

3

THE FACULTY

**Tenure Policies and Regulations of The University of North Carolina at Pembroke
(See also Appendix N for Excerpt from The Code...)**

3-1 FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

A. The University of North Carolina at Pembroke 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. The University of North Carolina at Pembroke 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.

3-2 ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

A. It is the policy of The University of North Carolina at Pembroke to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of this institution's academic staff. 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 spokespersons for The University of North Carolina at Pembroke.

B. The University of North Carolina at Pembroke will not penalize nor discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

3-3 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 The University of North Carolina at Pembroke except upon specified grounds and in accordance with the procedures provided in Section 4 and against termination of employment except as provided for in Section 6.

Academic tenure for faculty members is intended to secure their academic freedom and to help the institution attract and retain faculty members of high quality. While academic tenure may be withheld on any grounds other than those specifically stated to be impermissible under Section 5.A, a conferral of tenure requires an assessment of the faculty member's demonstrated professional competence, potential for future contribution, and institutional needs and resources.

B. In Relation to Faculty Ranks

Academic tenure, as herein described, pertains exclusively to the employment of faculty members by appointment to specified faculty ranks. Such appointments may be for fixed terms of appointment, automatically terminable when they expire ("fixed term appointment"); or they may be for probationary terms ("probationary term appointments"); 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. **Instructor.** The rank of instructor is appropriate for one who is appointed to the faculty in the expectation that in the normal course he will progress to professional rank in this or another institution but lacks, when appointed, one or more qualifications expected by the University for appointment to professorial rank. When he meets all those qualifications, the faculty member will usually be promoted to assistant professor or given a terminal appointment of one academic year.

The initial appointment to the rank of instructor is for a probationary one-year term. The instructor may be reappointed successively for six one-year terms, a total of seven such terms. At least 90 calendar days before the end of the first term and 180 calendar days before the end of the second consecutive term, the instructor shall receive written notice whether, when his current term expires, he will be reappointed at the rank of instructor for another term, promoted to the rank of assistant professor, appointed to a fixed term as provided in Section 3.B.5, or not reappointed. During the last 180 days of the second consecutive year of employment, the institution may notify the instructor that his employment will be terminated at the end of the third year of employment. Before the end of the third consecutive term, an instructor who has not been notified that his employment will be ended

in that year as provided in the preceding sentence shall receive a written decision whether, when his current term expires, he will be reappointed to a fourth consecutive term, promoted to the rank of assistant professor, appointed to a fixed term as provided in Section 3.B.5, or offered a terminal appointment for one academic year at the end of the current term. Decisions shall be made with respect to these same options before the end of the fourth, fifth, and six consecutive terms. No reappointment to the rank of instructor may be made after seven consecutive years' employment at that rank. The failure to give the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment at the same rank for one academic year. The decisions herein required shall be made as provided in Section 3.C.

Promotion at any time from the rank of instructor to the rank of assistant professor constitutes an initial appointment to the first two-year term at the latter rank, with the incidents described in Section 3.B.2.

2. Assistant Professor. The initial appointment to the rank of assistant professor is for a probationary one-year term. Unless at any point the assistant professor is not reappointed, he will be reappointed to three successive two-year terms before a decision is made to recommend permanent tenure at the same or higher rank or not to reappoint. At least 90 calendar days before the end of the one-year appointment, the assistant professor shall receive written notice whether, when his current term expires, he will be reappointed at the rank of assistant professor for a two-year term or not reappointed. Before the end of the first year of his first two-year term as assistant professor, the assistant professor shall receive written notice whether, when his current term expires, he will be reappointed to a second two-year term or not reappointed. Before the end of the first year of his second consecutive two-year term as assistant professor, the assistant professor shall receive written notice whether, when his current term expires, he will be reappointed to a third two-year term or not reappointed. Before the end of the first year of his third consecutive two-year term as assistant professor, the assistant professor shall receive written notice whether, when his current term expires, he will be reappointed with permanent tenure at the same or higher rank or not reappointed.

