

**Appendix B-2**

**REGULATIONS ON ACADEMIC FREEDOM, TENURE AND DUE PROCESS**

**PREPARED IN ACCORDANCE WITH THE PROVISIONS IN THE  
THE UNIVERSITY OF NORTH CAROLINA CODE, JANUARY, 1999**

**APPROVED BY THE BOARD OF TRUSTEES ON APRIL 19, 2004**

**REVISED NOVEMBER 28, 2006**

**APPROVED BY THE BOARD OF TRUSTEES ON February 21, 2007  
PASSED BY THE SENATE APRIL 28, 2009**

**APPROVED BY THE BOARD OF TRUSTEES ON SEPTEMBER 18, 2009**

**SECTION 1. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY  
COMMUNITY**

- A.** North Carolina Agricultural and Technical State University is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. This institution therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.
- B.** North Carolina Agricultural and Technical State University shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.
- C.** Faculty and students of this institution shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

**SECTION 2. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY**

- A.** It is the policy of North Carolina Agricultural and Technical State University to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of this institution. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with this institution and their position as men and women of learning. They

should not represent themselves, without authorization, as spokesmen for North Carolina Agricultural and Technical State University.

- B.** North Carolina Agricultural and Technical State University will not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuits of their respective areas of scholarly and professional interest and responsibility.

### **SECTION 3. ACADEMIC TENURE**

#### **A. In General**

Academic tenure refers to the conditions and guarantees that apply to a faculty member's employment. More specifically, it refers to the protection of a faculty member against involuntary suspension or discharge from employment or reduction in rank by North Carolina Agricultural and Technical State University except upon specified grounds and in accordance with the procedures provided in Section 4 of these regulations or against termination of employment except as provided for in Section 6. In all instances, the tenure conferred on a faculty member is held with reference to employment by NC A&T State University, rather than to employment by the University of North Carolina.

The intended purposes of according the protection of academic tenure to faculty members are to secure their academic freedom and to help the institution attract and retain faculty members of the high quality it seeks. While academic tenure may be withheld on any grounds other than those specifically stated to be impermissible under Section 5. A., its conferral requires an assessment of the faculty member's demonstrated professional competence; his/her potential for future contributions; his/her commitment to effective teaching, research, or public service; and the needs, resources, and the mission of the institution.

#### **B. In Relation to Faculty Ranks**

Academic tenure, as herein defined, pertains exclusively to the employment of faculty members by appointment to specified faculty ranks. Such appointments may be for fixed terms of employment, automatically terminable when they expire ("fixed term appointment"); or they may be for probationary terms ("probationary term appointment"); or they may be continuous until retirement, death, or resignation ("appointment with permanent tenure").

The faculty ranks to which appointments may be made and the incidents of academic tenure applicable to each are:

- 1. Assistant Professor.** The initial appointment to the rank of assistant professor shall be for a probationary term of two years. Unless at any point the assistant professor is not reappointed, he/she will be reappointed to a second two-year term and then to a three-year term before a decision is made to recommend permanent tenure and promotion to higher rank or not to reappoint.

At least 180 days before the end of the first two-year appointment, the assistant professor shall receive written notice whether he/she will be reappointed at that rank for a two-year term or not reappointed when his/her current term expires. At least 12 months before the end of the second consecutive two-year appointment, the assistant professor shall receive written notice whether he/she will be reappointed at the rank of assistant professor for a three-year term or not reappointed when his/her current term expires. If the decision is negative the faculty member will be given a one year terminal appointment at the rank of assistant professor. If reappointed to a three-year term, before the end of the second year of that term, the assistant professor shall receive written notice indicating whether he/she will be reappointed when his/her current term expires, recommended for permanent tenure at the same or higher rank, or not reappointed. If the assistant professor is reappointed with permanent tenure at the same rank, his/her status shall be reviewed at least once every three years. If not reappointed, the faculty member's employment will cease at the end of the three-year term.

