



TRANSMITTAL LETTER

The University of North Carolina
General Administration

Transmittal Number 79
August 28, 2012

THIS LETTER TRANSMITS CHANGES TO THE *UNC POLICY MANUAL*

- 200.6* Delegation of Authority to the President
This Policy was amended and approved by the Board of Governors on August 10, 2012.
- 600.2.4* Custody and Management of Institutional Trust Funds and Special Funds of Individual Institutions
This Policy was amended and approved by the Board of Governors on August 10, 2012.
- 600.2.4.1 Delegated Authority for Managing Institutional Trust Funds
This Policy was adopted by the Board of Governors on August 10, 2012.
- 101.3.1 Review of Nonreappointment Decisions Under Section 604 of *The Code*
A technical correction was made to the Policy on Page 3, Section II. F(2). The reference should indicate a fourteen-day, not a ten-day period.

*A redline version reflecting these changes is attached herein.

The *UNC Policy Manual* is accessible on our website at:
<http://www.northcarolina.edu/policy/index.php>

Attachments

An Equal Opportunity/Affirmative Action Employer

Delegation of Authority to the President

A. Pursuant to NCGS §116-11(13) and other North Carolina law as referenced herein, and notwithstanding *The Code* or any other Board of Governors policy¹ the Board of Governors delegates the following authorities to the President of the University:

1. Personnel

- a. Authority to appoint and set the salaries of Senior Academic and Administrative Officers (§300.1.1 and §600.3.4) and other employees exempt from the State Personnel Act (§300.2.1) serving within the UNC General Administration.
- b. Authority to set salary ranges for Senior Academic and Administrative Officers of the constituent institutions of University (§600.3.4).
- c. Authority to approve conferrals of tenure and to set salaries of faculty, Senior Academic and Administrative Officers, except the chancellors, and other employees exempt from the State Personnel Act at campuses that do not have Management Flexibility to Appoint and Fix Compensation as long as those salaries are within the established salary ranges and are not raises in excess of 15% and \$10,000 higher than the salary in effect at the end of the last fiscal year. (§§300.1.1 and 600.3.4; *Code* §602).
- d. Authority to approve all actions relating to the administration of the Optional Retirement Program (G.S. §135-5.1) and the Phased Retirement Program (§300.7.2).
- e. Authority to approve salary increases in excess of \$10,000 and 15% for faculty members who are receiving salary increases funded through the Faculty Recruitment and Retention Fund.

2. Governance

- a. The authority to approve the initiation of a lawsuit in the name of the University if the action is for monetary relief and the amount in controversy is less than \$250,000. (§200.5)
- b. The authority to settle a lawsuit that has been filed by or against a constituent institution or the University of North Carolina, if the settlement is solely for monetary relief and the amount the University is to pay pursuant to the settlement is less than \$250,000 or, if the University is to receive a payment, the amount the University claimed is less than \$250,000. (§200.5)
- c. Authority to approve the political activities of employees of the University who are candidates for or serving in public office (§300.5.1).

3. Reports

- a. The authority to approve and submit any report the University or the Board of Governors is required to submit to the General Assembly, the State Board of Education or any other State agency or officer.

¹The Secretary of the University is authorized to annotate the referenced policies and regulations to cross-reference these delegations.

4. Real Property

a. Except as authorized by b. below, authority to approve leases with at least \$50,000² but less than \$350,000 annual rental for a term of up to five years, subject to approval by the Department of Administration and the Governor and Council of State (§§600.1.3 and 600.1.4[R]).

b. Authority to approve the acquisition of real property by lease without the approval of the Department of Administration, the Governor and Council of State if the lease is for a term of not more than 10 years. The President's authority may be exercised in the President's discretion on behalf of General Administration, University affiliates or the constituent institutions. (G.S. 116-31.12, and Policy §§600.1.3.1 and 600.1.3.1[R]).

c. Authority to approve acquisition or disposition of an interest in real property, other than a lease, for an amount of at least \$50,000 but less than \$500,000 (§§600.1.3 and 600.1.4[R]).

d. Authority to approve capital improvement projects that are projected to cost \$500,000 or less. The President must provide notice of projects the president intends to approve under this provision to the Committee on Budget and Finance at least one week prior to authorizing the project. (§600.1.1).

5. Institutional Trust Funds

a. Authority to delegate to the chancellors management of institutional trust funds (600.2.4 and 600.2.4.1).

B. The President will report all actions taken under the authority of these delegations to the appropriate Committee of the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors.

C. These delegations will remain in effect unless and until the Board of Governors rescinds them in whole or in part.

²Note that leases with annual rent less than \$50,000 may be approved by the boards of trustees or the chancellors without further approval by the Board of Governors or the President. See Regulation §600.1.4[R].