The failure to give the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment at the same rank for one academic year. The decisions herein required shall be made as provided in Section 3.C.

Promotion as any time from the rank of assistant professor to the rank of associate professor constitutes an initial appointment to the first three-year term at the latter rank, with the incidents described for that term in Section 3.B.3.

3. 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 one year. Unless at any point the associate professor is not reappointed, he usually will be reappointed to two successive three-year terms before a decision is made to recommend permanent tenure at the same or higher rank or not to reappoint. At least 90 calendar days before the end of the one-year appointment, the associate professor shall receive written notice whether, when his current term expires, he 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 first three-year term, the associate professor shall receive written notice whether, when his current term expires, he will be reappointed to a second three-year appointment, reappointed with permanent tenure at the same or higher rank, or not reappointed. Before the end of the second year of the second three-year appointment, the associate professor shall receive written notice whether, when his current term expires, he will be reappointed with permanent tenure at the same or higher rank or not reappointed.

The failure to offer the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment at the same rank for one academic year. The decisions herein required shall be made as provided in Section 3.C.

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. Since this promotion confers permanent tenure, it must be approved by the President and the Board of Governors.

4. **Professor.** An initial appointment by the University to the rank of professor, is for a probationary term of three years. Before the end of the second year of the three-year term, the professor shall receive written notice whether, when his current term expires, he will be reappointed at rank with permanent tenure or not reappointed.

The failure to give the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment for one academic year. The decisions herein required shall be made as provided in Section 3.C.

5. **Special faculty appointments.** Appointments may be made to fixed-term faculty ranks with title designations "lecturer," "artist in residence," "writer in residence," and any faculty rank designation provided in paragraphs (1) through (4) of this subsection with the prefix-qualifier "adjunct," "clinical," or "research" under the conditions and with the incidents herein provided. 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 appointed, or because of concern for continued availability of special funding for the position, or for other valid institutional reasons.

Initial appointments may be for a fixed term of from one to three years. Subsequent appointments to fixed terms of one to five years' duration may be made either in direct succession or at intervals. Each is considered an initial appointment. No obligation exists on the part of The University of North Carolina at Pembroke to give any notice before a current term expires as to whether appointment will be offered for a succeeding term, but the Provost and Vice Chancellor for Academic Affairs, upon the faculty member's written request made not earlier than 180 calendar days nor later than 90 calendar days before his current term expires, shall within 20 calendar days after he receives 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.C.

C. **General Provisions**

1. Initiation, review, and approval of appointments, promotions, and reappointments. Each initial appointment to a fixed or probationary term, each promotion in rank, each reappointment to a fixed term, and each reappointment of an instructor, assistant professor, associate professor, or professor, whether or not the reappointment recommends the conferral of permanent tenure, shall be initiated by recommendation of the Provost and Vice Chancellor for Academic Affairs after consulting with the chair of the department¹ concerned and the Committee on Promotion and Tenure (See Appendix A for the composition of this committee.) The Provost and Vice Chancellor for Academic Affairs' recommendation shall be sent to the Chancellor. If the Provost and Vice Chancellor decides the faculty member should not be reappointed, promoted, or recommended for permanent tenure, he shall give the faculty member being considered a simple, unelaborated, written statement of that decision.

If the Chancellor decides not to recommend reappointment, promotion or permanent tenure, he shall give the faculty member being considered a simple, unelaborated, written 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 concurs in a recommendation that will confer permanent tenure, he shall consult with the Board of Trustees and, unless dissuaded, forward the recommendation to the President and Board of Governors for final approval. All other favorable recommendations by the Chancellor in regard to appointments, reappointments, and promotions shall be forwarded by him to the Board of Trustees for final approval unless that Board delegates the authority to give final approval.

¹"Department" is used herein as a generic term for departments or any other academic units to which faculty appointments are made; "chair" is a generic term for department chair or any other heads of academic units to which faculty appointments are made.

