ACTION ITEM: Revisions to the “Regulations on Academic Freedom, Tenure and Due Process” of The University of North Carolina at Greensboro

BACKGROUND INFORMATION:

The proposed revisions to the “Regulations on Academic Freedom, Tenure and Due Process” are necessary to provide for the appointment of tenure track faculty to interdisciplinary programs. Additionally, the Faculty Senate has approved revisions to the Regulations which require consultation with appropriate tenured faculty when a faculty member is to be hired as tenured to the University. These revisions also provided an opportunity to clarify certain procedures outlined in the Regulations that have surfaced as issues since the last revision. These proposed revisions were approved by the General Faculty on April 5, 2006.

RECOMMENDED ACTION:

That the Board of Trustees of The University of North Carolina at Greensboro amend the “Regulations on Academic Freedom, Tenure and Due Process” as described in the summary above and as indicated in the attached draft of the revised Regulations.

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A. Edward Uprichard
Provost and Vice Chancellor for Academic Affairs

Attachment
REGULATIONS ON ACADEMIC FREEDOM, TENURE AND DUE PROCESS
THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

(Approved by the Faculty Council, September 16, 1975; the Board of Trustees, October 9, 1975; and the Board of Governors, May 14, 1976)

(Section 8 amended by the Board of Governors, March 12, 1982; adopted by the Board of Trustees, April 8, 1982)

(Amended by the General Faculty, September 29, 1990; March 2, 1994; November 1, 1995; April 23, 1997; March 14, 2001; April 5, 2006 and approved by the Board of Trustees, February 7, 1991; April 5, 1995; November 9, 1995; August 28, 1997; April 19, 2001; November 6, 2003 and by the Board of Governors, April 12, 1991; June 9, 1995; February 9, 1996; November 14, 1997 and by the President, September 10, 2001)

SECTION 1. Freedom and Responsibility in the University Community

A. The University of North Carolina at Greensboro 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 Greensboro 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 The University of North Carolina at Greensboro 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 The University of North Carolina at Greensboro 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 the University 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 Greensboro.

B. The University of North Carolina at Greensboro shall not penalize or 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.

SECTION 3. Appointment, Reappointment, Promotion, and Tenure

A. Academic tenure refers to the conditions and guarantees that apply to a faculty member's professional employment. In all instances, academic tenure is held with reference to The University of North Carolina at Greensboro, rather than with reference to The University of North Carolina as a whole. It may be conferred only by action of the President and the Board of
Governors or by such other agencies or officers as may be delegated this authority by the Board of Governors.\footnote{1}

B. The purpose of granting tenure is to protect the academic freedom of faculty members while providing them with a reasonable degree of economic security. The University recognizes that a tenure policy is a vital aid in attracting and retaining faculty members of high quality. Accordingly, a faculty member who holds permanent tenure or an appointment to a specified term of service may be discharged or suspended before that term expires only for 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. Further, it may become necessary to discontinue the employment of tenured faculty members because of financial exigency or program curtailment (see Section 6).

C. Faculty appointments may be for fixed terms of employment, automatically terminable when they expire ("fixed term appointment"); or they may be for probationary terms, leading to reappointment/tenure reviews ("probationary term appointment"); or they may be continuous until resignation, retirement, or death ("appointment with permanent tenure").

D. Appointment, reappointment, promotion, and permanent tenure shall be awarded on the basis of demonstrated professional competence, potential for future contribution, public service that is professionally related, and the needs and resources of the University.

E. Faculty members are evaluated annually in the areas of teaching, research and creative activity, and service. An optional category of evaluation, directed professional activity, may also be used. In addition to the University-Wide Evaluation Guidelines for Promotions and Tenure, each unit and department or academic program\footnote{2} has its own set of criteria (consistent with these Regulations and Chapter Six of The Code of The Board of Governors of The University of North Carolina) upon which appointments, reappointments, promotion and tenure decisions are made.

In the evaluation of faculty, explicit recognition must be given to the primary importance of teaching, as required in Administrative Memorandum 338.

Institutional policy mandates that clear and specific statements of criteria for evaluation of faculty performance be provided in writing and discussed with each probationary faculty member before initial employment, at the beginning of the first term of employment, and with each candidate being reviewed for reappointment or tenure at the beginning of the year in which the review is scheduled to be made. A record of these discussions must be kept in the individual’s personnel file. Implementation of these requirements occurs at the departmental or academic unit level.

