

CHAPTER VI- ACADEMIC FREEDOM AND TENURE

SECTION 600. FREEDOM OF INQUIRY AND RESPONSIBILITY WITHIN THE UNIVERSITY COMMUNITY.

(1) The University of North Carolina System 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 System 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 System 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 faculty members. They should not represent themselves, without authorization, as spokespersons for the University of North Carolina System 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; NON-DISCIPLINARY SEPARATION.<sup>1</sup>

(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, or their designee, 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; however, the chancellor shall make the final decision regarding any proposed amendments or revisions.

(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 System.

(3) The tenure policies and regulations of each constituent institution<sup>2</sup> shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion, and the conferral of 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 in a manner accessible to 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, which may include the constituent institution's board of trustees.<sup>3</sup>

(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 for cause 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 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 Section 603 of *The Code*;

(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) The non-disciplinary separation from employment of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before the term expires when:

(i) the faculty member is unable to perform the essential functions of the job due to a medical condition or the vagueness of a medical prognosis and the university and the faculty member are unable to reach agreement on a return-to-work arrangement that meets both the needs of the university and the faculty member's condition, and the university has demonstrated a business or operational need to fill the faculty member's position; or

(ii) notwithstanding any unexhausted leave credits and leave benefits, the faculty member is unable to perform all of the position's essential duties due to a court order, or due to the loss of credentials or certification required for the position and that would render the faculty member unable to perform all of the essential functions of the job.

A separation under this subsection (d) is not considered to be disciplinary. A faculty member may file a grievance pursuant to Section 607 with respect to a non-disciplinary separation under this subsection. In the event that such a grievance is filed, the burden shall be on the university (rather than the grievant) to demonstrate that the faculty member was unavailable based on one of the grounds listed in (d)(i) and (ii) and that the university took reasonable steps to avoid separation.

(e) Retirement or Phased 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 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 University Personnel and through the committee to the Board of Governors.

#### SECTION 603. DISCIPLINARY DISCHARGE, SUSPENSION OR DEMOTION<sup>4</sup>.

(1) A faculty member who is the beneficiary of institutional guarantees of academic tenure shall enjoy protection against unjust and arbitrary application of formal discharge, suspension, or demotion. During the period of such guarantees the faculty member may be discharged from employment, suspended without pay, 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 but not limited to, the sustained failure to: meet assigned classes, respond to communications from individuals within the faculty member's supervisory chain, report to their employment assignment and by continuing to be absent for fourteen (14) consecutive calendar days without being excused by their supervisor, or to perform other essential duties of their position 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 or engaging in other unethical conduct; violation of university policy or law; mistreatment of students or employees; research misconduct; financial or other fraud; or criminal, or other illegal or inappropriate conduct. To justify formal discharge, suspension, or demotion, such misconduct should be either (i) sufficiently related to a faculty member's responsibilities as to disqualify the individual from effective performance of job duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

Formal discharge, suspension, or demotion may be imposed only in accordance with the procedures prescribed in this section. For impositions of formal discharge, suspension, or demotion under this section of *The Code*, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to Non-Reappointment, Denial of Tenure, and Denial of Promotion as provided in Section 604, Separation Due to Financial Exigency or Program Curtailment as provided in Section 605, a grievance as provided in Section 607, or any other lesser employment action that is not a formal discharge, suspension, or demotion.

(2) Procedures for the Imposition of Discharge, Suspension, or Demotion.

(a) "Notice of Intent to Discharge, Suspend, or Demote"

The chief academic officer of the institution, however titled, shall send the faculty member a written notice of intention to discharge, suspend, or demote a faculty member. The letter must include: (i) the proposed date of discharge, suspension, or demotion; (ii) specific reasons for discharge, suspension, or demotion; (iii) the faculty member's right to request a disciplinary hearing; and (iv) the deadline and process for the faculty member to request a disciplinary hearing in writing. The notice shall be provided in such a manner that provides proof of delivery. At any point during these procedures, the chancellor or the chief academic officer shall have the discretion to either reassign the faculty member to other duties or to place the faculty member on administrative leave with pay. Reassignment or placement of a faculty member on administrative leave with pay is not a disciplinary action.