2. **Decisions not to reappoint when probationary terms expire.** The decision not to reappoint when a probationary term appointment as instructor, assistant professor, associate professor, or professor expires shall be made by the Provost and Vice Chancellor for Academic Affairs, after consulting with the chair of the department concerned and the Committee on Promotion and Tenure. Each such decision shall be communicated for information to the Chancellor. The decision shall be final except as it may later be reviewed in accordance with the provisions of Section 5.

3. **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.

4. **Visiting faculty members.** Persons other than regular members of the faculty may be appointed as visiting members of the faculty with rank designations, prefixed by the word "visiting," appropriate to their status in their regular employment. Such appointments shall be for a term of not more than one year. One successive appointment for a term of not more than one year may be made. Appointments are made in accordance with the procedures for appointing an instructor, except that The University of North Carolina at Pembroke has no obligation to give notice before a current term expires whether an appointment will be offered for a second term. During his term of appointment, a visiting faculty member may not be suspended or discharged except upon the grounds and by the procedures provided in Section 4.

5. **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 Provost and Vice Chancellor for Academic Affairs shall be responsible for initiating the inclusion of special terms and conditions in documents of appointment.

a. **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 funds. This contingency shall not be included in a faculty member's contract in either of the following

situations:

- (1) 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.
- (2) If the faculty member held permanent tenure in the institution on 1 July 1975 and his contract was not then contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.

b. 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 specific 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 shall not apply to informal temporary adjustment of the regularly assigned duties of faculty members by the department chair who is responsible for their direct supervision or 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 resignation with its effective date to the Chancellor and to the Provost and Vice Chancellor for Academic Affairs. When possible, the faculty member should give at least 90 days' notice of his resignation.

3-4 FACULTY HEARING COMMITTEE

A. The Faculty Hearing Committee considers requests for hearings concerning discharge or the imposition of serious sanctions. (Section 3-5), nonreappointment (Section 3-6) or termination of employment (Section 3-7).

B. Elections for members of the Faculty Hearing Committee are conducted by the Committee on Committees and Elections of the Faculty Senate [See By-laws Article V. Section 2]. Those eligible to vote are members of the General Faculty. [See UNCP Faculty Constitution, Article I, Section 1].

The Faculty Hearing Committee shall be constituted as follows:

1. The Committee shall have seven (7) members, all of whom have permanent tenure or have held permanent tenure and are participating in phased retirement.
2. No department chair or officer of the administration may serve on this Committee.
3. At most one faculty member from a given department may serve at one time.
4. Members shall serve two-year staggered terms and may not serve more than two consecutive terms.
5. Membership on the Faculty Hearing Committee precludes service at the same time on the Promotion and Tenure Committee as well as on the Faculty Grievance Committee.

C. General Committee Procedures

1. As soon as the election results have been reported to the Senate, the chair of the Committee on Committees and Elections will call a meeting of the Faculty Hearing Committee for the purpose of electing a Chair of that committee for the next academic year.

2. For a particular hearing, 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. Replacement of Committee members who are unable to serve on a case for any reason will be made by the Chair of the Faculty Senate with the concurrence of the Executive Committee of the Senate.

If the Chair of the Faculty Senate has any conflict of interest in the case or is absent, then the duties of the Senate Chair, relative to the case, will be assumed by the following in succession: Senate Chair-Elect (if there is one), Chair of Faculty and Institutional Affairs Committee, Chair of Academic Affairs Committee.

3. A quorum for any meeting of the Committee is a simple majority of the total Committee membership.

4. The Chair of the Hearing Committee will report to the Faculty Senate early in the fall semester on the number of cases heard during the previous academic year.

3-5 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.² These penalties may be imposed only in accordance with procedures prescribed in this section. For purposes of these regulations, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to nonreappointment (Section 5) or termination of employment (Section 6).