F. Decisions on appointment, reappointment, promotion and tenure shall be made without regard to race, color, religion, gender, sexual orientation, ethnicity, national origin, age, honorable

\footnote{1} Policy \# 600.3.4 of the UNC Board of Governors, "Granting of Management Flexibility to Appoint and Fix Compensation," provides for the delegation to the Boards of Trustees of Special Responsibility Constituent Institutions the authority to administer various personnel actions. On September 13, 2002, the Board of Governors approved UNCG’s Institutional Plan for Management Flexibility, which delegated the authority to confer tenure to the Board of Trustees.

\footnote{2} Note that the term “academic program” is used to refer to an academic program that is independent of any particular department.
service in the armed forces of the United States, political affiliation or disability as defined by law.

G. Persons holding the following faculty ranks are eligible for probationary term appointments or permanent tenure: Assistant Professor, Associate Professor, Professor, and Professional Librarians who are members of the faculty. With respect to the several academic ranks and positions, the University’s tenure policy is as follows:

(1) Assistant Professor

(a) In all cases an Assistant Professor shall be appointed to an initial term of four years.

(b) At least twelve months before the initial term of appointment as Assistant Professor expires, the department head\(^1\), after assembling\(^4\) and consulting with the tenured members of the department faculty senior to the Assistant Professor in rank, and receiving the result of their independent deliberation and vote\(^5\), shall notify the candidate of the department’s decision (1) not to reappoint at the expiration of the candidate’s current term; or (2) to recommend to the Chancellor that the candidate be reappointed to a further term of three years (if not prohibited by paragraph (c) below); or (3) to recommend to the Chancellor that the candidate be reappointed with permanent tenure at the same or higher rank.

(c) At least twelve months before an Assistant Professor has completed seven years of full-time service at that rank in this institution, the candidate’s department head, after consultation as provided above, shall notify the candidate of the department’s decision (1) not to reappoint at the expiration of the candidate’s current term; or (2) to recommend to the Chancellor that the candidate be reappointed with permanent tenure at the rank of Associate Professor upon the approval of the appropriate governing board.

(d) Notice of appointment or reappointment shall be in writing from the Chancellor or designee. Notice of nonreappointment shall be in writing from the department head or the Chancellor, depending upon where the decision is made not to reappoint. A notice of nonreappointment shall be limited to the statement of the fact of nonreappointment. Failure to give timely notice of nonreappointment shall oblige the University to offer a terminal appointment of one academic year.

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\(^1\) “Department” is used as a generic term for departments, professional schools, academic programs, and any other academic units to which faculty appointments are made; “head” is a generic term for department heads or chairs, deans of professional schools, the University Librarian, Academic Program Directors, and any other heads of academic units to which faculty appointments are made.

\(^4\) “Assembling” refers to the actual physical presence of the tenured faculty. However, if there are extenuating circumstances that prevent a particular tenured faculty member from being physically present, then that faculty member may participate by real-time electronic means, such as speaker phone or video conference, with prior approval of the Dean. Such use of electronic means for participation during the deliberation process does not modify any other requirements for the vote.

\(^5\) For details on the role of Deans concerning the unit committees for promotion and tenure, the prohibition of voting more than once for a candidate for promotion and tenure, and the independence of departmental committees for promotion and tenure, see the resolutions passed on December 1, 2004 by the Faculty Senate Promotions and Tenure Guidelines Committee.
(e) If an untenured Assistant Professor declines the review for promotion and tenure, as required in sections (b) and (c) above, the candidate should write to the department head in advance of the review period indicating that he or she will not prepare any materials for review and that he or she understands that employment will end at the conclusion of the current term appointment. Failure to participate in the review as specified above will be deemed to constitute resignation and withdrawal of any request for reappointment at the end of the current probationary contract. The department head shall acknowledge this in writing, with a copy to the dean\(^4\) and Provost.

(2) Associate Professor

(a) An Associate Professor promoted to that rank within this institution shall have permanent tenure. An Associate Professor appointed to that rank from outside the institution normally shall be appointed to a term of five years. Before the end of the fourth year of that term, the candidate’s department head, after assembling (see footnote 4) and consulting with the tenured associate and full professors of the department faculty (see footnote 2) and receiving the result of their independent deliberation and vote, shall notify the candidate of the department’s decision (1) not to reappoint at the expiration of the candidate’s current term; or (2) to recommend to the Chancellor that the candidate be reappointed with permanent tenure at the same or higher rank. With justification, initial appointment at the rank of Associate Professor may be with permanent tenure.