Should the Chancellor fail to meet the required deadline for the notice of the decision not to reappoint, the faculty member will receive a terminal one-year appointment at the same rank. The decision herein required shall be made as provided in Section 3. D.

Promotion at any time from the rank of assistant professor to that of associate professor (without conferral of permanent tenure) constitutes an initial appointment to the three-year term at the latter rank, with the incidents described for that term in Section 3.B.2.

2. **Associate Professor.** When a faculty member's initial appointment by the institution is to the rank of associate professor, the appointment is to a probationary term of two years. Unless at any point the associate professor is not re-appointed, he/she will be re-appointed to a three-year term before a decision is made whether to recommend permanent tenure at the same or higher rank or to give notice of a terminal one-year appointment. At least 180 days before the end of the two-year appointment, the associate professor shall receive written notice of whether, when his/her current term expires, he/she will be reappointed at the rank of associate professor for a three-year term or not reappointed. Before the end of the second year of the three-year term, the associate professor shall receive written notice whether, when his/her current term expires, he/she will be recommended for permanent tenure at the same or higher rank or not be reappointed.

Should the Chancellor fail to meet the required deadline for the notice of the decision not to reappoint, the faculty member will receive a terminal one-year appointment at the same rank. The decision herein required shall be made as provided in Section 3.D.

A promotion at any time from the rank of associate professor to the rank of professor confers permanent tenure from the effective date of the promotion. Both

the President and the Board of Governors must approve this action since the promotion confers tenure, unless this approval has been delegated to the Board of Trustees.

3. **Professor.** When a faculty member's initial appointment by the institution is to the rank of professor, the appointment is to a single probationary three-year term. Before the end of the second year of the three-year term, the professor shall receive written notice whether, when his/her current term expires, he/she will be recommended for permanent tenure or not be reappointed.

Should the Chancellor fail to meet the required deadline for the notice of the decision not to reappoint, the faculty member will receive a terminal one-year appointment at the same rank. The decision herein required shall be made as provided in Section 3. D.

**New Hires with Exemplary Credentials.** In exceptional cases an academic unit might hire a candidate with exemplary credentials to associate or full professor rank with tenure. In such a case, the candidate's credentials must be reviewed by the University's tenure policy, and the process must result in a positive decision before an offer of permanent tenure can be made to the candidate. The candidate will be asked to prepare a package of his/her credentials and apply for tenure. The Provost will call upon the relevant tenure committees and the Dean to expedite the review process (as outlined in Section 3.D) and reach a positive or negative recommendation in a timely fashion. The decision of the tenure process will be communicated to the candidate and it may result in an offer for hire with or without tenure.

Policies concerning the minimum requirements and general criteria for promotion in rank and/or permanent tenure are given in Appendix C-3.

### C. Committees of the Faculty - Elected

Any faculty member appearing before any committee at the University, which will make a decision or recommendation concerning that faculty member, has the right to an impartial consideration. Faculty have the right to challenge the participation of a committee member based on a showing of a conflict of interest that may affect the impartiality of that committee member. Such challenges should be made before the committee in question. That committee must decide by majority vote the validity of the challenge before consideration is given to the issue before the committee. The faculty member in question cannot participate in this vote. An applicant for promotion who is serving on the promotion and tenure committee may not participate in the deliberation on his/her application.