(b) If, within 14 calendar days after receiving the notice, the faculty member makes no written request for a disciplinary hearing, the discharge, suspension, or demotion, shall be final and without recourse to any institutional grievance or appellate procedure.<sup>5</sup>

(c) If the faculty member makes a timely written request for a disciplinary 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 discharge, suspension, or demotion. The hearing committee shall accord the faculty member at least 30 calendar days from the time it receives the faculty member's written request for a disciplinary hearing to schedule the hearing. The hearing committee may, upon the faculty member's written request and for good cause, extend any campus-imposed deadline by written notice to the faculty member. The disciplinary hearing committee will ordinarily endeavor to complete the disciplinary hearing within 90 calendar days except under unusual circumstances such as when a disciplinary hearing request is received during official university breaks and holidays and despite reasonable efforts the disciplinary hearing committee cannot be assembled.<sup>6</sup>

(d) The disciplinary hearing shall be closed to the public. 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 evidence, and to make argument. A written transcript of all proceedings shall be kept; upon request, a copy of the transcript shall be furnished to the faculty member at the institution's expense.

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

(f) The disciplinary hearing committee shall make written recommendations to the chancellor within 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later. In reaching its written recommendations to the chancellor, the committee shall consider only the evidence presented at the disciplinary hearing and such written or oral arguments as the committee, in its discretion, may allow. The institution has the burden to prove by a showing of "clear and convincing" evidence that it had permissible grounds for the discharge, suspension, or demotion.

(g) Following receipt of the disciplinary hearing committee's written recommendations, the decision as to whether to discharge, suspend, or demote the faculty member is the chancellor's and shall be effective as of the date of the chancellor's decision and the institution's obligation to continue paying the faculty member's salary shall cease upon issuance of the chancellor's decision. If the chancellor decides to discharge, suspend, or demote the faculty member, the faculty member may appeal the decision to the board of trustees. An appeal to the board of trustees must contain a brief statement that alleges one or more of the following as the basis for the appeal: (1) that the process for making the decision was materially flawed; (2) that the result reached by the chancellor was clearly erroneous; or (3) that the decision was contrary to controlling law or policy. If the faculty member elects to 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 with the board of trustees by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member receives the chancellor's decision.

(3) Appeals of Decisions Imposing Discharge, Suspension, or Demotion. 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 an initial review to a standing or ad hoc committee of at least three members. The board of trustees, or its committee, shall consider the appeal based on the record of the proceedings below, and may, in its discretion, consider written or oral arguments, subject to any policies, regulations or guidelines as may be adopted by the Board of Governors, president, or board of trustees. The board of trustees' decision shall be made as soon as reasonably possible after the chancellor has received the faculty member's appeal to the trustees. This decision shall conclude the University's appeals process.

(4) The procedures prescribed herein shall take effect with any discharge, suspension, or demotion occurring on or after August 1, 2023.

SECTION 604. NON-REAPPOINTMENT, DENIAL OF TENURE, AND DENIAL OF PROMOTION. <sup>7</sup>

604 A. Decisions Subject to Notice.

(1) The following faculty employment decisions are subject to notice as provided by this section:

(a) Decision not to reappoint a tenure track faculty member after the initial contract period ("Non-Reappointment");

(b) Decision not to confer tenure to a tenure track faculty member ("Denial of Tenure"); and

(c) Decision not to promote in rank a tenure track faculty member or a tenured faculty member ("Denial of Promotion").

604 B. Notice of Decisions.

(1) Non-Reappointment.<sup>8</sup> For a non-reappointment of a tenure track faculty member, the faculty employment decision shall be made by the appropriate institutional faculty and administrative officers early enough to permit reasonable notice to be given. For a full time, tenure track faculty member, 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 60 calendar days' written notice before the specified term contract expires;

(b) During the second year of continuous service at the institution, the faculty member shall be given not less than 90 calendar days' written notice before the specified term 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' written notice before the specified term contract expires.

(2) Denial of Tenure. For Denial of Tenure the faculty member shall be given not less than 12 months' written notice before the faculty member's appointment expires.

(3) Denial of Promotion. For Denial of Promotion in rank, the faculty member shall be given written notice within a reasonable time following the final faculty employment decision not to promote.

