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ELIZABETH CITY STATE UNIVERSITY
Promotion and Tenure Policy

The latest amended version of this policy shall become effective on the date approved by the UNC President.

SECTION 1. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

- A.** Elizabeth City State University ("ECSU"), a constituent institution of the University of North Carolina, is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. ECSU therefore supports and encourages freedom of inquiry for faculty members 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. ECSU's Promotion and Tenure Policy has been developed pursuant to the framework established within [UNC Code Chapter VI – Academic Freedom and Tenure](#) of the Board of Governors of the University of North Carolina ("The Code"), which is incorporated by reference. This policy and provisions of Chapter Six of The Code, as amended from time to time, constitute the academic promotion and tenure policies of Elizabeth City State University. This policy shall be cited in appointment and reappointment letters sent to individual faculty members.
- B.** ECSU shall support faculty in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.
- C.** The faculty of ECSU 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.
- D.** ECSU incorporates as part of this policy the principles of freedom and responsibility in the university community as set forth in The Code.

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SECTION 2. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

- A.** It is the policy of ECSU to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic faculty of the 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 or ECSU.
- B.** ECSU 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.
- C.** The university incorporates as part of this policy the rights and responsibilities of the faculty under the principles of academic freedom as set forth in The Code.

SECTION 3. ACADEMIC TENURE

- A.** In general, Academic tenure serves to uphold and safeguard the academic freedom of the faculty. It also assists ECSU in recruiting and retaining faculty members of high quality. Academic tenure refers to the conditions and guarantees that attach to a faculty member's employment, particularly the protection from involuntary discharge from, or termination of, employment, and from the imposition of serious sanctions, except on grounds and in accordance with procedures set forth in Sections 4 and 5.
- B.** In relation to Faculty ranks, Tenure, as herein defined, pertains exclusively to the employment of faculty members by appointment to specified faculty ranks. Such appointments may be for fixed terms of employment, automatically terminable when they expire (fixed term appointment); or for probationary terms (probationary term appointment); or continuous until resignation, retirement, or death (appointment with tenure) or pursuant to actions in accordance with Sections 4 and 5 of this policy.

Departmental units are responsible for the development and publication of tenure and promotion qualifications for professorial rank appropriate to the discipline or disciplines

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included in their department. However, in cases where departmental units have not developed guidelines for promotion and tenure or where departmental promotion and tenure guidelines are inconsistent with the guidelines set forth in this policy, promotion and tenure qualification for rank will be governed by this policy to the extent there is a conflict. Departmental qualifications for academic rank are set forth by each department and approved by the Department Chair, the Associate Vice Chancellor for Academic Affairs, and the Provost and Vice Chancellor for Academic Affairs. In all cases, such qualifications must exceed or at minimum include the guidelines outlined in this policy.

C. FACULTY APPOINTMENTS

Regular faculty appointments are those to which consideration for tenure applies and for which there is an established time frame during which a decision to reappoint or confer tenure must be made, as Outlined in 300.2.1[G] Promotion and Tenure Guidelines. If exceptional circumstances warrant, this policy shall not preclude promotion or the conferral of tenure according to a time frame different from that set forth in 300.2.2.1[G] Promotion and Tenure Guidelines.

1. Instructor

The rank of instructor is appropriate for an individual who is appointed to the faculty lacking one or more qualifications needed for professorial rank, but in the normal course is expected to progress to the professorial rank at ECSU or another institution. The initial appointment to the rank of instructor is for a probationary term of one year. The instructor may be reappointed successively to one additional probationary one-year term. Before the end of the instructor's first term, the department chair in accordance with the general provisions set forth in 300.2.2.1[G] Promotion and Tenure Guidelines, shall each review the instructor's performance and recommend to the provost/vice chancellor for academic affairs either: 1) that the instructor be appointed to an appropriate term as assistant professor in accordance with 300.2.2.1[G] Promotion and Tenure Guidelines that the individual be appointed as special faculty in accordance with 300.2.2.1[G] Promotion and Tenure Guidelines; 3) that the instructor be offered a terminal appointment of one year or 4) not be reappointed.