Delegation of Authority to the President

A. Pursuant to NCGS §116-11(13) and other North Carolina law as referenced herein, and notwithstanding *The Code* or any other Board of Governors policy¹ the Board of Governors delegates the following authorities to the President of the University:

1. Personnel

a. Authority to appoint and set the salaries of Senior Academic and Administrative Officers (§300.1.1 and §600.3.4) and other employees exempt from the State Personnel Act (§300.2.1) serving within the UNC General Administration.

b. Authority to set salary ranges for Senior Academic and Administrative Officers of the constituent institutions of University (§600.3.4).

c. Authority to approve conferrals of tenure and to set salaries of faculty, Senior Academic and Administrative Officers, except the chancellors, and other employees exempt from the State Personnel Act at campuses that do not have Management Flexibility to Appoint and Fix Compensation as long as those salaries are within the established salary ranges and are not raises in excess of 15% and \$10,000 higher than the salary in effect at the end of the last fiscal year. (§§300.1.1 and 600.3.4; *Code* §602).

d. Authority to approve all actions relating to the administration of the Optional Retirement Program (G.S. §135-5.1) and the Phased Retirement Program (§300.7.2).

e. Authority to approve salary increases in excess of \$10,000 and 15% for faculty members who are receiving salary increases funded through the Faculty Recruitment and Retention Fund.

2. Governance

a. The authority to approve the initiation of a lawsuit in the name of the University if the action is for monetary relief and the amount in controversy is less than \$250,000. (§200.5)

b. The authority to settle a lawsuit that has been filed by or against a constituent institution or the University of North Carolina, if the settlement is solely for monetary relief and the amount the University is to pay pursuant to the settlement is less than \$250,000 or, if the University is to receive a payment, the amount the University claimed is less than \$250,000. (§200.5)

c. Authority to approve the political activities of employees of the University who are candidates for or serving in public office (§300.5.1).

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a. The authority to approve and submit any report the University or the Board of Governors is required to submit to the General Assembly, the State Board of Education or any other State agency or officer.

¹The Secretary of the University is authorized to annotate the referenced policies and regulations to cross-reference these delegations.

4. Real Property

a. Except as authorized by b. below, authority to approve leases with at least \$50,000² but less than \$350,000 annual rental for a term of up to five years, subject to approval by the Department of Administration and the Governor and Council of State (§§600.1.3 and 600.1.4[R]).

b. Authority to approve the acquisition of real property by lease without the approval of the Department of Administration, the Governor and Council of State if the lease is for a term of not more than 10 years. The President's authority may be exercised in the President's discretion on behalf of General Administration, University affiliates or the constituent institutions. (G.S. 116-31.12, and Policy §§600.1.3.1 and 600.1.3.1[R]).

c. Authority to approve acquisition or disposition of an interest in real property, other than a lease, for an amount of at least \$50,000 but less than \$500,000 (§§600.1.3 and 600.1.4[R]).

d. Authority to approve capital improvement projects that are projected to cost \$500,000 or less. The President must provide notice of projects the president intends to approve under this provision to the Committee on Budget and Finance at least one week prior to authorizing the project. (§600.1.1).

5. Institutional Trust Funds

a. Authority to delegate to the chancellors management of institutional trust funds (600.2.4 and 600.2.4.1).

B. The President will report all actions taken under the authority of these delegations to the appropriate Committee of the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors.

C. These delegations will remain in effect unless and until the Board of Governors rescinds them in whole or in part.

²Note that leases with annual rent less than \$50,000 may be approved by the boards of trustees or the chancellors without further approval by the Board of Governors or the President. See Regulation §600.1.4[R].

Custody and Management of Institutional Trust Funds and Special Funds of Individual Institutions

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.1 charged the Board of Governors of the University of North Carolina with the custody and management of the institutional trust funds of the University of North Carolina and of each constituent institution, and instructed the board to adopt uniform policies and procedures applicable to the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.2 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of special funds of that institution and instructed the Board of Governors to adopt uniform policies and procedures for the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.3 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of institutional student auxiliary enterprise funds of that institution, subject to uniform policies and procedures adopted by the Board of Governors; and

WHEREAS, after due consideration, the board concluded that moneys received by an institution in respect to fees and other payments rendered by medical, dental or other health care professionals under organized practice plans or under contractual agreements between the institution and a hospital or other health care provider should be deposited in the institution's official depository rather than with the State Treasurer;

WHEREAS the 1990 Reconvened Session of the 1989 General Assembly enacted legislation, Chapter 936 of the 1989 Session Laws, which provides management incentives and budgetary flexibility for constituent institutions of the University of North Carolina and an expanded definition of "institutional trust funds" to include institutional student auxiliary enterprise funds and funds received from the operation and maintenance of institutional forest and forest farmlands, thereby necessitating revision of the Board of Governors resolution dated January 12, 1979, concerning custody and management of institutional trust funds and special funds of individual institutions;

WHEREAS, the 2011 General Assembly enacted legislation, Session Law 2011-145 section 9.6E which provides that the Board of Governors adopt uniform policies applicable to the deposit, investment, and administration of institutional trust funds and that through the President, the Board of Governors may delegate authority to the chancellors.

NOW, THEREFORE, BE IT RESOLVED: That the following policies and procedures are hereby established for the administration of: institutional trust funds, as now defined in N.C.G.S. § 116-36.1 and special funds of individual institutions, as defined in N.C.G.S. § 116-36.2.