(b) In cases where the dean believes there are so few tenured faculty in the candidate’s department that an adequate department review cannot be conducted and/or where the department head is undergoing review for promotion to Professor, the dean and the Provost shall confer with the department head and tenured faculty in the department and determine the composition of the review committee. In such cases, the review committee must be composed of at least three (3) tenured faculty members at the same or higher rank. A memorandum of agreement between the candidate, the department head, the dean, and the Provost will specify the composition of the review committee.

(c) Notice of appointment or reappointment shall be in writing from the Chancellor or designee. Notice of nonreappointment shall be in writing from the department head or the Chancellor, depending upon where the decision is made not to reappoint. A notice of nonreappointment shall be limited to the statement of the fact of nonreappointment. Failure to give timely notice of nonreappointment shall oblige the University to offer a terminal appointment of one academic year.

(3) Professor

A Professor shall have permanent tenure.

(4) Professional Librarians

The provisions of subsection (1) above shall also govern the appointment, reappointment, and tenure of unranked Professional Librarians who are members of the faculty. When a

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\(^4\) “Dean” is used as a generic term to include the dean of the College, deans of the professional schools, and the University Librarian.
H. Procedures in Regard to Appointment, Reappointment, Promotion, and Tenure

(1) The department head shall consult annually with the appropriate members of the faculty as indicated in Section 3.G. to consider all full-time faculty below the rank of Professor for promotion and/or permanent tenure.

(2) The decision of the department head not to reappoint a faculty member as provided in Section 3.G., if concurred in by a majority of the voting department faculty as specified in Section 3.G., shall be final, except as the decision may be reviewed in accordance with Section 4 of these regulations.

(3) In all instances where the department head decides to recommend promotion and/or permanent tenure, the department head shall consult with the dean of the school or college and submit recommendations. The dean shall consult with a school or College committee on promotions and tenure, which will review these recommendations. The dean shall make available for the members of the school or College committee on promotions and tenure the formal, written bases upon which his or her recommendations on the candidates for promotions and tenure were made.

(4) All deans shall forward their recommendations to the Provost, including a summary report of the results of their reviews. The Provost may request review and comment by the Associate Provost for Research and/or the Dean of the Graduate School.

(5) Nominations receiving positive recommendations by the department faculty and the unit’s Committee on Promotions and Tenure and positive recommendations from the department head and dean will not normally be reviewed by the University Committee on Promotions and Tenure; however, as provided for in “The Constitution of the Faculty,” the Chancellor may submit any promotion and tenure nomination for review by the University Committee on Promotions and Tenure.

(6) The Provost shall organize the material for review by the University Committee on Promotions and Tenure and attend its initial meeting to review procedures and criteria. The Provost and the chair of the University Committee on Promotions and Tenure shall each submit recommendations directly to the Chancellor.

(7) Positive recommendations initiated by the department head will move through all stages of consideration to the Chancellor, regardless of recommendations against approval, which may be made at various stages in the process. Cases which receive a majority vote in favor of promotion and/or tenure or a tied vote by department faculty will move through all stages of consideration to the Chancellor, regardless of recommendations against approval which may be made at various stages in the process.
(8) If the Chancellor decides not to recommend promotion or permanent tenure, it is a final
decision. The Chancellor shall notify the faculty member of that decision by a simple,
unelaborated written statement. The faculty member may then seek review of that decision
by the Board of Governors’ Committee on Promotion and Tenure in accordance with Section
301 D of The Code of The Board of Governors of The University of North Carolina and with the
procedure set out in Section 609 D of The Code of The Board of Governors of The University of
North Carolina. If the Chancellor decides to recommend that permanent tenure be conferred,
the Chancellor shall then forward the recommendation to the Board of Trustees for final
approval. The Board of Trustees shall then decide whether or not to confer tenure.

I. Maximum Probationary Service

The total period of full-time service before permanent tenure is recommended shall not exceed
seven years, including all previous full-time service at the rank of Assistant Professor or higher in
this institution, unless the faculty member has been granted an extension of the probationary
term for any of the following reasons:

(1) Leave of Absence

Leaves of absence that are granted to probationary-term faculty may justify an extension of
the length of the probationary term. The probationary term may be extended in increments
of one or more academic years: for example, one year for leaves of one or two semesters, two
years for leaves of three or four semesters, etc. At the time a request for leave is granted, the
faculty member, the department head, the dean, and the Provost will agree in writing
whether time spent on a leave of absence will count as probationary service. In the absence
of an agreement or if the parties fail to reach agreement, time spent on a leave of absence
shall count as probationary service. Leaves of absence normally should not be for more than
two academic years or occur more often than once in three years.