2. Assistant Professor

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An initial appointment to the rank of assistant professor is for an initial probationary term of four years. Before the end of the third year of the four year term as assistant professor, written notice shall be given on whether, when the current term expires, he/she will be reappointed to a second term of three years or not reappointed. Before the end of the second year of the three-year term as assistant professor, written notice shall be given on whether, when the current term expires, he/she will be reappointed with a recommendation of tenure at the same or higher rank or that upon the expiration of the three-year term of appointment, the assistant professor not be reappointed. Tenure may be conferred only by action of the president and the Board of Governors of the University of North Carolina, or by such other agencies or officers as may be delegated such authority by the Board of Governors. In all instances, the tenure conferred on a faculty member is held with reference to employment by a constituent institution, rather than to employment by the University of North Carolina. The decisions herein required shall be made as provided in 300.2.1.1[G] Promotion and Tenure Guidelines.

For the purposes of tenure, promotion at any time from the rank of assistant professor to that of associate professor does not extend the time period for which a faculty member must apply and be conferred tenure. The decision and notification regarding the conferral of tenure shall not extend beyond the sixth year of service, the same year notice is required to be given by the university, following the initial appointment as an assistant professor.

3. Associate Professor

An initial appointment at the rank of associate professor may for a probationary term of four years. Before the end of the third year of a probationary four-year term, an associate professor shall be given written notice on whether he/she will be recommended for reappointment with tenure at the same or higher rank or not reappointed when the current term expires. The decisions herein required shall be made as provided in 300.2.2.1[G] Promotion and Tenure Guidelines. A promotion at any time from the rank of associate professor to that of professor constitutes a recommendation for tenure from the effective date of the promotion, subject to the approval and conferral of the president and the Board of Governors

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of the University of North Carolina, or by such other agencies or officers as may be delegated such authority by the Board of Governors. In all instances, the tenure conferred on a faculty member is held with reference to employment by a constituent institution, rather than to employment by the University of North Carolina.

4. Professor

An initial appointment at the rank of professor may be for a probationary term of three academic years. Before the end of the second year of the three-year probationary term, the professor shall be given written notice whether, when the current term expires, he/she will be recommended for reappointment with tenure or not be renewed at the end of the current term. The decisions shall be made in the manner provided in 300.2.2.1[G] Promotion and Tenure Guidelines. If a decision not to grant tenure is made but not communicated as herein required, the chancellor shall offer a terminal appointment of one academic year. The reappointment of professor constitutes a recommendation for tenure from the effective date of the promotion, subject to the approval and conferral of the president and the Board of Governors of the University of North Carolina, or by such other agencies or officers as may be delegated such authority by the Board of Governors. In all instances, the tenure conferred on a faculty member is held with reference to employment by a constituent institution, rather than to employment by the University of North Carolina.

5. Special Faculty Appointments

Faculty members who are appointed to any faculty rank designation provided in paragraphs 1 through 4 of this subsection with the prefix qualifier “adjunct,” “clinical,” “visiting,” “research” or who are appointed as lecturers, artists-in-residence, writers-in-residence, or other special categories are regarded as “special faculty members” for purposes of this policy. Special faculty members are not eligible for tenure considerations or conferral of tenure and may be paid or unpaid.

Special faculty members who are paid shall be appointed for a specified term of service, as set out in writing in their letter of appointment. The term of

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appointment of any paid special faculty member concludes at the end of the specified period set forth in the letter of appointment, and the letter of appointment constitutes full and timely notice that a new term will not be granted when that term expires.

Special faculty members who are not paid may be appointed for a specified term of service or at will. The pay and appointment status of special faculty members will be set out in their letter of appointment.