B. The Chancellor or his delegate shall send the faculty member by registered mail (return receipt requested) a written statement of intention to discharge him. 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 Hearing Committee. (See Section 4. F for the composition of this committee.)

C. If, within ten days³ after the faculty member 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, he may be discharged without recourse to any institutional grievance or appellate procedure.

D. If, within ten days after he receives the notice referred to in paragraph B above, the faculty member makes written request, by registered mail (return receipt requested) for a specification of reasons, the Chancellor or his delegate shall supply such specification 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 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 delegate shall insure that the hearing is accorded before the Hearing Committee. The hearing shall be on the written specifications of the reasons for the intended discharge. The

²Retirement for reason of disability shall be in accordance with North Carolina statutes and regulations governing retirement for faculty who are members of the state retirement system. A faculty member who is not a member of the state retirement system and who is mentally or physically disabled, but refuses to retire, may be discharged because of that disability only in accordance with the procedures of this section.

³Whenever it is used in Sections 4, 5, and 6, except where calendar day is specified, the word "day" shall mean any day except Saturday, Sunday, or any institutional holiday. In computing any period of time, the day on which notice is received is not counted, but the last day of the period being computed is to be counted.

Hearing Committee shall accord the faculty member twenty days from the time it receives his written request for a hearing to prepare his 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 and other evidence, to confront and cross-examine adverse witnesses, and to examine all documents and other adverse demonstrative evidence. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at the institution's expense.

G. The Chancellor, or his delegate or counsel, may participate in the hearing to present evidence, cross-examine witnesses, and make argument.

H. In reaching decisions on which its written recommendations to the Chancellor shall be based, the Hearing Committee shall consider only the evidence presented at the hearing and such written and oral arguments as the Hearing Committee, in its discretion, may allow. The Hearing 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 Hearing Committee that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor either declines to accept a Hearing Committee recommendation that is favorable to the faculty member or concurs in a Hearing 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 such appeal shall be filed within ten days after the faculty member receives the Chancellor's decision. The appeal to the Board of Trustees may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members of the Board of Trustees. The Board of Trustees, or its committee, shall consider the appeal on the written transcripts 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 Board of Trustees. The Board of Trustees' decision shall be final except that the faculty member may, within ten days after receiving the Board of Trustees' decision, file a written petition for review with the Board of Governors if he alleges that one or more specified provisions of The Code of The University of North Carolina have been violated. All such petitions to the Board of Governors shall be transmitted through the President of The University of North Carolina, and the Board of Governors shall, within forty-five days, grant or deny the petition or take such other action it deems advisable. If it grants the petition for review, the Board of Governors' decision shall be made within forty-five days after it has notified the faculty member that it will review the

petition.

J. When a faculty member has been notified of the institution's intention to discharge him, the Chancellor may suspend him 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.

3-6 NONREAPPOINTMENT OF FACULTY MEMBERS ON PROBATIONARY TERM APPOINTMENTS

A. Permissible and Impermissible Grounds for Nonreappointment

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 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, sex, religion, or national origin; or (3) personal malice.

B. Conference with Provost and Vice Chancellor for Academic Affairs

Within five days after receiving a written notice of nonreappointment a faculty member may request in writing a private conference with the Provost and Vice Chancellor for Academic Affairs⁴ to discuss the reasons for nonreappointment. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible. Within five days after the conference, the Vice Chancellor shall give the faculty member a simple, unelaborated, written statement whether the original decision remains in effect.

C. Request for Review by Hearing Committee

Within ten days after receiving the Provost and Vice Chancellor's statement, the faculty member may request that the Hearing Committee review the decision. This review is limited solely to determining whether the decision not to reappoint was based on any of the grounds stated to be impermissible in Section 5.A above. The request for review shall be written and addressed to the chair of the Hearing Committee, with a copy to the Provost and Vice Chancellor for Academic Affairs. It shall specify the grounds upon which the faculty

⁴If 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 501 C(4) of The Code of The University of North Carolina.

member contends that the decision was impermissibly based, with a short, plain statement of the facts that he believes supports the contention. Such a request constitutes on the faculty member's part:

- (1) A representation that he can support his contention by factual proof.
- (2) An agreement that the institution may offer in rebuttal of his contention any relevant data within its possession.