(2) Personal Exigency

Extensions of the probationary term may be granted in cases in which a probationary-term
faculty member does not take a leave of absence, but seeks to extend the probationary period
for reasons of personal exigency. Examples of personal exigency may include, but are not
limited to, extended illness, disability, childbirth or serious problems concerning the health
or welfare of a child or other immediate family member. Extensions of the probationary term
shall be limited to a total of no more than two years and must be expressly requested by the
faculty member. The faculty member shall explain in writing his or her reasons for
requesting an extension. Extensions of the probationary term must be approved by the
department head, the dean, and the Provost, and stated in appointment or reappointment
documents or added by a written memorandum of amendment during the term of an
appointment.

(3) Administrative Assignment

Extensions of the probationary term may be granted in cases in which a probationary-term
faculty member assumes a full-time administrative position for one or more semesters. The
J. 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. Pursuant to Section 602(7) of The Code of The Board of Governors of The University of North Carolina, the following exceptions shall apply to either of the foregoing contingency requirements:

(1) That such a contingency shall not be included in a promotion to a higher rank if, before the effective date of that promotion, the faculty member had permanent tenure and no such condition was attached to the tenure.

(2) That such a contingency shall not be attached to the faculty member’s contract if the faculty member held permanent tenure in that institution on July 1, 1975 and the contract was not contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.

(3) The federal funds provided to the North Carolina Agriculture Research Service through the Hatch 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.

If a faculty member’s appointment is terminated because of the non-availability of these funds, the institution will make every reasonable effort to give the same notice as set forth in Section 6.B.(2). This notice shall include the pertinent data upon which the termination action is based.

K. All full-time faculty members below the rank of Professor shall be reviewed annually for promotion, at least at the departmental level. The Chancellor may recommend that a faculty member be promoted or granted permanent tenure at any time. If the Chancellor recommends that a faculty member be hired with permanent tenure, then the tenured faculty of the hiring department will deliberate and vote on whether to grant tenure to the candidate for the position in question. The recommendation of the tenured faculty will then be forwarded to the dean, the Provost and the Chancellor.

L. Fixed-Term Faculty Appointments

(1) All appointments of Lecturers, Part-time Faculty, Visiting Faculty, Adjunct Faculty, Clinical Faculty, Academic Professionals, Instructors, or special categories of faculty such as Artists-in-Residence or Writers-in-Residence shall be for fixed terms of service. The term shall be set

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7 The terms of appointment for Adjunct Faculty members may be one, two, or three years, based upon the recommendation and justification of the dean. Adjunct appointments extended to University employees may be ongoing, as long as the relationship on which the appointment was based continues.
forth in writing when the appointment is made and the specification of the length of the appointment shall be deemed to constitute full and timely notice of nonreappointment when that term expires. In the letter of appointment, the Chancellor, or Chancellor’s designee, shall call to the appointee’s attention that such appointments do not culminate in eligibility for tenure and therefore the provisions of Sections 3.G. through 3.K. do not apply.

(2) The Instructor rank is reserved for Assistant Professor candidates who are completing terminal degree requirements. An Instructor shall be appointed for a period of one year and may be reappointed successively in the same rank for a maximum of two further one-year terms. Upon the recommendation of the dean, an Instructor’s rank may be changed to Assistant Professor at the beginning of the academic year following the completion of the terminal degree requirements. If an Instructor is appointed to the rank of Assistant Professor, the time served as Instructor shall not be counted as part of the probationary service toward the attainment of permanent tenure.

(3) Individuals may be appointed, reappointed, and promoted to Clinical Faculty or Academic Professional non-tenure-track ranks based upon the fulfillment of academic unit- or department- based criteria for each rank. Decisions regarding the conferral of rank among Clinical Faculty and Academic Professionals reside with the dean, with the concurrence of the Provost, and with the advice of the department head and a unit or departmental committee of faculty.

M. Terms and Conditions of Appointments

The terms and conditions of each initial appointment and each reappointment to the faculty shall be set out in writing. A copy of the terms, signed by the Provost, shall be delivered to the faculty member and a copy shall be retained by the Provost. The general terms and conditions of such appointments, including those provided herein, shall either be 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. The University tenure regulations, including Chapter Six of The Code of The Board of Governors of The University of North Carolina, shall be published by the institution and distributed to all faculty members. Upon request, each faculty member shall have ready access to information about his or her employment status from the department head.

N. Resignation and Retirement

(1) A faculty member shall give prompt written notice of resignation, with its effective date, to the department head. Upon receiving such notification, the department head shall promptly inform the dean, the Provost, and the Chancellor of the resignation.