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

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

a. General Provisions

i. Initiation, Review, and Approval of Appointments, Promotions, and Reappointments:

Each initial appointment with a fixed or probationary term, promotion in rank, reappointment to a fixed term, and reappointments of instructors, assistant professors, associate professors, or professors, whether or not the reappointment recommends the conferral of tenure, shall be initiated by recommendation of the department chairperson after consultation with the department's assembled tenured faculty. The departmental promotion and tenure committee, consisting of the department's tenured faculty shall forward to the department chair a written recommendation on all promotions, reappointments and tenure.

The recommendations of the departmental promotion and tenure committee, chairperson shall be submitted in writing, to the provost/vice chancellor for academic affairs, who shall forward it with her/his recommendation in writing to the chancellor. If the conferral of tenure or promotion is included in the recommendation, the provost/vice

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chancellor for academic affairs shall consult the Faculty Personnel Committee, which will prepare a written report to the provost/vice chancellor for academic affairs regarding its recommendation.¹ If, after a thorough evaluation, the provost/vice chancellor for academic affairs decides not to recommend reappointment, promotion, or the conferral of tenure that decision shall be communicated in a letter to the faculty member from the provost/ vice chancellor for academic affairs. If the chancellor concurs in a recommendation that will confer tenure, the recommendation shall be forwarded to the President and the Board of Governors of the University of North Carolina after consultation with the Board of Trustees and, unless dissuaded, forward the recommendation to the President of the University of North Carolina system for final approval by the Board of Governors. All other favorable recommendations by the Chancellor in regard to appointments, reappointments, and promotions shall be forwarded by the Chancellor to the Board of Trustees for final approval.

ii. Terms and Conditions of Appointments

1. The terms and conditions of initial appointments and reappointments to the faculty shall be set out in writing. A copy of the terms, signed by the chancellor or the provost as her/his designee, 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 specific documents that shall be readily available to the faculty member.
2. The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given. For full-time faculty at the rank of instructor, assistant professor, associate professor, or professor, the minimum requirement for timely notice shall be as follows:

¹ See the Faculty Handbook for the composition of the Faculty Personnel Committee.

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- a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires; and
 - b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and
 - c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.
3. Notice of reappointment or non-reappointment shall be written. If the decision is not to reappoint, then failure to give timely notice of non-reappointment will oblige the Provost thereafter to offer a terminal appointment of one academic year.
 4. 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 from the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions in documents of appointment is with the department chairperson who recommended the appointment. However, nothing shall prohibit the provost/vice chancellor for academic affairs or the chancellor from initiating the inclusion of these special terms or conditions.
- iii. Continued Availability of 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 tenure, shall be contingent upon the continuing availability of such funds. This contingency shall not be included in a faculty member's contract for a promotion to a higher rank if, before the effective date of that promotion, the faculty member held tenure and no such condition was attached to the tenure. That such a contingency shall not be attached to the faculty member's contract if the faculty member

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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. That such a contingency may be waived for health affairs faculties because of the unusual dependence of programs in the health professions on income from sources such as clinical receipts.

- iv. Provisions for Less than Full-Time Employment Special terms for less than full-time employment (less than .75 FTE) with commensurate compensation, or relief from all employment obligations for a specified period, may be included in an appointment or reappointment to any faculty rank or may be added by a written memorandum of amendment during the term of an appointment. Such special terms must be expressly stated in initial appointment documents or, if added by an amendment, must be approved by signature of the chancellor or the provost as her/his designee and the faculty member, with a copy to be retained by each. These provisions do not apply to informal temporary adjustments of the regularly assigned duties of faculty members by the department chairperson who are responsible for their direct supervision, or to the University's granting of extended leaves of absence with or without compensation.

- v. Extensions of Time

- 1. The chancellor or the chancellor's designee (the provost/vice chancellor for academic affairs) may grant an untenured faculty member with the rank of assistant professor or associate professor an extension of the time period during which the institutional decision must be made regarding reappointment or conferral of tenure. An extension of time may be granted only in documented cases of compelling circumstances that are determined to have the potential to significantly delay the progress of development of the faculty member's program.