The committee composition for faculty reappointments, promotion, and tenure may be found in Chapter V, Section A (Committees of the Faculty – Elected). The following additional guidelines are provided for the faculty Reappointments, Promotions and Tenure committees at all three levels, i.e., University, School/College, and Department:

- Where numbers permit, all committee members will be elected to two-year terms.
- The terms of the committee members will be staggered so that approximately half of the committee members will be newly elected each year.
- Where numbers permit, each member will be allowed to serve a maximum of two consecutive terms.
- For departments with limited number of tenured faculty members, to satisfy the requirement of one member per department on the School/College committee, an individual might be required to serve more than two consecutive two-year terms. In such a case, the requirement of one member per department on the School/College committee will not apply.
- Where numbers permit, a faculty member will be allowed to review a candidate only one time, as a member of only one of the three committees.
- No tenured faculty member who is an applicant for promotion will be allowed to serve on any of the three committees. If an individual has already been elected to one of these committees prior to his/her decision to apply for promotion, a replacement (only for that year) will be elected by the same faculty body that elected the original member.
- The above provisions, as they apply to various units, must be published by the corresponding unit and made available to all the faculty members in that unit.

#### **D. Evaluation Procedures for Reappointments, Promotions, and Tenure**

- 1. Initiation, Review, and Approval of Reappointments, Promotions, and Conferral of Tenure.** The applicant will initiate his/her candidacy for reappointment, promotion, and/or tenure by submitting an appropriate application to the department chairperson. The candidate may seek (1) an appointment with a fixed or probationary term for two years or longer, (2) promotion in rank, (3) reappointment to a fixed term, and/or (4) reappointment as an assistant professor, associate professor, or professor, whether or not the reappointment recommends the conferral of permanent tenure. The relevant dates for the reappointment promotion and tenure process will be published in the annual academic calendar which is available no later than May 1 of each year.

The department chairperson shall convene the department RPT committee. The committee will elect a chairperson. The committee will deliberate on the application, and reach a positive or a negative decision by a majority vote. The committee members will use the department's current published standards for reappointments, promotion and tenure for their evaluations. The committee will also prepare a written recommendation that reflects the collective and individual evaluations of all committee members. A document containing the voting record and the written recommendation will be signed by all committee members and added to the candidate's application package. The department chairperson will provide a copy of the document to the applicant, who will be given an opportunity to give his/her response. The applicant's response will be added to the package, and the department chairperson, then, will submit the application to the School/College Dean.

The Dean shall convene the School/College RPT committee. The committee will elect a chairperson. The committee will deliberate on the application, and reach a positive or a negative decision by a majority vote. The committee will use the School's/College's current published standards for reappointments, promotion and tenure for their evaluations. The committee will prepare a document that includes the voting record and a written recommendation that reflects the collective and individual evaluations of all committee members. The document will be signed by all committee members and submitted to the Dean.

The Dean shall review the applicant's package. In relation to applicants for reappointment and tenure, the Dean's review will not be limited to only judging the professional qualifications of the applicant, but also to determining whether the School/College will have the resources to support the application, and whether a positive recommendation concerning the application will be consistent with the current School/College goals. Such factors as the following will be considered in this review: tenure density, enrollment trends, needs in critical areas of specialization, and results of program audit and review. The Dean shall make his/her decision to approve or decline the application. A document containing this decision with statements of justification, and signed by the Dean will be added to the application package.

Of the three bodies (the department RPT committee, the School/College RPT committee, and the Dean) who have evaluated the application, if two or all three bodies support the application, the application shall be forwarded to the Provost, with a positive recommendation. If two or all three bodies do not support the application, the application shall be forwarded to the Provost with a negative recommendation. Any unit without three recommending bodies at the School/College/Division level, in case of a tied vote, will undergo a third review by the elected standing committee as outlined in Section C-4. In either case, the Dean will provide the candidate copies of all the documentation leading to the recommendation within a week after the package is forwarded to the Provost.

If the School/College recommendation is negative, the Provost may ask for additional justification and reconsideration by the three School/College bodies. Through the process of justification and reconsideration, if the School/College recommendation is reversed, the Provost will forward the application to the University Committee for review. If the School/College recommendation is still negative, the Provost will forward the application to the Chancellor, who will send an unelaborated written statement to the candidate denying his/her application. This decision is final except as it may later be reviewed in accordance with the provisions of Section 5.