(2) Consistent with Section 606 of The Code of The Board of Governors of The University of North Carolina, each member of the faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes or in accordance with the provisions of UNCG’s Phased Retirement Program.

SECTION 4. 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, potential for future contributions, and institutional needs and resources. These considerations may form, in whole or in part, the basis of the ultimate decision; however, 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) the faculty member's race, color, religion, gender, sexual orientation, ethnicity, national origin, age, political affiliation, disability as defined by law, or honorable service in the armed forces of the United States; or (3) personal malice.

B. Conference with Department Head

(1) Within five days after receiving a written notice of nonreappointment from the faculty member's department head, the faculty member may in writing request a private conference with the department head 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 department head shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

(2) Conference with Supervisor of Department Head

Within five days after receiving notice that the original decision remains in effect, the faculty member may in writing request a conference with the department head's immediate supervisor.

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8 On March 9, 1990, the Board of Governors issued an interpretation of The Code provisions prohibiting malice in reappointment decisions. That interpretation states, "As used in The Code, 'personal malice' means dislike, animosity, ill-will, or hatred based on personal characteristics, traits, or circumstances of an individual that are not relevant to valid University decision making. Having separately dealt with matters of race, sex, religion, and national origin, this particular Code provision simply goes on to state that other personal factors similarly may be outside the scope of proper consideration. Thus, to identify but a few possibilities, personnel decisions based on negative reactions to an employee's anatomical features, marital status, or social acquaintances are intrinsically suspect. While the terms 'ill-will,' 'dislike,' 'hatred,' and 'malevolence' may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the Board's prohibition. Any degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for decision making."

9 Additionally, the review for or against reappointment may not be used as a forum for consideration of unproven allegations of personal or professional misconduct. Discussion or consideration of personal or professional misconduct is considered an improper basis for decision making unless the candidate was previously found guilty of that misconduct by an appropriate hearing body (e.g., the Committee on Due Process) or by a court. Personal or professional misconduct may include, but is not limited to, criminal offenses, drug or alcohol abuse that renders the employee unable to fully execute work-related responsibilities, actions which violate various University conduct policies such as sexual harassment, undue favoritism, ethics in research, or other actions which may be deemed as inappropriate.

10 In schools that are not departmentalized or in the case in which the candidate for reappointment is acting as the department head, the dean shall fill the role of the department head.

11 Wherever it is used in Sections 4, 6 and 7, except where calendar day is specified, the word "day" shall mean any day except Saturday, Sunday, or an institutional holiday. In computing any period of time, the day in which notice is received is not counted, but the last day of the period being computed is counted.
administrative supervisor. This request shall be granted and the conference held forthwith, within five days after receiving the request if possible. The faculty member must provide written documentation to the immediate supervisor of the department head on support of his or her contentions regarding the reasons for nonreappointment.

Within ten days after this conference, the reviewing administrative officer shall send a written evaluation of the matter to the faculty member and to the department head. The evaluation may be in the form of an unlabeled 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 for the reconsideration. Whatever form the evaluation may take, it is merely recommendatory and is not binding upon the department head or final as to the faculty member.

Within five days after receiving an evaluation that disagrees with the decision or recommends its reconsideration, the department head shall give the faculty member and the department head’s immediate supervisor a response in writing.

C. Procedure for Review when Initial Decision Not to Reappoint is Made by the Chancellor

If the initial decision not to reappoint is made by the Chancellor, the faculty member may request review by the faculty Committee on Due Process as set out in Section 4.D. below.

D. Request for Review by Committee on Due Process: Scope of Review

Within ten days after the faculty member receives notice of an unfavorable action resulting from the conference with the department head’s supervisor or within ten days after the faculty member receives notice of nonreappointment from the Chancellor, the faculty member may request that the faculty Committee on Due Process (provided for in “The Constitution of the Faculty”) review the decision. This review is limited to determining whether the decision not to reappoint was based upon any of the grounds stated to be impermissible in Section 4.A. or resulted from failure to comply with the procedures specified in Section 3.G. and 3.H.

The request for review shall be written and addressed to the chair of the Committee on Due Process. It shall specify the grounds upon which the faculty member contends that the decision was impermissibly based or arrived at improperly through procedural irregularities, with a short, plain statement of facts that the faculty member believes support the contention.

Such a request constitutes on the faculty member’s part: (1) a representation that the faculty member can prove the contention and (2) an agreement that the institution may offer in rebuttal of the contention any relevant data within its possession.