The normal extension is one year; however, other extensions may be

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approved in exceptional cases. Approval of an extension must be in writing and will extend the current appointment. A faculty member must request an extension in writing to the provost/vice chancellor for academic affairs.

2. Extensions of the period of a current probationary term of appointment due to conditions related to health, or requirements of childbirth or child care, or similar compelling reasons, may be added. Such special terms must be expressly stated in initial appointment documents or, if added by an amendment, must be approved by signature of the chancellor or the provost as her/his designee and the faculty member or their power of attorney, with a copy to be retained by each.

vi. Resignation

A faculty member who has decided to resign from ECSU shall give prompt written notice of his/her resignation with its effective date to the department chairperson, with copies to the provost and the chancellor. A professor or associate professor should give not less than 120 calendar days' notice and an assistant professor should give not less than 90 calendar days' notice of resignation.

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

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

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1. incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time;
2. neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or
3. misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct.

To justify serious disciplinary action, such misconduct should be either (i) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

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

- B.** The provost/vice chancellor for academic affairs shall send the faculty member a written notice of intention to discharge the faculty member or impose a serious sanction together with a written specification of reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires a signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by the Faculty Hearing Committee, an elected standing faculty committee on hearings.
- C.** Within 14 calendar days after receiving the notice and written specifications referred to in paragraph (4.B.) above, the faculty member may request a hearing before the Faculty Hearing Committee. The request for a hearing must be in writing, be addressed to the chairperson of the Faculty Hearing Committee, with a copy to the chancellor, and be mailed by certified mail, return receipt requested, or by another means that

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provides proof of delivery. If within 14 calendar days after receiving the notice and written specifications referred to in paragraph (4.B.) above, the faculty member makes no written request for a hearing, the faculty member may be discharged or serious action imposed without recourse to any institutional grievance or appellate procedure.²

D. Repealed

E. If the faculty member makes a timely written request for a hearing, the chancellor shall ensure a process is in place so that the hearing is timely accorded before an elected standing committee of ECSU's faculty. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 30 calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The hearing committee will ordinarily endeavor to complete the hearing within 90 calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.³

1. Conduct of Hearing

- a. The hearing shall be conducted informally and shall be closed to the public unless the faculty member and the hearing committee agree that it may be open;
- b. The faculty member shall have the right: to counsel, to present testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, to examine all documents and other adverse demonstrative evidence, and to make argument;
- c. The provost/vice chancellor for academic affairs, or designee, and/or counsel, may participate in the hearing to present testimony of witnesses and other evidence, to cross-examine witnesses, to examine all documents

² In computing any period of time, the day in which notice is received is not counted, but the last day of the period being computed is to be counted.

³ To meet the deadline, faculty are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two or more sessions.

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- and other evidence, and to make argument;
- d. A written transcript of all proceedings shall be kept; upon request, a copy thereof shall be furnished to the faculty member at ECSU's expense.
 - e. 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;
 - f. All witnesses may be questioned by the members of the committee;
 - g. Except as herein provided the conduct of the hearing shall be under the control of the committee chairperson;
 - h. A quorum, for purposes of conducting a hearing shall be a simple majority of the committee's total membership;
 - i. No one shall serve on a hearing panel who holds an appointment in the faculty member's department, participated directly in the decision to discharge or sanction the faculty member or has any other conflict of interest.
2. Hearing Procedure
- a. The committee chairperson shall call a hearing to order;
 - b. Following the chairperson's opening statement, the provost/vice chancellor for academic affairs, or designee, and/or counsel, may participate in the hearing to present evidence, cross-examine witnesses, and make argument;
 - c. After the conclusion of the presentation by the provost/vice chancellor for academic affairs, or designee, and/or counsel, the faculty member shall be allowed to make a rebuttal presentation supported by such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony;
 - d. At the conclusion of the rebuttal presentation, each side shall have an opportunity to make a final summary statement;
 - e. At the conclusion of the presentations and summary statements, if any, the committee chairperson shall end the hearing;
 - f. The burden of proof shall be on ECSU;
 - g. In evaluating the evidence, the committee shall use the standard of "clear and convincing" evidence in determining whether ECSU has met its burden of showing that permissible grounds for serious sanction exist and are the