The Provost shall convene the University committee. The university committee reviews all applications with positive recommendations in relation to the published university standards. The University committee is to review the applicant's professional qualifications in relation to the published University standards. The committee will reach a decision by a majority vote of all its members and prepare a document containing the voting record. A written recommendation signed by all the committee members will be submitted to the Provost.

The Provost shall review the application and the University committee's recommendation. In relation to applicants for reappointment and tenure, the Provost's review will not be limited to only judging the professional qualifications of the applicant, but also to determining whether the University will have the resources to support the application, and whether a positive recommendation concerning the application will be consistent with current University goals. Such factors, as the following will be considered in this review: tenure density, enrollment trends, needs in critical areas of specialization, and results of program audit and review. If the Provost will decide not to support the application, a letter stating the recommendation with a brief explanation, and signed by the Provost will be added to the package. If the Provost will decide to support the application, a letter of support signed by the Provost will be added to the package. The package will then be submitted to the Chancellor. In either case, the Provost will provide the candidate copies of all the documentation leading to the decision within a week after the Provost's review. If the Provost's positive recommendation is in contradiction to the University committee's recommendation, the Provost will send a letter to the University committee explaining the reasons for his/her decision. If a negative tenure decision is reached because of factors other than the professional qualifications of the applicant, the Provost might make a recommendation to the Chancellor with special arrangements to prolong the employment of the applicant at the University.

If the Chancellor shall decide not to recommend a reappointment, promotion, or permanent tenure, he/she shall send the candidate a letter with a simple, unelaborated, statement of the decision. This decision is final except as it may later be reviewed in accordance with the provisions of Section 5.

If the Chancellor shall concur in a recommendation that will confer permanent tenure, he/she shall consult with the Board of Trustees and, unless dissuaded, forward the recommendation to the President and Board of Governors for final approval, unless approval has been delegated to the Board of Trustees. All other favorable recommendations by the Chancellor in regard to appointments, reappointments, and promotions shall be forwarded by him/her to the Board of Trustees for final approval. A letter approving appointment, reappointment, promotion or tenure will be sent to the candidate by the Chancellor.

The procedure outlined above applies to all resident tenure-track and tenured faculty, to candidates for new appointment at the ranks of Associate Professor or Full Professor, and to candidates for new appointments being considered for conferral of tenure. For a candidate for new appointment, timetable for review will be set consistent with the needs of the new appointment.

2. **Early Promotion and Tenure.** Nothing in these regulations shall be construed to preclude a faculty member from being recommended for permanent tenure and/or promotion at any time.
3. **Terms and Conditions of Appointments.** The terms and conditions of each initial appointment and of each reappointment to the faculty shall be set out in writing. A copy of the terms, signed by the Chancellor, shall be delivered to the faculty member and the Chancellor shall retain a copy. The general terms and conditions of such appointments, including those provided herein, shall be either set out in the document of appointment or incorporated therein by clear reference to specified documents that shall be readily available to the faculty member.

Any special terms and conditions shall be clearly stated in the written appointment. Except as herein provided, no special terms or conditions may be included that vary the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions in documents of appointment is with the Chairperson who recommends the appointment.

4. **Continued Availability of Special Funding.** 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 sources. This contingency shall not be included in a faculty member's contract in either of the following situations:
  - a. 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. If the faculty member held permanent tenure in the institution on July 1, 1975, and his/her contract was not then contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.

The federal funds provided to the North Carolina Agricultural Extension Service through the Smith-Lever Act shall be considered to be permanent trust funds. Faculty who are funded in whole or in substantial part from these funds shall not be subject to the contingency provisions of this section.

5. **Provisions for Less than Full-Time Employment.** Special terms for less than full-time employment with commensurate compensation, or for relief from all employment obligations for a specified period, may be included in an appointment or reappointment to any faculty rank or may be added by a written memorandum of amendment during the term of an appointment. For compassionate reasons of health, or requirements of childbirth or child care, or similar compelling reasons, such terms may, with the concurrence of the faculty member, include extensions of the period of a current



probationary term of appointment to coincide with the extent and duration of the relief from the full-time employment obligation. Such special terms must be expressly stated in initial appointment documents or, if added by memorandum of amendment, must be approved by signature of the Chancellor and the faculty member, with a copy to be retained by each. Except as may be otherwise expressly provided in the document of appointment, all appointments to any faculty rank are on the basis of a full-time employment obligation and confer the full incidents of academic tenure pertinent to the particular appointment.

These provisions do not apply to informal temporary adjustments of the regularly assigned duties of faculty members by the department Chairperson who is responsible for their direct supervision; nor to the university's granting of extended leaves of absence with or without compensation.

#### **D. Resignation**

A faculty member shall give prompt written notice of his/her resignation with its effective date to the Chancellor. Copies should go to the Provost, the School/College Dean, and his/her department chairperson. A professor or associate professor should ordinarily give at least four months' notice and an assistant professor or instructor at least three months' notice of resignation.

### **SECTION 4. DUE PROCESS BEFORE DISCHARGE OR THE IMPOSITION OF SERIOUS SANCTIONS**

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

(1) 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;

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

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

These sanctions may be imposed only in accordance with the procedures prescribed in this section. For purposes of this Code, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to non-reappointment (Section 5) or termination of employment (Section 6).

**(B)** The Provost/Vice Chancellor for Academic Affairs shall send the faculty member a written notice of intention to discharge the faculty member or impose a serious sanction together with a written specification of the reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by the Faculty Hearing and Reconsideration Committee.

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

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

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

**(F)** The Provost/Vice Chancellor for Academic Affairs, or designee, and/or counsel, may participate in the hearing to present testimony of witnesses and other evidence, to cross-examine witnesses, to examine all documents and other evidence, and to make argument.

**(G)** In reaching decisions on which its written recommendations to the Chancellor shall be based, the Faculty Hearing and Reconsideration Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The university has the burden of proof. In evaluating the evidence, the committee shall use the standard of "clear and convincing" evidence in determining whether the institution has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action. The committee shall make its written recommendations to the Chancellor within 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later.

**(H)** If the Chancellor concurs in a recommendation of the Faculty Hearing and Reconsideration Committee that is favorable to the faculty member, the Chancellor's decision shall be

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

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

## **SECTION 5. NONREAPPOINTMENT OF FACULTY MEMBERS ON PROBATIONARY TERM APPOINTMENT**

### **A. Permissible and Impermissible Grounds for Non-reappointment**

The decision whether to reappoint a faculty member when a probationary term of appointment expires may be based on any factor considered relevant to the total institutional interests, but it must consider the faculty member's demonstrated professional competence, his/her potential for future contributions, and institutional needs and resources. Policies concerning the minimum requirements and general criteria for promotion in rank and/or permanent tenure are given in Appendix C-3. These considerations may form, in whole or in part, the basis of the ultimate decision, except that in no event a decision not to reappoint may be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution; (2) discrimination based upon the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by the board of trustees; or (3) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. The burden of proof is upon the aggrieved faculty member to establish by the preponderance of the evidence that his or her contention is true.

### **B. Conference with Dean**

Within fourteen calendar days after receiving a written notice of non-reappointment, a faculty member may in writing request a private conference with the dean of his/her school to discuss

the reasons for non-reappointment. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.<sup>1</sup>

Within five days after the conference, the dean shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

### **C. Conference with the Provost/Vice Chancellor for Academic Affairs**

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

Within ten days after this conference, the Provost/Vice Chancellor shall send a written evaluation of the matter to the faculty member, the dean, and the department Chairperson. The evaluation may be in the form of an unelaborated concurrence with the decision; an expression of disagreement with the decision, with or without supporting reasons; or a recommendation for reconsidering the decision, with or without suggestions for specific procedures in doing so. Whatever form the evaluation may take, it is merely recommendatory and is not binding upon the dean or final as to the faculty member.

Within five days after receiving an evaluation that disagrees with the decision or recommends it reconsideration, the dean shall give the faculty member and the Provost/Vice Chancellor for Academic Affairs his/her response in writing.

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

The Chancellor shall ensure a process is in place so that a hearing is timely accorded a faculty member, who timely requests a review, before an elected standing committee of the institution's faculty.

Within fourteen calendar days after he/she receives notice of an unfavorable action resulting from the conference with the Vice Chancellor, the faculty member may request that the Faculty Hearing Committee review the decision. This review is limited solely to determining whether the decision not to reappoint was based on any grounds stated to be impermissible in Section 5. A. If the faculty member does not request review of the notice of on-reappointment in a timely fashion as specified by this paragraph, the non-reappointment is final without recourse to any further review by faculty committees, the institution, or the Board of Governors.

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<sup>1</sup> If the Provost/Vice Chancellor for Academic Affairs makes the initial decision not to reappoint, substitute her/his name for that of dean wherever the latter appears. If the initial decision not to reappoint is made by the Chancellor or Board of Trustees, the faculty member who is not to be reappointed may seek review of that decision in accordance with the procedure set out in Section 604 of The Code.

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

The purpose of Faculty Hearing Committee 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.

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

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

#### **E. Conduct of Hearing**

The hearing shall be conducted informally and in private. Only the members of the Committee, the faculty member, the department Chairperson, the dean, and such witnesses as may be called may attend, except that the faculty member and the Chair/dean may each be accompanied by a person of his/her choosing. A quorum for the hearing is a simple majority of the Committee's total membership. Committee members who hold an appointment in the faculty member's department, who will testify as witnesses, or who have any other conflict of interest are disqualified. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the institution's expense.

Rules of evidence, as used in court, do not apply in these hearings. The Committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. The Committee members, the faculty member, and the dean or the representative of the faculty member or dean may question all witnesses. Except as herein provided, the conduct of the hearing is under the committee Chairperson's control.

#### **F. Hearing Procedure**

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

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

At the end of such presentation, the Committee shall consider the matter in executive session. The burden of proof is upon the aggrieved faculty member to establish by the preponderance of the evidence that his or her contention is true.

### **G. Procedure After Hearing**

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

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

If the dean fails to make a recommended modification in the original decision, the Faculty Hearing Committee shall submit a report to the Chancellor containing the Committee's findings and recommendation and what it considers to be appropriate action by the Chancellor to resolve the matter. The Chancellor must base his/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 strongly 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.

### **H. 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 calendar -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 certified mail, return receipt requested, or by another means that provides proof of delivery. See UNC Policy Manual 101.3.1

### **I. Appeals to the Board of Governors**

If the Chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member's receipt of the Chancellor's decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the Chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy. (See Policy 101.3.1 of UNC Policy manual)

## **SECTION 6. TERMINATION OF FACULTY EMPLOYMENT**

### **A. Reasons Justifying Termination and Consultation Required**

- 1. Reasons for Terminating Employment.** The employment of a faculty member with permanent tenure or of a faculty member appointed to a probationary or fixed term may be terminated by North Carolina Agricultural and Technical State University 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 6.A.2. This determination is subject to concurrence by the President and the 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 cannot be met, the employment of the faculty member may be terminated in accordance with the institutional procedures set out in Section 6.B.

2. **Consultation with Faculty and Administrative Officers.** When it appears that the institution will experience an institutional financial exigency or when it is considering a major curtailment in or elimination of a teaching, research, or public service program, the Chancellor or his/her delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

## **B. Termination Procedure**

1. **Considerations in Determining Whose Employment is to be Terminated.** In determining which faculty member's employment is to be terminated for the reasons set forth in Section 6. A (1), consideration shall be given to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.
2. **Timely Notice of Termination**
  - a. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of program is not founded upon financial exigency, he/she shall be given timely notice as follows:
    - i. One who has permanent tenure shall be given not less than twelve months' notice and
    - ii. 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) of UNC Code..
  - b. When a faculty member's employment is to be terminated because of financial exigency, the institution shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in Section 6. B.2a.
3. **Type of Notice to be Given.** The Chancellor or his/her delegate shall send the faculty member whose employment is to be terminated a written statement of this fact by mail, return receipt requested. This notice shall include a statement of the conditions requiring termination of the faculty member's employment; a general description of the procedures followed in making the decision; a disclosure of pertinent financial or other data upon which the decision was based; a statement of the faculty member's right, upon request, to a reconsideration of the decision by the Reconsideration Committee if he/she alleges that the decision to terminate him/her rather than another faculty member was arbitrary or capricious; and a copy of this procedure on termination of employment.



4. **Termination if Reconsideration not Requested.** If, within 14 calendar days after he/she receives the notice required by Section 6. B (3), the faculty member makes no written request for reconsideration hearing, his/her employment shall be terminated at the date specified in the notice given pursuant to Section 6. B (3), and without recourse to any institutional grievance or appellate procedure.
5. **Request for Reconsideration Hearing.** Within 14 calendar days after receiving the notice required by Section 6. B (3), the faculty member may request by mail, return receipt requested, a reconsideration of the decision to terminate his/her employment if he/she alleges that the decision was arbitrary or capricious. The request shall be submitted to the Chancellor and shall specify the grounds upon which the faculty member contends that the decision to terminate his/her employment was arbitrary or capricious and shall include a short, plain statement of facts that the faculty member believes support the contention.

Submission of such a request shall constitute on the faculty member's part:

- a. A representation that he/she can support his/her contention by factual proof, and
  - b. An agreement that the institution may offer in rebuttal of his/her contention any relevant data within its possession.
6. **Jurisdiction of Reconsideration Committee.** If the faculty member makes a timely written request for a reconsideration of the decision, the Chancellor or his/her delegate shall insure that the hearing is accorded before the Reconsideration Committee, the composition of which is set out in Chapter V, Section A.6 of the Faculty Handbook. This reconsideration shall be limited solely to a determination of the contentions made in the faculty member's request for reconsideration. The reconsideration hearing shall be held promptly, but the Committee shall accord the faculty member five days from the time it receives his/her written request for a hearing to prepare for it.
  7. **Conduct of Hearing.** The hearing shall be conducted informally and shall be closed to the public. The faculty member and the Chancellor have the right to legal counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine witnesses, and to examine all documents and other adverse demonstrative evidence. The faculty member and the Committee shall be given access, upon request, to documents of North Carolina Agricultural and Technical State University that were used in making the decision to terminate the faculty member after the decision was made that some faculty members' employment must be terminated. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the institution's expense. The Committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. Committee members may question

all witnesses. Except as herein provided, the conduct of the hearing is under the Committee Chairperson's control.

A quorum for purposes of the hearing is a simple majority of the Committee's total membership. No person shall serve on the Reconsideration Committee who holds an appointment in the faculty member's department, participated directly in the decision to terminate this individual faculty member, or has any other substantial conflict of interest.

- 8. Hearing Procedure.** The hearing shall begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for hearing and supported by such proof, as he/she desires to offer.

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

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

- 9. Procedure After Hearing.** If the Reconsideration Committee determines that the contention of the faculty member has not been established, it shall, by a simple unelaborated statement, so notify him/her and the Chancellor. The faculty member may then appeal the decision to terminate his/her employment in the manner provided by Section 605 C.6 of The Code of The Board of Governors.

If the Reconsideration Committee determines that the contention of the faculty member has been satisfactorily established, it shall so notify him and the Chancellor by a written notice that shall also include a recommendation for corrective action by the Chancellor.

Within ten day after receiving the recommendation, the Chancellor shall send written notice to the faculty member and 'the Chairperson of the Committee what modification, if any, he/she will make with respect to the original decision to terminate the faculty member's employment. If the Chancellor fails to reverse the original decision, the faculty member may appeal the termination in the manner provided by Section 605.C.6 of The Code of the Board of Governors. If the Chancellor concurs in a recommendation of the Committee that is favorable to the faculty member, his/her decision is final.

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

**1. Institutional Assistance to Employees who are Terminated.**

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

**2. First Right of Refusal of New Positions.** For two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section 6. A, the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by mail, return receipt requested, to the faculty member's last known address, and the faculty member will be given thirty calendar days after attempted delivery to accept or reject the offer.

**SECTION 7. RETIREMENT OF FACULTY**

**A. Retirement Policy for Members of the Faculty**

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

**SECTION 8. SPECIAL FACULTY APPOINTMENTS, NEW HIRES WITH EXEMPLARY CREDENTIALS, AND INSTRUCTORS**

**A. Special Faculty Appointments**

Appointments may be made to fixed term faculty ranks with title designations "lecturer," "artist in residence," "writer in residence," "visiting faculty members," and any faculty rank designation the prefix-qualifier "adjunct," "clinical," or "research" under the conditions and with the incidents herein provided. These appointees are regarded as "special faculty members" for purposes of the University Code. Special faculty members may be paid or unpaid. Such an appointment, using any of the foregoing title designations, is appropriate for one who has unusual qualifications for teaching, research, academic administration, or public service, but for whom neither the professorial ranks nor the instructor rank is appropriate because of the limited duration of the mission for which the appointment has been made or because of concern for continued availability of special funding for the position, or for other valid institutional reasons.

Special faculty members who are paid shall be appointed for a specified term of service from one to three years, as set out in writing in the letter of appointment. Subsequent appointments to fixed terms of from one to five years duration may be made either in direct succession or at intervals. 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. Each is considered an initial appointment.

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.

North Carolina Agricultural and Technical State University is not obliged to give any notice before a current term expires as to whether appointment will be offered for a succeeding term. Thus, the specification of the length of the appointment shall be deemed to constitute full and timely notice of non-reappointment when that term expires. But the appropriate school dean or division director, upon the faculty member's written request made not later than 90 days before a current term expires, shall within 20 days after he/she received the request give the faculty member a written decision whether an offer of reappointment will be made and, if so, its terms. Failure to communicate a decision constitutes notice that no offer will be made. The decisions herein required shall be made as provided in Section 3.D.

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

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

## **B. Instructors**

The instructor rank is designated for faculty completing a terminal degree. An instructor's appointment is for one year and may be reappointed sequentially in the same rank for an additional one-year term, which is a total of two years. With the dean's recommendation, an instructor may be reappointed to the rank of assistant professor at the beginning of the academic year following the conferral of the terminal degree. When an instructor is appointed to the rank of assistant professor, the time accrued as an instructor shall not be counted as part of the probationary period for permanent tenure.



~~SECTION 9. REVIEW OF PERSONNEL ACTIONS AFFECTING SPECIFIED EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT (EPA).~~

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

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

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

~~(i) Notice~~

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

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

~~(ii) Equal Employment Opportunity and Protected Activity  
(A) For the Senior Academic and Administrative Officers defined in sub-section (i) above, for violations of any provision of sub-sections III.D. or E. of Policy 300.1.1 of the University Policy Manual, and  
(B) For the other employees exempt from the State Personnel Act defined directly above in sub-section (ii), for violations of any provision of sections V. or VI. of Policy 300.2.1. of the University Policy Manual; or~~

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

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

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

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

~~(c) If the employee or former employee timely files a written request for review, the Chancellor 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 Chancellor, shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The 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.~~

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