The Committee on Due Process shall consider the request and grant a hearing if it determines that (a) the request contains a contention that the decision was impermissibly based or arrived at improperly through procedural irregularities and (b) the facts suggested, if established, will support the contention. A denial of the request finally confirms the decision. If the request is granted, a hearing shall be held within twenty days after the request is received; the faculty member shall be given at least ten days’ notice of the hearing.
E. Conduct of Hearing

The hearing shall be conducted informally and in private. Only the members of the Committee on Due Process, the faculty member, the department head or Chancellor\(^\text{12}\) (depending upon where the decision was made not to reappoint) and such witnesses as may be called may attend except that the faculty member and the department head or Chancellor may each be accompanied by a person of their choosing. If either party chooses to be accompanied by an attorney, the attorney may not actively participate in the hearing. 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 or school, who will testify as witnesses, or who have any other conflict of interest are disqualified from participating in that hearing. If the faculty member requests it and the chair of the committee approves, a transcript of the proceedings shall be provided to the faculty member. 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. All witnesses may be questioned by the committee members, the faculty member, the department head or the Chancellor, and the representatives of the faculty member and head or Chancellor. Except as herein provided, the conduct of the hearing is under the committee chair’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 the faculty member desires to offer. When the faculty member has concluded this presentation, the committee shall recess to consider whether the faculty member 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 thereafter terminate the proceedings. Such termination confirms the decision not to reappoint. If it determines that rebuttal or explanation is desirable, it shall so notify the parties and proceed with the hearing. The department head or the Chancellor 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 these individuals desire to offer, including their own testimony.

At the end of this presentation, the committee shall consider the matter in executive session. The burden is upon the aggrieved faculty member to satisfy the committee that the contention is true.

G. Procedure After Hearing

(1) When the Committee finds Against the Faculty Member

If the Committee on Due Process determines that the faculty member’s contention has not been established, it shall, by a simple, unelaborated written statement, so notify the parties. Such a determination confirms the decision not to reappoint. Further review may be had

\(^{12}\) The Chancellor need not appear at the hearing in person but may designate a representative to attend and perform all functions assigned to the Chancellor in Sections 4.E. and 4.F.
only in accordance with the procedure set out in Section 604 D of The Code of The Board of Governors of The University of North Carolina and the Board of Governors policy on “Appeals of Nonreappointment Decisions Under Section 604 of The Code of The Board of Governors of The University of North Carolina,” 101.3.1. Appeals from a negative decision at the departmental level are made to the Chancellor. Appeals from a negative decision by the Chancellor are made to the Board of Governors. Such appeals are based on the record of the committee hearing and are limited to three issues: (1) whether the procedures followed in reviewing the faculty member’s contentions failed to comport with the procedures set out in these regulations; (2) whether the decision that the faculty member failed to prove his or her contentions was clearly erroneous based on the available evidence; and (3) whether the decision contravened controlling law or University policy.

(2) When the Committee finds in Favor of the Faculty Member

If the committee determines that the faculty member’s contention has been satisfactorily established, it shall so notify the parties by a written notice that includes a recommendation for corrective action.

Within five days after receiving such a recommendation, the department head or the Chancellor (depending upon where the initial decision was made not to reappoint) shall notify the faculty member, the faculty member’s immediate supervisor (in the case of a recommendation received by the Chancellor), the faculty member’s dean (in the case of a recommendation received by the department head), and the chair of the Committee on Due Process what modification, if any, will be made with respect to the original decision not to reappoint.

If the department head fails to make a recommended modification in the original decision, the committee shall submit a report to the Chancellor containing the committee’s findings and recommendations.

If the Chancellor decides not to recommend reappointment, it is a final decision. If the Chancellor is considering taking action that is inconsistent with the recommendation of the committee, the Chancellor should communicate or consult with the committee regarding the Chancellor’s concerns before making a decision. The Chancellor shall notify the faculty member and relevant administrators of that decision by a simple, unelaborated written statement of notice. This notice 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 ten-day period and, (3) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. The notice of the decision is to be conveyed to the faculty member by a method of delivery that requires a signature for delivery. The faculty member may then seek review of that decision in accordance with the procedure set out in Section 604 D of The Code of The Board of Governors of The University of North Carolina. If the Chancellor decides to recommend reappointment, that recommendation shall be processed as provided in Section 3.H.(6) of these regulations.
SECTION 5. Post-Tenure Review

A. Definition and Purpose

In accordance with Administrative Memorandum 371 and the UNCG “Policy on Post-Tenure Review,” post-tenure reviews are required of all tenured faculty members. Building on annual reviews, post-tenure reviews are cumulative evaluations of faculty performance in the areas of teaching, research and creative activity, service, and directed professional activity (optional). The purpose of post-tenure review is to promote excellence among tenured faculty by (1) recognizing and rewarding exemplary faculty performance; (2) providing for a clear plan and timetable for improvement of performance of faculty found deficient; and (3) for those whose performance remains deficient, providing for the imposition of appropriate sanctions, which may, in the most serious cases, include a recommendation for discharge.

B. Review of Post-Tenure Review Evaluations

(1) In post-tenure review evaluations where a faculty member’s performance is found deficient and where discharge or the imposition of serious sanctions is recommended, the faculty member may request review by the Committee on Due Process, in accordance with Section 7 of these Regulations.

(2) If a faculty member seeks to grieve any other element related to a post-tenure review evaluation, the faculty member must first meet with the department head. If the matter is not resolved through this process, the faculty member must next meet with the department head’s supervisor. Requests for these meetings shall be granted and held forthwith, within five days after receiving the request if possible. If, after following these procedures, the matter is still not resolved, the faculty member may appeal to the Faculty Grievance Committee in accordance with its policies and procedures.

SECTION 6. Termination of Employment for Reasons of Financial Exigency or Program Curtailment

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 fixed or probationary term may be terminated 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 paragraph (2) below. This determination is subject to concurrence by the President and then approval by the Board of Governors of The University of North Carolina. 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 can be terminated in accordance with the institutional procedures set out in subsection B. below.

(2) Consultation with Faculty and Administrative Officers

When it appears that the institution will experience an institutional financial exigency or when the institution is considering a major curtailment in or elimination of a teaching, research, or public-service program, the Chancellor or Chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments, academic programs, or schools that might be affected and the Faculty Senate.

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 paragraph A.(1) above, 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

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 follows:

(a) one who has permanent tenure shall be given not less than twelve months' notice and

(b) one who was appointed to a fixed term and does not have permanent tenure shall be given notice in accordance with the requirements specified in Section 3.G.

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 immediately above.

(3) Type of Notice to Be Given

The Chancellor or Chancellor's delegate shall send the faculty member whose employment is to be terminated a written statement of this fact by a method of delivery that requires a signature for delivery. 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 Committee on Due Process, if the faculty member
alleges that the decision to terminate the appointment 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 attempted delivery of the notice required by paragraph (3) above, the faculty member makes no written request for a reconsideration hearing, the faculty member’s employment shall be terminated at the date specified in the notice given pursuant to paragraph (3) without recourse to any institutional grievance or appellate procedure.

(5) Request for Reconsideration Hearing

Within ten days after attempted delivery of the notice required by paragraph (3) to the faculty member, the faculty member may request in writing a reconsideration of the decision to terminate his or her employment if the faculty member alleges that the decision was arbitrary or capricious. The request shall be submitted to the Chancellor, shall specify the grounds upon which the faculty member contends that the decision to terminate 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 the faculty member can prove the contention and (b) an agreement that the institution may offer in rebuttal of the contention whatever relevant data it may have.

(6) Jurisdiction of Reconsideration Committee

If the faculty member makes a timely written request for a reconsideration of the decision, the Chancellor or Chancellor’s delegate shall insure that a hearing is accorded before the Committee on Due Process. 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 the faculty member’s written request for a hearing to prepare for it.

(7) Conduct of Hearing

The hearing 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 adverse witnesses, and to examine all documents and other adverse demonstrative evidence. The faculty member and the committee shall have access, upon request, to documents of The University of North Carolina at Greensboro that were used in making the decision to terminate the faculty member’s appointment after the decision was made that some faculty member’s appointment must be terminated. Upon the faculty member’s request, a transcript of the proceedings shall be provided 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. All witnesses may be questioned by the committee members. Except as herein provided, the conduct of the hearing shall be under the control of the committee chair.
A quorum for purposes of the hearing is a simple majority of the total membership. No one shall serve on the committee for this hearing who holds appointment in the faculty member’s department, academic program, or school, who participated directly in the decision to terminate this faculty member’s appointment, or who 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 the faculty member desires to offer. The Chancellor or Chancellor’s representative may then present, in rebuttal of the faculty member’s contentions or in general support of the decision to terminate employment, such testimonial or documentary proofs as he or she desires to offer, including his or her own testimony.

At the end of this presentation, the Committee on Due Process shall consider the matter in executive session and shall make its written recommendation to the Chancellor within ten days after its hearing concludes. The burden is on the faculty member to satisfy the committee that his or her contention is true.