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basis for the recommended action;

- h. The committee shall make its written recommendations to the chancellor within 14 calendar days after its hearing concludes or after the full transcript is received, whichever is later.

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

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

SECTION 5. TERMINATION OF FACULTY EMPLOYMENT

A. Reasons Justifying Termination and Consultation Required

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1. **Reasons for Terminating Employment** The employment of any faculty member may be terminated by ECSU because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of teaching, research, or public service programs. Financial exigency is defined as a significant decline in the financial resources of the institution that results from a decline in institutional enrollment or by other actions or events that compel a reduction in the institution's operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of teaching, research, or public service programs shall be made by the chancellor, after consultation with the academic administrative officers and faculties as required by Section 5.A.2 below. This determination is subject to concurrence by the president of the University of North Carolina and then approval by the Board of Governors. If the financial curtailment or elimination of program is such that the institution's contractual obligation to a faculty member cannot be met, the employment of the faculty member may be terminated in accordance with the institutional procedures set out in Section 5.B below.

2. **Consultation with Faculty 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, department chairpersons and faculties of the schools or other units that might be affected. In cases of financial exigency, the chancellor shall appoint an ad hoc committee made up of the provost/vice chancellor for academic affairs, the department chairpersons, and at least one faculty member from each affected department. The faculty representatives on the ad hoc committee shall be elected by their respective departments. The chancellor shall formulate a plan, after receiving the advice of the ad hoc committee, subject to the approval of the Board of Trustees, the president of the University of North Carolina and the Board of Governors.

B. Termination Procedure

1. **Consideration in Determining Whose Employment is To Be Terminated**
In determining which faculty members' employment is to be terminated for the

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reasons set forth in Section 5.A 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

- a. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program that is not founded upon financial exigency, the faculty member shall be given timely notice as follows:
 - i. One who has tenure shall be given not less than twelve months' notice.
 - ii. One who was appointed to a fixed or probationary term and does not have tenure shall be given notice as follows: (a) during the first year of service at the institution, the faculty member shall be given not less than 90 calendar days' notice before the employment contract expires; (b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires; and (c) after two or more years of continuous service at the institution, the faculty member shall be given not less than 12 months' notice before the employment contract expires.
- b. When a faculty member's employment is to be terminated because of financial exigency, the institution shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in Section 5.B.2.a above.

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3. Type of Notice To Be Given

The chancellor or her/his designee shall send a faculty member, whose employment is to be terminated, a written notice by a method of delivery that requires a signature for delivery. A method of delivery that requires a signature for delivery includes but is not limited to: certified mail, registered mail, Federal Express, other commercial delivery service that obtains signature or personal or hand-delivered service by an ECSU employee who is not directly involved in the personnel action at issue. The notice shall include a statement of the conditions requiring termination of the 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 a faculty committee if he/she contends that the decision to terminate was arbitrary or capricious; and a copy of the Tenure Policies and Regulations on termination of employment.

a. Termination If Reconsideration Not Requested

If, within ten (10) days after receiving the notice required in Section 5.B.3 above, the faculty member makes no written request for a reconsideration hearing, the employment shall be terminated at the date specified in the notice given pursuant to Section 5.B.3 above, and without recourse to any institutional grievance or appellate procedure.