I. General Provisions

A. Funds not to substitute for state appropriations. Neither the funds covered by these policies and procedures nor the investment income therefrom shall take the place of state appropriations or any part thereof, but any portion of these funds available or general institutional purposes shall be used to supplement state appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

B. Presumption that receipts belong to the General Fund unless shown otherwise. Except as otherwise provided by or pursuant to law, all moneys received by or accruing to an institution shall be deemed institutional receipts within the meaning of the Executive Budget Act and shall be deposited with the State Treasurer to the credit of the General Fund unless the chancellor can show that the moneys fall within one or more of the following general categories: (1) institutional trust

funds, as defined in N.C.G.S. § 116-36.1. (2) special funds of the institution, as defined in N.C.G.S. § 116-36.2. (3) endowment funds, as defined in N.C.G.S. § 116-36. (4) funds subject to debt instruments containing special provisions with respect to the deposit of receipts pledged to secure such debt.

C. Accounting. The chancellor of each institution, with the approval of the State Controller, shall establish and maintain an accounting system for the funds covered by these policies and procedures in conformity with generally accepted principles of institutional accounting and in accordance with these policies and procedures.

D. Internal control. The chancellor of each institution shall institute internal control procedures with respect to the handling of funds covered by these policies and procedures that are necessary or desirable to prevent misappropriation or mishandling of the funds.

E. Preaudit of disbursements. No bill or claim against an institution to be charged to an account established here under may be paid unless it has been approved by the officer or employee authorized to initiate disbursements from that account. No bill or claim may be paid in any form other than a check or draft on an official depository of the institution or a warrant on the State Treasurer.

F. Facsimile signatures. The chancellor may authorize the use of facsimile signature machines or signature stamps in signing checks, drafts, and warrants.

II. Institutional Trust Funds

A. Applicability. This Section II applies to moneys within the following categories:

1. moneys, or the proceeds of other forms of property, received by the institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment funds of the institution.
2. moneys received by the institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.
3. moneys received by the institution pursuant to grants from, or contracts with, any state agencies, any political subdivisions of the state, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs.
4. moneys collected by the institution to support extracurricular activities of students of the institution.
5. moneys received from or for the operation by the institution of activities established for the benefit of scholarship funds or student activity programs.
6. moneys received from or for the operation by the institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services.
7. moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other healthcare professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider.
8. moneys received from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in Section II.A. as 'trust funds', except the net proceeds from disposition of an interest in real property first acquired by the

institution through expenditure of moneys received as a grant from a state agency. (Chapter 529 of the 1981 Session Laws)

9. moneys received from operation and maintenance of institutional forests and forest farmlands, provided that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.
10. moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o;
11. moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

B. Delegation of authority. The chancellor of each institution, under the supervision of the President, is charged with the custody and management of all moneys within the categories described in Section II.A. now held by or hereafter accruing to that institution in accordance with applicable laws of the State of North Carolina and these policies and procedures.

C. Agency Fund Authorities. The President is authorized to approve and transmit to the State Treasurer an agency fund authority for each institution receiving any of the moneys identified in Section II.A. This document shall contain the following information:

1. The name of the institution.
2. The categories of moneys as described in Section II.D. to be deposited in the fund.
3. The position or individual authorized to approve disbursements from the fund.

The fund authority shall constitute authorization for the State Treasurer to establish and administer such a fund in the name of the institution.

D. Institutional trust fund authorities. The President is authorized to approve for each institution for which an Agency Fund is established pursuant to Section II.C. one or more Institutional Trust Fund Authorities for each of the following categories as may be appropriate to that institution's operations:

1. Gifts, devises and bequests. This category comprises all receipts described in Section II.A.(1), including income derived from the investment of institutional trust fund balances and gifts and grants for student loans (including federal and state contributions).
2. Federal contracts, grants and agreements. This category comprises receipts described in Section II.A.(2), including receipts derived from the sale of surplus federal property originally purchased through a federal institutional trust fund.
3. Non-federal contracts and grants. This category comprises receipts described in Section II.A.(3) not properly includable in another category.
4. Student extracurricular activities. This category comprises receipts described in Section II.A.(4), including receipts from student activities fees established by the Board of Governors for the support of student organizations, student athletic and recreational activities (other than intercollegiate athletics), student entertainment, student publications and similar activities.
5. Institutional auxiliary enterprises and activities supporting scholarship funds and student activity programs. This category comprises receipts described in Section II.A.(5) and Section II.A.(6) from the operation of self-supporting service enterprises which exist primarily to furnish goods or services to students, faculty, or staffs and institutional programs and for which charges or fees are related to the cost of the goods or services. By way of illustration but not limitation, these enterprises include the operation of housing, food, health, and laundry services, central stores, printing and duplicating services, student stores, student centers, athletic facilities, rental property, utilities systems, and

similar operations, specifically including all operations whose profits are dedicated to scholarship support or specific student activity programs.

6. Fees for services of health care professionals. This category comprises receipts described in Section II.A.(7).

7. Dispositions of real property. This category includes receipts described in Section II.A.(8) of net proceeds from the disposal of any interest in real property belonging to an institution and acquired as described in Section II.A.(8).