(9) Procedure After Hearing

If the Committee on Due Process determines that the faculty member’s contention has not been established, it shall, by simple, unelaborated statement, so notify the faculty member and the Chancellor. The faculty member may then appeal the decision to terminate his or her employment in the manner provided by Section 605 C(6) of The Code of The Board of Governors of The University of North Carolina.

If the committee determines that the faculty member’s contention has been satisfactorily established, it shall notify the faculty member and the Chancellor by a written notice that may also include a recommendation for corrective action by the Chancellor.

Within ten days after receiving this recommendation, the Chancellor shall send written notice to the faculty member and the chair of the Committee on Due Process what modification, if any, will be made 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 of The University of North Carolina. If the Chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the decision is final.

C. Assistance for Faculty Members and Rights to New Positions

(l) Institutional Assistance to Employees Who Are Terminated

The institution, when requested in writing by one whose employment has been terminated, shall give the faculty member reasonable assistance in finding other employment.
(2) First Right of Refusal of New Positions

For two years after the effective termination date of a faculty member's contract for any reason specified in subsection A., the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer, sent to the faculty member's last known address, shall be made by a method of delivery that requires a signature for delivery. The faculty member shall have thirty calendar days after attempted delivery of the notice to accept the offer.

SECTION 7. 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 nonreappointment (Section 4) or termination of employment (Section 6).

B. The Provost shall send the faculty member by registered mail, return receipt requested, a written statement of intention to discharge the faculty member. 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 Committee on Due Process.

C. If, within ten days after receiving the notice referred to in subsection B. above, the faculty member makes no written request for either a specification of reasons or a hearing, the faculty member may be discharged without recourse to any institutional grievance or appellate procedure.

D. If, within ten days after receiving the notice referred to in subsection B. above, the faculty member makes written request, by registered mail, return receipt requested, for a specification of reasons, the Provost 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 receiving 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 Provost shall insure that the hearing is accorded before the faculty Committee on Due Process. The hearing shall be on the written specification of reasons for the intended discharge. The Committee on Due Process shall accord the faculty member twenty days from the time it receives the faculty member's written request for a hearing to prepare a defense. The 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 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 Provost, and/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 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 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, 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 the Chancellor’s decision to the Board of Trustees. This appeal shall be transmitted through the Chancellor and be addressed to the Chair of the Board. Notice of appeal shall be filed 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 Committee on Due Process, 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 the faculty member alleges that one or more specified provisions of The Code of The Board of Governors of The University of North Carolina have been violated. Any such petition to the Board of Governors shall be transmitted through the President and the Board shall, within forty-five days after it receives the petition, grant or deny the petition or take such other action as it deems advisable. If it grants the petition for review, the Board’s 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 the faculty member, the Chancellor may suspend the individual 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 8. Implementation of These Regulations

A. These policies and regulations supersede all other institutional documents governing the matters covered herein.

B. Except as otherwise provided below, all provisions of these policies and regulations shall become operative (with respect to all existing and all future faculty appointments) on the effective date, which shall be the date twenty-eight calendar days after the day on which these policies and
regulations are approved by the President and the Board of Governors of The University of North Carolina:

(l) The removal of the rank of Instructor from Sections 3.G., i.e., from the group of probationary ranks, shall apply only with respect to those persons employed after the effective date of these regulations, as amended, and shall not modify any terms of employment for persons holding current untenured appointments made under previous forms of these regulations, except that such persons may request modifications to conform to these regulations, as amended. Any request for modifications must be initiated by the affected faculty member within ninety (90) calendar days from the effective date.

(2) All provisions hereof requiring that a department head assemble and consult with at least the tenured members of the department who are senior in rank to the faculty member under consideration shall apply only with respect to personnel recommendations initiated by the department head after the effective date.

(3) The provisions of Section 4 shall apply with respect not only to those who receive notices of nonreappointment after the effective date but also to those who are given such notices during the ninety calendar days next preceding the effective date. Instructors, Assistant Professors, and Associate Professors to whom notices of nonreappointment are given during the ninety calendar days next preceding the effective date shall have twenty calendar days after the effective date within which to initiate the review procedures provided in Section 4.

SECTION 9. Amendment

Amendments to these regulations may be initiated upon the recommendation of the Committee on Faculty Government in the same manner as prescribed in "The Constitution of the Faculty" for amendments to that document. If the recommended amendments are approved by two-thirds of the General Faculty members present and voting, they shall be sent to the Chancellor for approval. If the Chancellor approves them, the Chancellor shall send them to the Board of Trustees, which, if it approves them, shall send them to the President for final approval.