b. Request for Reconsideration Hearing

Within ten (10) days after receiving the notice required in Section 5.B.3 above, the faculty member may request a reconsideration hearing on the termination if he/she contends that the decision to terminate was arbitrary or capricious. The request must be made in writing, specify the grounds for the faculty member's contention(s), include a short and plain statement of the facts supporting the contention(s) and be submitted to the chancellor by a method of delivery that requires a signature for delivery. A method of delivery that requires a signature for delivery includes but is not limited to: certified mail, registered mail, Federal Express, other commercial delivery service that obtains signature or personal or hand-delivered service by an ECSU employee who is not directly involved in the personnel action at issue. Submission of such a request shall

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constitute on the part of the faculty member: (1) a representation that the contention(s) can be proven; and (2) an argument that the institution may offer a rebuttal to the contention(s).

c. Jurisdiction of Faculty Hearing Committee

If a faculty member makes a timely written request for a reconsideration hearing on the termination decision, the chancellor or her/his designee shall ensure that the hearing is held before the Faculty Hearing Committee.⁴ The Committee's review shall be limited to the contention(s) raised by the faculty member's hearing request. Hearings shall be conducted promptly but shall not be scheduled earlier than five (5) days after the committee receives a hearing request.

A. Conduct of Hearing

1. Reconsideration hearings shall be conducted informally and shall be closed to the public;
2. A faculty member and the administration shall have the right to: legal counsel, present the testimony of witnesses and other evidence, confront and cross-examine adverse witnesses and examine all documents and other demonstrative evidence;
3. Upon request, a faculty member and the committee shall be given access, as provided by law, to university documents used in making the termination decision;
4. Upon request, a transcript of the proceedings shall be provided to the faculty member at the institution's expense;
5. 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;
6. All witnesses may be questioned by the members of the committee;
7. Except as herein provided, the conduct of the hearing shall be under the control of the committee chairperson;
8. A quorum, for purposes of conducting a hearing shall be a simple majority of the committee's total membership;

⁴ See the Faculty Handbook for the composition of this committee.

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9. No one shall serve on a hearing panel who holds an appointment in the faculty member's department, will testify as a witness, participated directly in the decision to terminate the faculty member or has any other conflict of interest.

B. Hearing Procedure

1. The Committee chairperson shall call a hearing to order and state the faculty member's contentions;
2. Following the chairperson's opening statement, the faculty member shall make a presentation of contentions, limited to the grounds specified in the hearing request, and supported by such proof as he/she desires to offer;
3. After the conclusion of the faculty member's presentation, the chancellor or her/his representative shall be allowed to make a rebuttal presentation supported by such testimonial or documentary proofs as he/she desires to offer, including her/his own testimony;
4. At the conclusion of the rebuttal presentation, each side shall have an opportunity to make a final summary statement;
5. At the conclusion of the presentations and summary statements, if any, the chairperson shall close the hearing;
6. At the end of the hearing, the Committee shall consider the matter in executive session and make a written recommendation to the chancellor within ten (10) days after the conclusion of the hearing;
7. The burden shall be on the faculty member to establish that all asserted contentions are true.

C. Procedure After Hearing

If the Committee determines that a faculty member fails to establish her/his contentions, the Committee shall so notify both the faculty member and the chancellor in writing by a simple unelaborated statement. The faculty member may then appeal the termination decision only to the Board of Trustees in the manner provided in the Code of The University of North Carolina, section 605C(6).

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If the Committee determines that the contention of a faculty member has been established, the Committee shall so notify both the faculty member and the chancellor in writing, including a recommendation for corrective action to be taken by the chancellor.

Within ten (10) days after receiving a Committee recommendation for corrective action, the chancellor shall send written notice to the faculty member and the Committee chairperson of modifications of the termination decision, if any. If the chancellor fails to reverse the original decision, the faculty member may appeal the termination only to the Board of Trustees in the manner provided by The Code of the University of North Carolina, section 605C(6). If the chancellor concurs with the Committee's recommendation for corrective action, the decision shall be final.

