulations may request a leave of absence without pay, subject to approval of such leave by the President or by the chancellor, as applicable.

E. Voluntary Shared Leave

Employees in positions covered by these regulations shall be subject to the same provisions concerning shared leave as are applicable to employees subject to the State Personnel Act with the exception that the donation and acceptance of such leave shall be computed on the basis of days rather than hours.

F. Educational Entitlement

Employees in covered positions are entitled to the same opportunities as other University employees to invoke the privilege of tuition waiver conferred by UNC Policy 1000.2.2.

VIII. Statutory and Other Rules of Employment

A. Privacy of personnel records

Employees in covered positions enjoy the protections of and are subject to the provisions of Article 7 of N.C.G.S. 126 entitled "The Privacy of State Employee Personnel Records."

B. Employment preference for veterans

Employees in covered positions enjoy the protections of and are subject to the provisions of N.C.G.S. §§ 128-15, which provide for preference in employment for veterans of United States military service and their spouses and widows or widowers.

C. Employment of related persons

Employees in covered positions are subject to the policy concerning employment of related persons as adopted by the Board of Governors on April 13, 1973, and as it maybe revised from time to time.

D. Retirement

Employees in covered positions may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes.

IX. Implementation

The Board of Trustees of each constituent institution shall adopt for the institution personnel policies for covered positions within the institution that are consistent with all provisions of these policies. Any proposed provision in an institutional policy statement that in any manner adds to or modifies the provisions of these policies must be submitted for review and approved by the President prior to its adoption and implementation.

X. Effective Date

The effective date of institutional policies adopted pursuant to Section IX shall be September 1, 1981.

^[1] Pursuant to NCGS §116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated the appointment of EPA employees serving within the General Administration to the President of the University. See Policy 200.6, *Delegation Authority to the President of the University*, adopted 11/13/06.

^[2] Subject to any compensation policies adopted by the Board of Governors or the Board of Trustees.

^[3] Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by State or Federal law, may be applied to covered positions.

^[4] Effective July 1, 2001.