604 C. Review of Decisions.

(1) **Campus-Based Review.** Subject to limitations contained in *The 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 a decision regarding non-reappointment, promotion, and tenure as provided in Section 604A. Such procedures shall at a minimum provide for the following:

(a) The faculty member shall have at least 30 calendar days upon receiving the notice of the decision to request a review of the decision on the grounds that the faculty employment decision was based on an Impermissible Basis (as defined herein). If the faculty member does not request review of the decision within the campus-defined timeframe, the decision shall be final without recourse to any further review or appeal.

(b) If the faculty member files a request for review within the campus-specified timeframe, the chancellor shall ensure a process is in place so that a review by a standing committee of the institution's faculty occurs within a reasonable time from the request for review. The institution and faculty member should endeavor to complete the review within 90 days from the request for review.

(c) In reaching written recommendations to the chancellor, the review committee shall consider only the evidence presented by the faculty member and a representative of the university, including the written record of the decision. The faculty member shall have the burden to prove by a preponderance of the evidence that the decision was based on an Impermissible Basis.

(d) **Impermissible Basis.** A decision under Section 604A shall not be based upon (1) 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; (2) the faculty member's membership in a group protected from discrimination under state or federal law; (3) other violation of state or federal law; or (4) material violation of applicable university policies for reappointment, promotion, and tenure that materially affected the decision. .

(2) **Appeal to the Board of Trustees.** If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final with no appeal available. If the chancellor either declines to accept 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 by filing a written notice of appeal with the board of trustees. This appeal shall be transmitted through the chancellor and be addressed to the chair of the board of trustees, by submitting such notice by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement that alleges one or more of the following as the basis for the appeal: (a) that the campus-based process for reviewing the decision was materially flawed; (b) that the result reached by the chancellor was clearly erroneous; or (c) that the decision was contrary to controlling law or policy.

(3) The procedures prescribed in this section shall take effect with any faculty employment decision effective on or after August 1, 2023.

SECTION 605. SEPARATION DUE TO FINANCIAL EXIGENCY OR PROGRAM CURTAILMENT.

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 605 C (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.<sup>9</sup>

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 due to 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 shall be made in such a manner that provides proof of delivery. . 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.

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 Section 605 may appeal the reconsideration decision to the board of trustees of the constituent institution.

#### SECTION 606. SEPARATION DUE TO RETIREMENT.

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

#### SECTION 607. FACULTY GRIEVANCE PROCESS.

(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 deans, department chairs and department heads.

(2) The committee shall be authorized to hear grievances of members of the faculty.

(3) "Grievances" within the province of the grievance committee's power shall include matters directly related to a faculty member's terms and conditions of employment. Grievances must be based upon a decision made by an administrator in a supervisory role over the faculty member. The grievance must allege that the decision was in violation of federal or state law, or UNC Policy or Regulation, or constituent institution policy or regulation and that the faculty member was negatively affected by such decision. However, the grievance committee may not consider a matter that is subject to Section 603, Section 604, or Section 605 of *The Code*, or a matter that is not grievable as defined in UNC Policy 101.3.2[R].

(4) A faculty member who has a grievance may submit the grievance to the faculty grievance committee. The grievance committee shall decide whether the facts fall within the institution's grievance policy such that the grievance is reviewable by the committee; submission of a grievance shall not result automatically in consideration or review of the grievance.

(5) The chancellor shall make the final decision on a grievance. If the decision is not in favor of the faculty member, the decision may be appealed to the board of trustees of the constituent institution. The decision of the board of trustees is final.

SECTION 608. STUDENTS' RIGHTS AND RESPONSIBILITIES.

(1) The University of North Carolina System 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 of North Carolina System 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 *The Code*.

SECTION 609. JURISDICTION OF THE BOARD OF GOVERNORS.

609 A. Discretionary Review.

The Board of Governors may make such inquiry and review into matters as it may from time to time deem appropriate; provided, however, that the Board of Governors shall not review matters or actions that are subject to separate processes under Chapter VI or any other chapter of *The Code*, or for which a designated review, grievance, or hearing process has been established by the UNC Policy Manual, including but not limited to student disciplinary matters, research misconduct matters, other employment matters, first amendment matters, misuse of state funds reports, or audit and compliance matters. Moreover, it is the Board of Governors expectation that campus matters will be appropriately addressed at the constituent institution. Therefore, it is only in extraordinary circumstances, as solely determined by the Board of Governors that the Board of Governors will exercise its discretion to review any matter that has not first been brought to the attention of the designated institutional administrator, chancellor, or president for appropriate review and handling.