8. Institutional forests and forest farmlands. This category includes receipts described in Section II.A.(9) of moneys received from operation and maintenance of institutional forests and forest farmlands and used, when used, in support of forest-related research, teaching, and public service programs.

9. Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o. This category includes receipts described in Section II.A.(10) of moneys derived from certain activities authorized by the referenced subsections of the Umstead Act.

10. Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 166-209.3. This category includes receipts described in Section II.A.(11) of moneys from the operation of certain programs of the State Education Assistance Authority.

Each Institutional Trust Fund Authority shall contain the following information:

1. The name of the institution.
2. The source(s) of the moneys to be credited thereunto.
3. The purpose(s) for which the moneys credited thereunto may be used.
4. The position or individual authorized to receive moneys to be credited thereto and to disburse them.

Upon the approval of the President, the Institutional Trust Fund Authority shall be transmitted to the chancellor of the institution and a copy shall be filed among the permanent records of the President's office. When established as provided therein, the Institutional Trust Fund Authority shall constitute authorization for the institution to receive and disburse the moneys described therein in accordance with the purposes stated, subject to the provisions of G.S. 143-18.1 with respect to capital improvements projects.

E. **Subsidiary Account Authorities.** For each subsidiary account within one of the categories described in Section II.D., the chancellor is authorized to approve an account authority containing the following information:

1. The Institutional Trust Fund Authority within which the account is established.
2. The name of the account and its accounting designation.
3. The source of the moneys to be credited thereto.
4. The purpose of the account, including any specific restrictions, terms or conditions on the use of the moneys credited thereto.
5. The position or individual authorized to accept receipts and initiate disbursements from the account. Each account authority for institutional trust funds authorized by the chancellor shall be filed among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

F. **Deposit to and disbursement from institutional trust fund accounts.** Except as provided in Section II.I., all moneys within the categories described in Section II.A. that are received by an institution shall be deposited with the State Treasurer in that institution's Agency Fund and

credited to the appropriate Institutional Trust Fund and subsidiary account on the institution's books. Disbursement of such moneys shall be accomplished by warrant on the State Treasurer issued by the person designated in the Agency Fund Authority upon voucher or requisition of the person designated in the Institutional Trust Fund Authority or the subsidiary account authority as appropriate. No disbursement shall be made for a purpose not specified in the appropriate fund or account authority or contrary to any specific restrictions, terms or conditions on the use of the funds.

G. Allocation of investment income. Subject to any restrictions thereon, investment income credited to an institution's Agency Fund by the State Treasurer as provided in Section II.D. or earned through institutional investment and management may be used for institutional support purposes in such manner as the President, or chancellor, as applicable, shall approve.

H. Financial reports. If an institution has delegated authority pursuant to Policy 600.2.4.1, the institution shall report only as provided in Section II.K.

I. Institutional Trust Funds under delegated authority. Any of the foregoing provisions of this Section to the contrary notwithstanding, funds identified in Policy 600.2.4.1 shall be deposited in an official depository of the institution.

J. Investment of cash balances. Available cash balances shall be invested in interest bearing deposits and investments so that the rate of return equals that realized from the investment of state funds generally and shall otherwise be managed in the manner provided for in Section III.D, E, F, G, and H. Income earned on investment of funds shall be used, subject to any restrictions thereon, in such manner as may be prescribed further in the Institutional Trust Fund Authority.

K. Reports. If an institution has delegated authority pursuant to Policy 600.2.4.1, the chancellor shall report annually by September 30 to the President as of June 30 of each year, (i) the total balance of institutional trust and special funds invested outside of the Office of the State Treasurer; (ii) the balance broken down into sub-total by investment asset classes; and (iii) names of commercial cash management bank, investment custodian, and all investment managers including dollars under management and the type of investment asset classes handled by the manager. Beginning with the third annual report submitted to the President, the constituent institution shall include a rolling three-year average annual rate of return on institutional trust and special funds invested outside of the Office of the State Treasurer. Beginning the fifth annual report, the constituent institutional shall also include a rolling five-year average annual rate of return on the same funds, in addition to continuing to provide the rolling three-year average annual rate of return.

III. Special Funds of Individual Institutions

A. Applicability. This Section III applies to moneys within the following categories:

1. moneys received from or for the operation by the institution of its program of intercollegiate athletics.
2. moneys held by the institution as fiscal agent for individual students, faculty, staff members, and organizations.

B. Account Authority. Effective January 15, 1979, a chancellor shall not authorize the creation or continuation of an account for special funds falling within any of the categories described in Section III.A., until he has established an account authority for that account. Upon approving an account authority for special funds, the chancellor shall file it among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

C. Allocation of investment income. Income earned on investment of funds covered by this Section III shall be used, subject to any restrictions thereon, in such manner as may be prescribed in the account authority.

D. Fidelity bonding. Each officer, employee, or agent of an institution who handles or has in his custody any of the funds described in Section III.A., or who has access to physical inventories constituting assets of accounts established under this Section III, shall be covered by an individual or blanket fidelity bond with sufficient sureties payable to the institution.