The Hearing Committee shall consider the request. A denial of the request finally confirms the decision. The Hearing Committee shall grant a hearing if it determines that:

- (1) The request contains a contention that the decision was impermissibly based under these policies and regulations.
- (2) The facts suggested, if established, will support the contention.

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.

D. Conduct of the Hearing

The hearing shall be conducted informally. Only the members of the Hearing Committee, the faculty member, the Provost and Vice Chancellor for Academic Affairs, the department chair, and such witnesses as may be called may attend, except that the faculty member and the Provost and Vice Chancellor may be accompanied by a person of their choosing. A quorum for the hearing is a simple majority of the total committee 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. Upon request, a copy of the transcript of the proceedings shall be provided to the faculty member at the institution's expense.

The Hearing 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. All witnesses may be questioned by the committee members, the faculty member, the Provost and Vice Chancellor for Academic Affairs, or the department chair, or by the representatives of the faculty member or Provost and Vice Chancellor. Except as herein provided, the conduct of the hearing is under the Hearing Committee chair's control.

E. 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 the faculty member desires to offer. When the faculty member has concluded this presentation, the Hearing Committee shall recess to consider whether a prima facie case has been established. If the Committee 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. If the Committee determines that rebuttal or explanation is desirable, it shall so notify the parties and the hearing shall proceed. The Provost and Vice Chancellor for Academic Affairs shall then present in rebuttal of the faculty member's contentions, or in general support of the decision not to reappoint, such testimony or documentary proofs as he desires to offer, including his own testimony.

At the end of such presentation, the Hearing Committee shall consider the matter in executive session. The burden is upon the aggrieved faculty member to satisfy the Hearing Committee that his contentions are true.

F. Procedure after Hearing

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

Within five days after receiving such a recommendation, the Provost and Vice Chancellor for Academic Affairs shall notify the faculty member and the Chair of the Hearing Committee what modification, if any, he will make with respect to the original decision not to reappoint.

If the Provost and Vice Chancellor for Academic Affairs fails to make a recommended modification in the original decision, the Hearing Committee chair shall submit a written 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.

3-7 TERMINATION OF FACULTY EMPLOYMENT

The employment of any faculty member may be terminated by The University of North Carolina at Pembroke 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 institutional financial resources that is

brought about by decline in institutional enrollment or by other action or events that compel a reduction of the institution's current operating 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 academic administrative officers and faculties as required by Section 6.B below. This determination is subject to concurrence by the President of The University of North Carolina and approval by the Board of Governors of The University of North Carolina. If the financial exigency or curtailment or elimination of a 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 Section 6.C below.

B. *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 shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected.

C. *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 above, consideration shall be given to tenure status, years of service to the institution, and other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program 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 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 604A of Chapter Six of The Code of The University of North Carolina.

b. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of program is not founded upon financial exigency, the faculty member shall be given timely notice as set forth in Section 604A of Chapter Six of The Code of The University of North Carolina.

3. *Type of notice to be given.* The Chancellor or his delegate shall send the

faculty member whose employment is to be terminated a written statement of this fact by registered 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 written request, to a reconsideration of the decision by the Hearing Committee if the faculty member alleges that the decision to terminate him 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 ten days after the faculty member receives the notice required by Section 6.C.3 above, he makes no written request for a reconsideration hearing, his employment will be terminated at the date specified in the notice given pursuant to Section 6.C.3 above, and without recourse to any institutional grievance or appellate procedure.