C. Assistance for Faculty Members and Rights to New Positions

1. Institutional Assistance to Employees Who Are Terminated Upon written request, the institution shall give a faculty member terminated under Section 5.A reasonable assistance in finding other employment.
2. First Right of Refusal of New Positions For a period of two (2) years after the effective date of termination for any of the reasons specified in Section 5.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 extended by a method of delivery that requires a signature for delivery, at the address last furnished by the faculty member, and the faculty member shall be given thirty (30) calendar days after receiving the notice to accept or reject the offer. If the university is unsuccessful in its attempt to extend the offer by a method of delivery that requires a signature for delivery, the position shall remain open for thirty (30) calendar days from the university's notice of the failed attempt.

A method of delivery that requires a signature for delivery includes but is not limited to: certified mail, registered mail, Federal Express, other commercial delivery service that obtains signature or personal or hand-delivered service by an ECSU employee, who is not directly involved in the personnel action at

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issue.

SECTION 6. NON-REAPPOINTMENT OF FACULTY MEMBERS ON PROBATIONARY TERM APPOINTMENTS

A. Permissible and Impermissible Reasons for Non-reappointment

The decision on whether to reappoint a faculty member at the expiration of a probationary term appointment may be based on any factor considered relevant to the total institutional interests, but the faculty member's demonstrated professional competence, potential for future contributions, and institutional needs and resources must be considered. These considerations may form, in whole or in part, the basis for the ultimate decision, except in no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by ECSU's Board of Trustees, or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See UNC Policy 101.3.1 II. B for details.

B. Review of Non-reappointment Decisions

1. **Campus Based Review.** A tenure track faculty member may seek review of the decision of the provost/vice chancellor for academic affairs not to reappoint the faculty member. The purpose of the campus based review process is to determine
 - (1) whether the decision was based on impermissible grounds as set forth in Section 6.A. and/or
 - (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint. The faculty member may seek review in the following manner:
 - a. Within 14 calendar days after receiving the notice of non-reappointment from the provost/vice chancellor for academic affairs, the faculty member may request review of the decision by the Faculty Hearing Committee. A request for review of the non-reappointment decision must be in writing,

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specify the grounds for contention(s) that the decision was impermissibly based and/or contention(s) that the decision materially deviated from prescribed procedures include a short and plain statement of facts supporting the contention(s) and be addressed to the Committee chairperson, with a copy to the chancellor. Submission of such a request shall constitute on the faculty member's part: (1) a representation that the contention(s) can be proven, and (2) an agreement that the institution may offer a rebuttal to the contention(s).

If the faculty member does not request review of the notice of non-reappointment within 14 calendar days, the non-reappointment is final without recourse to any further review by faculty committees, ECSU or the Board of Governors.

- b. If the faculty member files a request for review within 14 calendar days after receiving the notice of non-reappointment, the chancellor shall ensure that a hearing is timely accorded before an elected standing committee of ECSU's faculty in accordance with the following process:
 - i. Conduct of Hearing
 1. Non-reappointment hearings shall be conducted informally and shall be closed to the public;
 2. Attorneys are not allowed to actively participate during the hearing. Only members of the Committee, the faculty member, the provost/vice chancellor for academic affairs, and such witnesses as may be called may attend, except the faculty member and the provost may each be accompanied by not more than two persons of her/his choosing, excluding attorneys;
 3. The faculty member and the provost/vice chancellor for academic affairs shall have the right to present testimony and other evidence, to confront and cross-examine witnesses and to examine all documents and other adverse demonstrative evidence;
 4. Upon request, the faculty member and the Committee shall be given access, as provided by law, to university documents used in making the non-reappointment decision;
 5. The Committee may consider only such evidence presented at the

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hearing and such written or oral arguments as the committee, in its discretion, may allow;