E. Investment of idle funds.

1. An institution may deposit at interest or invest all or part of the cash balance of any account established under this Section III.

2. Moneys may be deposited at interest in any bank or trust company in this state in the form of certificates of deposit, savings accounts, or similar interest-bearing time deposits. Such deposits shall be secured as provided in Section III.G., provided, however; that deposits of an institution with delegated authority pursuant to Policy 600.2.4.1 shall not be required to be secured.

3. Moneys may be invested in any form of investment allowed by law to the State Treasurer any of the securities authorized by A RESOLUTION CONCERNING THE INVESTMENT OF UNIVERSITY FUNDS NOT REQUIRED FOR CURRENT USE adopted by the Executive Committee of the Board of Trustees of the University of North Carolina on March 14, 1969; or as proposed by the institution pursuant to Policy 600.2.4.1.

4. The institution may employ one or more fiscal agents for the purposes of this section.

F. Selection of depositories. The chancellor of each institution shall designate as the official depository of the institution one or more banks or trust companies in this state. No funds subject to this Section III shall be deposited in any place, bank or trust company other than an official depository, except as otherwise required by the terms of any debt instrument containing special provisions with respect to deposits.

G. Deposits to be secured. The amount of money on deposit in an official depository or deposited at interest pursuant to Section III.E. shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of state funds generally, provided, however; that deposits of an institution with delegated authority pursuant to Policy 600.2.4.1 shall not be required to be secured.

H. Daily deposits. All receipts subject to this Section III shall be deposited daily. If the chancellor gives his approval, deposits shall be required only when the moneys on hand amount to as much as two hundred and fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the week.

Custody and Management of Institutional Trust Funds and Special Funds of Individual Institutions

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.1 charged the Board of Governors of the University of North Carolina with the custody and management of the institutional trust funds of the University of North Carolina and of each constituent institution, and instructed the board to adopt uniform policies and procedures applicable to the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.2 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of special funds of that institution and instructed the Board of Governors to adopt uniform policies and procedures for the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.3 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of institutional student auxiliary enterprise funds of that institution, subject to uniform policies and procedures adopted by the Board of Governors; and

WHEREAS, after due consideration, the board concluded that moneys received by an institution in respect to fees and other payments rendered by medical, dental or other health care professionals under organized practice plans or under contractual agreements between the institution and a hospital or other health care provider should be deposited in the institution's official depository rather than with the State Treasurer;

WHEREAS the 1990 Reconvened Session of the 1989 General Assembly enacted legislation, Chapter 936 of the 1989 Session Laws, which provides management incentives and budgetary flexibility for constituent institutions of the University of North Carolina and an expanded definition of "institutional trust funds" to include institutional student auxiliary enterprise funds and funds received from the operation and maintenance of institutional forest and forest farmlands, thereby necessitating revision of the Board of Governors resolution dated January 12, 1979, concerning custody and management of institutional trust funds and special funds of individual institutions;

WHEREAS, the 2011 General Assembly enacted legislation, Session Law 2011-145 section 9.6E which provides that the Board of Governors adopt uniform policies applicable to the deposit, investment, and administration of institutional trust funds and that through the President, the Board of Governors may delegate authority to the chancellors.

NOW, THEREFORE, BE IT RESOLVED: That the following policies and procedures are hereby established for the administration of: institutional trust funds, as now defined in N.C.G.S. § 116-36.1 and special funds of individual institutions, as defined in N.C.G.S. § 116-36.2.

I. General Provisions

A. Funds not to substitute for state appropriations. Neither the funds covered by these policies and procedures nor the investment income therefrom shall take the place of state appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement state appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

B. Presumption that receipts belong to the General Fund unless shown otherwise. Except as otherwise provided by or pursuant to law, all moneys received by or accruing to an institution shall be deemed institutional receipts within the meaning of the Executive Budget Act and shall

be deposited with the State Treasurer to the credit of the General Fund unless the chancellor can show that the moneys fall within one or more of the following general categories: (1) institutional trust funds, as defined in N.C.G.S. § 116-36.1. (2) special funds of the institution, as defined in N.C.G.S. § 116-36.2. (3) endowment funds, as defined in N.C.G.S. § 116-36. (4) funds subject to debt instruments containing special provisions with respect to the deposit of receipts pledged to secure such debt.

C. Accounting. The chancellor of each institution, with the approval of the State Controller, shall establish and maintain an accounting system for the funds covered by these policies and procedures in conformity with generally accepted principles of institutional accounting and in accordance with these policies and procedures.

D. Internal control. The chancellor of each institution shall institute internal control procedures with respect to the handling of funds covered by these policies and procedures that are necessary or desirable to prevent misappropriation or mishandling of the funds.

E. Preaudit of disbursements. No bill or claim against an institution to be charged to an account established here under may be paid unless it has been approved by the officer or employee authorized to initiate disbursements from that account. No bill or claim may be paid in any form other than a check or draft on an official depository of the institution or a warrant on the State Treasurer.

F. Facsimile signatures. The chancellor may authorize the use of facsimile signature machines or signature stamps in signing checks, drafts, and warrants.

II. Institutional Trust Funds

A. Applicability. This Section II applies to moneys within the following categories:

1. moneys, or the proceeds of other forms of property, received by the institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment funds of the institution.
2. moneys received by the institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.
3. moneys received by the institution pursuant to grants from, or contracts with, any state agencies, any political subdivisions of the state, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs.
4. moneys collected by the institution to support extracurricular activities of students of the institution.
5. moneys received from or for the operation by the institution of activities established for the benefit of scholarship funds or student activity programs.
6. moneys received from or for the operation by the institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services.
7. moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other healthcare professionals under an organized

practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider.

8. moneys received from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in Section II.A. as 'trust funds', except the net proceeds from disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a state agency. (Chapter 529 of the 1981 Session Laws)

9. moneys received from operation and maintenance of institutional forests and forest farmlands, provided that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.

10. moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.:

11. moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

B. Delegation of authority. The chancellor of each institution, under the supervision of the President, is charged with the custody and management of all moneys within the categories described in Section II.A. now held by or hereafter accruing to that institution in accordance with applicable laws of the State of North Carolina and these policies and procedures.

C. Agency Fund Authorities. The President is authorized to approve and transmit to the State Treasurer an agency fund authority for each institution receiving any of the moneys identified in Section II.A. This document shall contain the following information:

1. The name of the institution.
2. The categories of moneys as described in Section II.D. to be deposited in the fund.
3. The position or individual authorized to approve disbursements from the fund.

The fund authority shall constitute authorization for the State Treasurer to establish and administer such a fund in the name of the institution.

D. Institutional trust fund authorities. The President is authorized to approve for each institution for which an Agency Fund is established pursuant to Section II.C. one or more Institutional Trust Fund Authorities for each of the following categories as may be appropriate to that institution's operations:

1. Gifts, devises and bequests. This category comprises all receipts described in Section II.A.(1), including income derived from the investment of institutional trust fund balances and gifts and grants for student loans (including federal and state contributions).
2. Federal contracts, grants and agreements. This category comprises receipts described in Section II.A.(2), including receipts derived from the sale of surplus federal property originally purchased through a federal institutional trust fund.

3. Non-federal contracts and grants. This category comprises receipts described in Section II.A.(3) not properly includable in another category.

4. Student extracurricular activities. This category comprises receipts described in Section II.A.(4), including receipts from student activities fees established by the Board of Governors for the support of student organizations, student athletic and recreational activities (other than intercollegiate athletics), student entertainment, student publications and similar activities.

5. Institutional auxiliary enterprises and activities supporting scholarship funds and student activity programs. This category comprises receipts described in Section II.A.(5) and Section II.A.(6) from the operation of self-supporting service enterprises which exist primarily to furnish goods or services to students, faculty, or staffs and institutional programs and for which charges or fees are related to the cost of the goods or services. By way of illustration but not limitation, these enterprises include the operation of housing, food, health, and laundry services, central stores, printing and duplicating services, student stores, student centers, athletic facilities, rental property, utilities systems, and similar operations, specifically including all operations whose profits are dedicated to scholarship support or specific student activity programs.

6. Fees for services of health care professionals. This category comprises receipts described in Section II.A.(7).

7. Dispositions of real property. This category includes receipts described in Section II.A.(8) of net proceeds from the disposal of any interest in real property belonging to an institution and acquired as described in Section II.A.(8).

8. Institutional forests and forest farmlands. This category includes receipts described in Section II.A.(9) of moneys received from operation and maintenance of institutional forests and forest farmlands and used, when used, in support of forest-related research, teaching, and public service programs.

9. Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o. This category includes receipts described in Section II.A.(10) of moneys derived from certain activities authorized by the referenced subsections of the Umstead Act.

10. Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3. This category includes receipts described in Section II.A.(11) of moneys from the operation of certain programs of the State Education Assistance Authority.

Each Institutional Trust Fund Authority shall contain the following information:

1. The name of the institution.
2. The source(s) of the moneys to be credited thereunto.
3. The purpose(s) for which the moneys credited thereunto may be used.
4. The position or individual authorized to receive moneys to be credited thereto and to disburse them.

Upon the approval of the President, the Institutional Trust Fund Authority shall be transmitted to the chancellor of the institution and a copy shall be filed among the permanent records of the President's office. When established as provided therein, the Institutional Trust

Fund Authority shall constitute authorization for the institution to receive and disburse the moneys described therein in accordance with the purposes stated, subject to the provisions of G.S. 143-18.1 with respect to capital improvements projects.

E. **Subsidiary Account Authorities.** For each subsidiary account within one of the categories described in Section II.D., the chancellor is authorized to approve an account authority containing the following information:

1. The Institutional Trust Fund Authority within which the account is established.
2. The name of the account and its accounting designation.
3. The source of the moneys to be credited thereto.
4. The purpose of the account, including any specific restrictions, terms or conditions on the use of the moneys credited thereto.
5. The position or individual authorized to accept receipts and initiate disbursements from the account. Each account authority for institutional trust funds authorized by the chancellor shall be filed among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

F. **Deposit to and disbursement from institutional trust fund accounts.** Except as provided in Section II.I., all moneys within the categories described in Section II.A. that are received by an institution shall be deposited with the State Treasurer in that institution's Agency Fund and credited to the appropriate Institutional Trust Fund and subsidiary account on the institution's books. Disbursement of such moneys shall be accomplished by warrant on the State Treasurer issued by the person designated in the Agency Fund Authority upon voucher or requisition of the person designated in the Institutional Trust Fund Authority or the subsidiary account authority as appropriate. No disbursement shall be made for a purpose not specified in the appropriate fund or account authority or contrary to any specific restrictions, terms or conditions on the use of the funds.

G. **Allocation of investment income.** Subject to any restrictions thereon, investment income credited to an institution's Agency Fund by the State Treasurer as provided in Section II.D. or earned through institutional investment and management may be used for institutional support purposes in such manner as the President, or chancellor, as applicable, shall approve.

H. **Financial reports.** If an institution has delegated authority pursuant to Policy 600.2.4.1, the institution shall report only as provided in Section II. K.

~~Financial reports on the Institutional Trust Funds as identified in this Section II shall be submitted by the chancellors to the State Budget Officer, the President and the local Board of Trustees of the institution. The frequency, form and content of the reports shall be prescribed by the President, in accordance with the requirements of the Director of the Budget.~~

I. Institutional Trust Funds under delegated authority. Any of the foregoing provisions of this Section to the contrary notwithstanding, funds, identified in Policy 600.2.4.1 shall be deposited in an official depository of the institution. Fees for services of health care professionals. Any of the foregoing provisions of this Section to the contrary notwithstanding, funds identified in Section II.A.(7) shall be deposited in an official depository of the institution.

J. Investment of cash balances. Available cash balances shall be invested in interest bearing deposits and investments so that the rate of return equals that realized from the investment of state funds generally and shall otherwise be managed in the manner provided for in Section III.D, E, F, G, and H. Income earned on investment of funds shall be used, subject to any restrictions thereon, in such manner as may be prescribed further in the Institutional Trust Fund Authority.

K. Reports. If an institution has delegated authority pursuant to Policy 600.2.4.1, the chancellor shall report annually by September 30 to the President as of June 30 of each year, (i) the total balance of institutional trust and special funds invested outside of the Office of the State Treasurer; (ii) the balance broken down into sub-totals by investment asset classes; and (iii) names of commercial cash management bank, investment custodian, and all investment managers including dollars under management and the type of investment asset classes handled by the manager. Beginning with the third annual report submitted to the President, the constituent institution shall include a rolling three-year average annual rate of return on institutional trust and special funds invested outside of the Office of the State Treasurer. Beginning the fifth annual report, the constituent institution shall also include a rolling five-year average annual rate of return on the same funds, in addition to continuing to provide the rolling three-year average annual rate of return.

III. Special Funds of Individual Institutions

A. Applicability. This Section III applies to moneys within the following categories:

1. moneys received from or for the operation by the institution of its program of intercollegiate athletics.
2. moneys held by the institution as fiscal agent for individual students, faculty, staff members, and organizations.

B. Account Authority. Effective January 15, 1979, a chancellor shall not authorize the creation or continuation of an account for special funds falling within any of the categories described in Section III.A. until he has established an account authority for that account. Upon approving an account authority for special funds, the chancellor shall file it among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

C. Allocation of investment income. Income earned on investment of funds covered by this Section III shall be used, subject to any restrictions thereon, in such manner as may be prescribed in the account authority.

D. Fidelity bonding. Each officer, employee, or agent of an institution who handles or has in his custody any of the funds described in Section III.A., or who has access to physical inventories constituting assets of accounts established under this Section III, shall be covered by an individual or blanket fidelity bond with sufficient sureties payable to the institution.

E. Investment of idle funds.

1. An institution may deposit at interest or invest all or part of the cash balance of any account established under this Section III.
2. Moneys may be deposited at interest in any bank or trust company in this state in the form of certificates of deposit, savings accounts, or similar interest-bearing time deposits. Such deposits shall be secured as provided in Section I II.G. provided, however:

that deposits of an institution with delegated authority pursuant to Policy 600.2.4.1 shall not be required to be secured.

3. Moneys may be invested in any form of investment allowed by law to the State Treasurer ~~or~~ any of the securities authorized by A RESOLUTION CONCERNING THE INVESTMENT OF UNIVERSITY FUNDS NOT REQUIRED FOR CURRENT USE adopted by the Executive Committee of the Board of Trustees of the University of North Carolina on March 14, 1969; or as proposed by the institution pursuant to Policy 600.2.4.1

4. The institution may employ one or more fiscal agents for the purposes of this section.

F. Selection of depositories. The chancellor of each institution shall designate as the official depository of the institution one or more banks or trust companies in this state. No funds subject to this Section III shall be deposited in any place, bank or trust company other than an official depository, except as otherwise required by the terms of any debt instrument containing special provisions with respect to deposits.

G. Deposits to be secured. The amount of money on deposit in an official depository or deposited at interest pursuant to Section III.E. shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of state funds generally. provided, however; that deposits of an institution with delegated authority pursuant to Policy 600.2.4.1 shall not be required to be secured.

H. Daily deposits. All receipts subject to this Section III shall be deposited daily. If the chancellor gives his approval, deposits shall be required only when the moneys on hand amount to as much as two hundred and fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the week.

~~I. Reports on the status of deposits and investments. The chancellor shall report annually to the President as of June 30 of each year of the amounts of funds on deposit in official depositories of the institution, a list of all investment securities held on behalf of these accounts, and a description of the surety bonds or investment securities securing these deposits and investments.~~

~~IV. Implementation~~

~~A. Requests for Authorizations. On or before February 1, 1979, or with respect to funds cited in Section II.A.(6),(8), and (9) as directed by the State Controller, the chancellor of each institution shall forward a request for approval of an agency fund authority as identified in Section II.C. and such institutional trust fund authorities as may be required by the institution, as identified in Section II.D. The request shall be accompanied by a complete list of all accounts in his possession or under his direct control as of January 1, 1979, or on July 1, 1990, with respect to funds cited in Section II.A.(6),(8), and (9) containing any institutional trust funds as defined in G.S. 116-36.1. This inventory shall be organized in the categories described in Section II.D. and for each separate account shall show the following information:~~

~~(1) The name of the account and its accounting designation.~~

~~(2) The amount of cash balance and investments of the account as of the date of the inventory.~~

~~B.——Deposit of funds with the State Treasurer. Upon the receipt of approved fund authorities, the chancellor shall transfer the cash balance and investments of accounts so identified (other than organized practice plan receipts as defined in N.C.G.S. § 116-36.1(g)(7)) to the State Treasurer for deposit in the State Treasurer's Agency Fund for that institution and shall proceed to disburse moneys in accordance with the provisions of Section H.F. These transfers shall be made in accordance with the following schedule:~~

~~(1)——The current cash balance of each account shall be transferred as directed above.~~

~~(2)——Cash equivalent investments shall be converted into cash and transferred upon maturity.~~

~~(3)——Investment securities shall be converted into cash and transferred at such time as may be mutually agreeable to the State Treasurer and the institution.~~

~~These initial transfers of cash balances and investments shall be without prejudice to adjustments later found to be appropriate.~~

~~C.——Accounting and reporting. The chancellor of each institution will proceed to establish the subsidiary account authorities as identified in Section H.E. and to modify further the internal accounting systems and procedures of the institution as may be necessary to the end that all requirements of this resolution will have been met forthwith.~~

Delegated Authority for Managing Institutional Trust Funds

I. Authority

N.C. Gen. Stat. § 116-36.1 (G.S. 116-36.1) authorizes the Board of Governors of the University of North Carolina to adopt uniform policies and procedures applicable to the deposit, investment and administration of institutional trust funds and to delegate such authority through the President to the constituent institutions.

II. Delegation to the President and Chancellor

A. The Board of Governors delegates authority to the President of the University of North Carolina, to deposit, invest and administer institutional trust funds consistent with G.S. 116-36.1.

B. Upon request by the Chancellor of a constituent institution, the President may delegate authority to the Chancellor of a constituent institution, to deposit, invest and administer institutional trust funds consistent with G.S. 116-36.1.

III. Constituent Institution Eligibility for Delegated Authority

The Vice President for Finance, in consultation with General Counsel, shall establish the process by which a constituent institution may request delegated authority consistent with G.S. 116-36.1. The minimum criteria a constituent institution must meet to receive authorization from the President shall be:

1. The constituent institution has performed a written, comprehensive self-assessment that demonstrates it has the administrative, technical, financial and support resources necessary to properly carry out the delegated authority.

2. The chancellor has certified in writing that the constituent institution has the administrative, technical, financial and support resources necessary to properly carry out the delegated authority.

3. The constituent institution has appropriate and sufficient technical and professional staff with demonstrated capability in the development, evaluation and execution of cash management and investment operations and an associated understanding of the risk and return attributes of its investment strategies and underlying investments.

4. An assessment team, assembled and led by the Vice President for Finance, in consultation with the General Counsel, has reviewed the constituent institution's self-assessment, has, if necessary, performed an on-site capabilities appraisal that confirms the institution's self-assessment, and has recommended delegation to the President.

IV. Revocation of Delegation to the Constituent Institution

For good cause and consistent with G.S. 116-36.1, the President may revoke or suspend the authority of a constituent institution or take other remedial action as the President deems necessary and appropriate, pending a review of any reported noncompliance with this policy and the associated regulations. The Vice President for Finance, in consultation with the General Counsel, shall establish the process by which such reports shall be investigated and for the implementation of any revocation or suspension. Once authority has been revoked pursuant to this policy, all institutional trust funds shall be deposited with the North Carolina State Treasurer.

This version of this policy applies to requests for review/appeals of all decisions not to reappoint made on or after 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 nonreappointments 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 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 fourteen-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 ensure 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 subcommittee 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 reviews of all decisions not to reappoint made on or after January 1, 2004.

Appendix to 101.3.1 Process for Review of Nonreappointments