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. 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.

## 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 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. The continued employment of a special faculty member during the term appointment may be made expressly contingent on items such as the continued availability of funding from any source, on enrollment levels, or any other contingency established by the institution, in which case the appointment letter must state such contingency.
- (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, paid special faculty members are entitled to seek recourse under Section 607 of *The Code* (relating to faculty grievances).
- (5) Special faculty members, whether paid or unpaid, are not covered by Section 604 of *The 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.

## SECTION 611. APPOINTMENT OF AFFILIATE FACULTY

Institutions may confer honorary academic titles to outstanding individuals who have primary employment responsibility outside the university but provide professional expertise or contributions to an academic program. Such honorary academic appointments are necessary to recruit and recognize professionals, especially those in healthcare fields, to serve in critical roles such as preceptors for clinical clerkships or experiential learning. Processes for the selection and appointment of these unpaid faculty roles must reside outside the tenure policies and regulations of each constituent institution as these appointments are not eligible for permanent tenure and shall not be entitled to any rights under any other Section of this Chapter.

## SECTION 612. REVIEW OF PERSONNEL ACTIONS AFFECTING SPECIFIED EMPLOYEES EXEMPT FROM THE NORTH CAROLINA HUMAN RESOURCES ACT (EHRA)

- (1) Review Processes. Certain non-faculty employees, as described in subsection (1)(b) below who are exempt from the North Carolina Human Resources Act, may seek review under procedures provided for by this section in the event that the employee is discontinued, terminated, or discharged from employment, or suffers other adverse employment action. Each constituent institution shall develop procedures applicable to employees of the constituent institution, and the UNC System Office 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 an employee or former employee may file a request for review, after receiving notice of an employment action covered by this

section. If the employee or former employee does not timely file a written request for review, then the employment action is final without recourse to any institutional grievance, review, or appeal.

(b) Exempt Professional Staff as defined in Section 300.1.1 I.C. who are not commissioned police officers may seek review of personnel actions based on allegations:

(i) Notice

(A) For violations of applicable notice requirements set out in Section 300.1.1. of the UNC Policy Manual; or

(ii) Equal Employment Opportunity and Protected Activity

(A) For violations of any provision of subsections III.D. or E. of Section 300.1.1 of the UNC Policy Manual; or

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

(A) For discharge for cause or other formal disciplinary action, or for interpretation and application of a policy provision, all pursuant to and limited by subsection III.C of Section 300.1.1 of the UNC Policy Manual, a review may be sought only if the employee alleges the discharge, formal 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 the UNC System Office) 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 the UNC System Office) 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").

(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 subsection (1)(b), above. The decision of the board of trustees is final with no further appeal.

(b) For employees of the UNC System Office, 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 subsection (1)(b) above. The decision of the Board of Governors is final with no further appeal.

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<sup>1</sup> Pursuant to G.S. 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 UNC System. See Section 200.6, *Delegation Authority to the President of the University*.

<sup>2</sup> 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 University of North Carolina School of the Arts and for the North Carolina 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.

<sup>3</sup> See Footnote 1, above.

<sup>4</sup> A demotion as defined in this Section shall not include a demotion that results in the loss of a faculty member's tenure.

<sup>5</sup> In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

<sup>6</sup> To meet this deadline, faculty are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two or more sessions.

<sup>7</sup> 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, regular faculty holding fixed-term contracts at those institutions are entitled to the rights afforded in this section.

<sup>8</sup> Faculty at North Carolina School of Science and Mathematics shall be given notice no later than February 15 of the reappointment year.

<sup>9</sup> Because of the unique character and mission of the North Carolina School of Science and Mathematics, when the employment of a faculty member is to be terminated during or at the conclusion of a fixed-term contract because of major curtailment or elimination of a teaching, research, or public-service program that is not founded upon financial exigency, written notice shall be given no later than the November 1 prior to termination. When faculty employment is to be terminated during or at the conclusion of a fixed-term contract because of financial exigency, the school shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give notice no later than the November 1 prior to termination. Terminations at the end of a fixed-term contract for the reasons stated above in this footnote are not subject to Section 604 of *The Code*, but instead are subject to Section 605.