5. *Request for reconsideration hearing.* Within ten days after receiving the notice required by Section 6.C.3 above, the faculty member may request by registered mail (return receipt requested) a reconsideration of the decision to terminate his employment if he alleges that the decision was arbitrary or capricious. The request shall be submitted to the Chancellor. It shall specify the grounds upon which the faculty member contends that the decision to terminate his employment was arbitrary or capricious and include a short, plain statement of facts that the faculty member believes supports the contention. Submission of such a request shall constitute on the faculty member's part:

- (1) A representation that he can support his contention by factual proof.
- (2) An agreement that the institution may offer in rebuttal of his contention whatever relevant data it may have.

6. *Jurisdiction of reconsideration committee.* If the faculty member whose employment is to be terminated makes a timely written request for reconsideration of the decision, the Chancellor or his delegate shall insure that the hearing is accorded before the Faculty Hearing Committee. (See Chapter 3-4 for the composition of this committee.) The Hearing Committee's reconsideration shall be limited solely to a determination of the contentions made in the faculty member's request for reconsideration hearing shall be held promptly, but the Hearing Committee shall accord the faculty member five days from the time it receives the 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 shall have the right to legal counsel, to present the testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, and to examine all documents and other adverse demonstrative evidence. The faculty member and the Hearing Committee shall be given

access, upon request, to The University of North Carolina at Pembroke documents 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. At the faculty member's request, a transcript of the proceedings shall be given the faculty member at the institution's expense.

The Hearing 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. All witnesses may be questioned by committee members. The Hearing Committee may consider only whether the selection of the faculty member for termination, with regard to other faculty members, was arbitrary or capricious. Its jurisdiction does not extend to a reconsideration of whether a financial exigency exists or a teaching, research, or public service program should be curtailed or eliminated. Except as herein provided, the conduct of the hearing is under the control of the Hearing Committee chair.

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

8. *Hearing procedure.* The hearing will begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for a hearing and supported by such proof as he desires to offer. The Chancellor or his representative may then present in rebuttal of the faculty member's contentions, or in general support of the decision to terminate the faculty member's employment, such testimonial or documentary proofs as he desires to offer, including his own testimony.

After opportunity for cross-examination by both parties, the Hearing Committee shall consider the matter in executive session and shall make its written recommendations to the Chancellor within ten days after the hearing concludes.

9. *Procedure after hearing.* If the Hearing Committee determines that the contentions of the faculty member have not been established, it shall, by a simple, unelaborated statement, so notify the faculty member and the Chancellor. The faculty member may then appeal the decision to terminate his employment in the manner provided by Section 501 C(4) of The Code of The University of North Carolina.

If the Hearing Committee determines that the faculty member's contentions have been satisfactorily established, it shall notify the faculty member and the Chancellor by written notices.

Within ten days after receiving the written notice that concludes that the faculty member's contentions have been satisfactorily established, the Chancellor shall send written

notice to the faculty member and the chair of the Hearing Committee what modifications, if any, the Chancellor 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 501 C(4) of The Code of The University of North Carolina. If the Chancellor concurs in the conclusion of the Hearing Committee that is favorable to the faculty member, the Chancellor's decision is final.

10. *Time limits on appeals under 501C(4) of the Code.* If the line of appeal as prescribed by Section 501C(4) is from the Chancellor to the President, and thereafter from the President to the Board of Governors:

a. A grievant dissatisfied with the Chancellor's disposition of his grievance must file written notice of appeal with the President, with a copy to the Chancellor, within 10 days after the grievant's receipt of the decision by registered mail (return receipt requested). The schedule for perfecting and processing the appeal will be established by the President. The President will issue his decision within 60 days after receipt of the notice of appeal; provided, that if the grievant fails to comply with the schedule established by the President and thereby precludes a decision within 60 days, the President in his discretion may extend the period for decision or he may dismiss the appeal.

b. A grievant dissatisfied with the President's disposition of his appeal must file written notice of appeal with the Board of Governors, by submitting such notice to the President, within 10 days after the grievant's receipt of the decision by registered mail (return receipt requested). If the Board agrees to consider the appeal, it will do so on a schedule established by the President, subject to any instructions received from the committee of the Board which 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. (In each instance used, in 10.a. and 10.b., the term "days" shall mean consecutive calendar days.) Adopted September 14, 1984; amended June 14, 1985 by the Board of Governors.

D. *Institutional Assistance to Employees Who are Terminated*

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

E. *First Right of Refusal of New Position*

For two years after the effective termination date 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 registered mail (return receipt requested) to the last address given by the faculty member. The faculty member will be given thirty calendar days after the notice is received to accept or reject the offer.

3-8 RETIREMENT OF FACULTY

(1) Each member of the faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes ("Retirement System of Teachers and State Employees"). [See Phased Retirement procedures and documents in Section 3-10].

3-9 EFFECTIVE DATE

These policies and regulations supersede all other institutional documents governing the matters covered herein and they shall become operative (with respect to all existing as well as future faculty appointments) on the effective date, which shall be the date 28 calendar days after the day on which these policies and regulations have been approved by the President and the Board of Governors of The University of North Carolina.

A. Faculty members who, upon the effective date, have been serving at the rank of instructor for seven or more years, shall be appointed on July 1, 1976, to a fixed term rank as authorized by Section 3.B.5, promoted to the two-year term as assistant professor, recommended for permanent tenure at the rank of assistant professor, or offered a terminal appointment of one academic year. This decision shall be made in accordance with the procedure of Section 3.C.

B. Faculty members without permanent tenure who, upon the effective date, have been serving at the rank of assistant professor for fewer than two years shall be appointed on July 1, 1976, to the second two-year term as assistant professor unless they are not reappointed in accordance with Section 3.B.2. Faculty members without permanent tenure who, upon the effective date, have been serving at the rank of assistant professor for two or more years shall be appointed on July 1, 1976, to the third two-year term as assistant professor, recommended for permanent tenure at the rank of assistant professor, promoted to associate professor with or without a recommendation for permanent tenure, or offered a terminal appointment of one academic year. These decisions shall be made in accordance with the procedure of Section 3.C.

C. Faculty members without permanent tenure who, upon the effective date, have been serving at the rank of associate professor for fewer than two years shall be appointed on July 1, 1976, to the first three-year term as associate professor unless they are not reappointed in accordance with Section 3.B.3. Faculty members without permanent tenure who, upon the effective date, have been serving at the rank of associate professor for two or more years shall be appointed on July 1, 1976, to the second three-year term as associate professor,

recommended for permanent tenure at the rank of associate professor, promoted to professor, or offered a terminal appointment of one academic year. These decisions shall be made in accordance with the procedure of Section 3.C.

D. Faculty members who, upon the effective date, have been serving at the rank of professor without permanent tenure shall be appointed on July 1, 1976, to the three-year term as professor, recommended for permanent tenure, or offered a terminal appointment of one academic year. This decision shall be made in accordance with the procedure of Section 3.C.

E. The provisions of Section 5 shall apply, not only with respect to those to whom notices of nonreappointment are given after the effective date, but also with respect to those to whom such notices have been given within the period of 60 calendar days next preceding the effective date. Instructors, assistant professors, associate professors, and professors to whom notices of nonreappointment have been given within the period of 60 calendar days next preceding the effective date shall have 20 calendar days after the effective date within which to initiate the procedures for review provided in Section 5.

F. The provisions of Section 7 shall apply with respect to all those who, upon the effective date, have attained normal retirement age and are in continued terms of employment, as well as to those who attain normal retirement age after the effective date.

G. Revision of Section 7A and 7B shall be effective on July 1, 1982, upon approval of the President of The University of North Carolina acting on behalf of the Board of Governors as provided in a resolution of the Board of Governors adopted March 12, 1982.

These Tenure Regulations were approved by the Board of Governors of The University of North Carolina and became effective on February 13, 1976.