6. Except as herein provided, the conduct of the hearing shall be under the control of the Committee chairperson;
7. A quorum for purposes of conducting a hearing shall be simple majority of the committee's total membership;
8. Committee members who hold an appointment in the faculty member's department, will testify as a witness, participated directly in the decision not to reappoint the faculty member, or have any other conflict of interest shall not participate on the hearing panel;
9. Upon request a transcript of the proceedings shall be provided to the faculty member at ECSU's expense.

ii. Hearing Procedure

1. The Committee Chairperson shall call a hearing to order and state the faculty member's contentions;
2. Following the Chairperson's opening statement, the faculty member shall make a presentation of her/his contentions. The presentation shall be limited to the grounds specified in the hearing request and supported by such proof as she/he desires to offer;
3. After the conclusion of the faculty member's presentation, the Committee shall recess to determine whether a prima facie case has been established;
4. If the Committee determines that a prima facie case has been established, the Committee shall so notify the parties of the hearing and terminate the proceedings. A termination of the hearing by the Committee under these circumstances shall confirm the non-reappointment decision;
5. If the Committee determines that a prima facie case has been established, the hearing shall proceed and the provost/vice chancellor for academic affairs shall be allowed to make a rebuttal presentation. The presentation shall include such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony;
6. At the conclusion of the rebuttal presentation, each side shall have an opportunity to make final summary statements;
7. At the conclusion of the rebuttal presentation and summary statements,

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if any, the Chairperson shall end the hearing;

8. The faculty member shall have the burden of proof;
9. In evaluating evidence the committee shall use the standard of preponderance of the evidence (which is the same as the greater weight of the evidence);
10. At the end of the hearing, the Committee shall consider the matter in executive session.

iii. Procedure After the Hearing

1. In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow.
2. If the Committee determines that a faculty member fails to establish his/her contentions, the Committee shall so notify both the faculty member and the provost/vice chancellor for academic affairs in writing by a simple unelaborated statement. The Committee shall also communicate such a determination to the Chancellor as a recommendation to confirm the non-reappointment decision, an unfavorable recommendation for the faculty member.
3. If the Committee determines that the contentions of the faculty member have been established, the Committee shall so notify both the faculty member and the provost/vice chancellor for academic affairs in writing. The Committee shall also communicate such a determination to the chancellor as a recommendation to overturn the non-reappointment decision, a favorable recommendation for the faculty member.

iv. The Final Campus-based Decision

The chancellor shall issue the final campus-based decision based on a thorough review of (i) the record evidence from the hearing and (ii) the report of the committee. The chancellor shall notify the faculty member and relevant administrators of his/her decision in writing. The notice to the faculty member shall be sent by a method of delivery that requires a signature for delivery. The notice to the faculty member shall inform the faculty member of his/her appeal rights to the Board of Governors as set forth in Section 6.B.b. below, unless the chancellor concurs in a

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recommendation of the committee that is favorable to the faculty member.

- v. Appeal to the Board of Governors.
If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered, (2) that the result reached by the chancellor was not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy.⁵

SECTION 7. RETIREMENT OF FACULTY

Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes. Faculty members may also be eligible for the Phased Retirement Program.

SECTION 8. FACULTY GRIEVANCE COMMITTEE

- A. The Faculty Grievance Committee shall be elected by the faculty with members elected from each professorial rank.⁶ Administrative officers shall not serve on this committee. For purposes of this section, administrative officers shall be deemed to include department chairpersons and division heads.

⁵ See UNC Policy 101.3.1 for additional information.

⁶ See Faculty Handbook for the selection procedures for this committee.

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- B.** The committee shall be authorized to hear, mediate, and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance, to mediate voluntary adjustment by the parties and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be given to the chancellor only after the department chairperson, provost or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time. C. "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships at ECSU, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.
- C.** If any faculty member believes that he/she has a grievance, he/she may petition the Faculty Grievance Committee for a hearing. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the petitioner considers pertinent to the case. The committee shall decide whether the facts merit an investigation, so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition.