

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 or suspended from employment or diminished in rank only for reasons of incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty. These penalties may be imposed only in accordance with the procedures prescribed in this section. For purposes of these regulations, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to non-reappointment (Section 5) or termination of employment (Section 6).
- B.** The Provost/Vice Chancellor for Academic Affairs shall mail the faculty member, written statement of intention to discharge him/her. The statement shall include notice of the faculty member's right, upon request, to both written specification of the reasons for the intended discharge and a hearing by the Faculty Hearing Committee as provided for in the Faculty Handbook.
- C.** If, within ten days² after he/she receives the notice referred to in paragraph B above, the faculty member makes no written request for either a specification of reasons or a hearing, and he/she may be discharged without recourse to any institutional grievance or appellate procedure.
- D.** If, within ten days after he/she receives the notice referred to in paragraph B above, the faculty member makes written request, by registered mail,³ return receipt requested, for a specification of reasons, the Chancellor or his/her delegate shall supply such specifications in writing by registered mail, return receipt requested, within ten days after receiving the request. If the faculty member makes no written request for a hearing within ten days after he/she receives the specification, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure.
- E.** If the faculty member makes a timely written request for a hearing, the Chancellor or his/her delegate shall insure that the hearing is accorded before the Faculty Hearing Committee. The hearing shall be on the written specification of reasons for the intended discharge. The Hearing Committee shall accord the faculty member twenty days from the time it receives

² The word "day" as used in Sections 4, 5, and 6, shall mean, except where calendar day is specified, any day except Saturday, Sunday, or an institutional holiday. In computing any period of time, the day which notice is received is not counted but the last day of the period so computed is to be counted.

³ Acceptable delivery methods include those that must have a signature, with proper notification of unobtainable signatures to be retained in institutional records as outlined in Section 101.3.3 (A and C) of The Code of the Board of Governors of the University of North Carolina.

his/her written request for a hearing to prepare his/her defense. The Hearing Committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member.

- F. The hearing shall be closed to the public unless the faculty member and the Hearing Committee agree that it may be open. The faculty member shall have the right to counsel, to present the testimony of witnesses with knowledge related to the written specification and other evidence related to the written specification, to confront and cross-examine adverse witnesses, to make argument, and to examine all documents and other adverse demonstrative evidence. The burden of proof shall be on the administrator to satisfy by a preponderance of evidence that his or her contention is true. 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.
- G. The Chancellor, or his/her delegate or counsel, may participate in the hearing to present testimony of witnesses and other evidence, cross-examine witnesses, examine all documents, and make argument.
- H. In reaching decisions of which its written recommendations to the Chancellor shall be based, the Committee shall consider only the evidence presented at the hearing and such written and oral arguments as the Committee, in its discretion, may allow. The Committee shall make its written recommendations to the Chancellor within ten days after its hearing concludes.
- I. If the Chancellor concurs in a recommendation of the Committee that is favorable to the faculty member, his/her decision shall be final. If the Chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the Board of Trustees. This appeal shall be transmitted through the Chancellor and be addressed to the Chairperson of the Board.

Notice of appeal shall be filed within ten days after the faculty member receives the Chancellor's decision. The appeal to the Board of Trustees shall be decided by the full Board of Trustees. However, the Board may delegate the duty of conducting a hearing to a standing or ad hoc committee, of at least three members. The Board of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the Faculty Hearing Committee, but it may, in its discretion, hear such other evidence as it deems necessary. The Board of Trustees' decision shall be made within forty-five days after the Chancellor has received the faculty member's request for an appeal to the Trustees. This decision shall be final except that the faculty member may, within ten days after receiving the Trustees' decision, file a written petition for review with the Board of Governors if he/she alleges that one or more specified provisions of The Code of The University of North Carolina have been violated. If the Board of Governors agrees to consider the appeal, it will do so on a schedule established by the President, subject to any instructions received from the committee of the Board that has jurisdiction of the subject matter of the grievance. The Board will issue its decision within 90 days after receipt of the notice of appeal; provided, that if the grievant fails

to comply with the schedule established for perfecting and processing the appeal and thereby precludes a decision within 90 days, the Board in its discretion may extend the period for decision or it may dismiss the appeal.

- J. When a faculty member has been notified of the institution's intention to discharge him, the Chancellor may suspend him/her at any time and continue the suspension until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension shall be exceptional and shall be with full pay.

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. These considerations may form, in whole or in part, the basis of the ultimate decision, except that a decision not to reappoint may not 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, gender, religion, or national origin, age, disability, and honorable service in the armed services; or (3) personal malice. 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 five 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.⁴

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 five 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.

⁴ 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.