

**EAST CAROLINA UNIVERSITY  
2009-2010 FACULTY SENATE**

The fourth regular meeting of the 2009/2010 Faculty Senate will be held on **Tuesday, December 1, 2009, at 2:10 p.m.** in the Health Sciences Building (off 5<sup>th</sup> Street) in room 1120 (College of Nursing side).

**PLEASE NOTE CHANGE IN MEETING LOCATION.**

Faculty with ECU parking permits can park in the A5, B5, or B4 zone parking areas located in front of the Allied Health Sciences and Nursing Wings and is labeled as **SM-20** in the linked information.

**AGENDA**

- I. **Call to Order**
- II. **Approval of Minutes**  
November 3, 2009
- III. **Special Order of the Day**
  - A. Roll Call
  - B. Announcements
  - C. Steve Ballard, Chancellor
  - D. Marilyn Sheerer, Provost and Senior Vice Chancellor for Academic and Student Affairs
  - E. Marianna Walker, Chair of the Faculty
  - F. Mark Sprague, Faculty Assembly Delegate  
Report on the November 20, 2009, Faculty Assembly Meeting.
  - G. David Weismiller, Director of SACS  
Written Report on Activities of the Faculty Credentials Committee
  - H. James Gehlhar, Associate Vice Chancellor for International Affairs  
Written Report on International Student Enrollment
  - I. Question Period
- IV. **Unfinished Business**

**V. Report of Committees**

- A. Academic Standards Committee, Linda Wolfe
1. Approval of Foundation Curriculum Course for Arts, COMM 2020: Fundamentals of Speech Communication (FC:FA)
  2. Approval of Foundation Curriculum Course for Science, BIOL 2110/2111: Fundamental of Microbiology (FC:SC)
- B. Agenda Committee, Christine Zoller  
Proposed 2010-2011 Faculty Senate and Agenda Committee meeting dates (attachment 1).
- C. Educational Policies and Planning Committee, Deedee Glascoff
1. Proposed Sport and Exercise Psychology Concentration in the Master of Science degree in Exercise and Sport Science within the College of Health and Human Performance.
  2. Proposed Risk Management and Insurance Concentration in the BSBA in Finance within the College of Business.
  3. Proposed Health Physics Concentration in the Master of Science degree in Physics within the College of Arts and Sciences.
  4. Notice of Intent to Plan a New Baccalaureate Degree in Religion/Religious Studies within a multidisciplinary program within the College of Arts and Sciences.
- D. Faculty Governance Committee, Puri Martinez
1. Proposed revisions to the *ECU Faculty Manual*, Appendix I. Policy on Conflicts of Interest and Commitment. (attachment 2).
  2. Proposed revisions to the *ECU Faculty Manual*, Appendix D. Tenure and Promotion Policies and Procedures of ECU (attachment 3).
- E. Unit Code Screening Committee, Timm Hackett  
Proposed revisions to the Department of Theatre and Dance Unit Code of Operation.
- F. University Curriculum Committee, Paul Schwager  
Curriculum matters contained in the November 12, 2009, University Curriculum Committee minutes.

**VI. New Business**

**Faculty Senate Agenda  
December 1, 2009  
Attachment 1.**

**AGENDA COMMITTEE REPORT**

Proposed 2010-2011 Faculty Senate and Agenda Committee Meeting Dates

Fall 2010 University Calendar		Spring 2011 University Calendar	
August 24	Classes Begin	January 7	Classes Begin
September 6	State Holiday	January 17	State Holiday
October 9 – 12	Fall Break	March 6–13	Spring Break
October 25-29	Early Registration	March 21-25	Early Registration
November 24–28	Thanksgiving Break	April 22-23	State Holiday
December 7	Classes End	April 25	Classes End
December 9-16	Exams	April 28-May 5	Exams

**Agenda Committee will meet:**

**Faculty Senate will meet:**

August 31, 2010	September 7, 2010
September 21, 2010	October 5, 2010
October 19, 2010	November 2, 2010
November 16, 2010	December 1, 2010
January 11, 2011	January 25, 2011
February 8, 2011	February 22, 2011
March 15, 2011	March 29, 2011
April 5, 2011	April 19, 2011
	April 26, 2011
	Organizational Meeting

Faculty Senate Agenda  
December 1, 2009  
Attachment 2.

**FACULTY GOVERNANCE COMMITTEE REPORT**  
Proposed revision to the *ECU Faculty Manual*,  
Appendix I. Policy on Conflicts of Interest and Commitment.

Proposed revisions are noted in **bold** print and deletions are noted in ~~strikethrough~~.

APPENDIX I  
EAST CAROLINA UNIVERSITY POLICY ON CONFLICTS OF INTEREST AND  
COMMITMENT **AND EXTERNAL ACTIVITIES OF FACULTY AND OTHER  
PROFESSIONAL STAFF**

CONTENTS

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- II. ~~The Concepts at Issue~~ **Definitions**
- III. Policies
  - A. Conflict of Interest
  - B. Conflict of Commitment
  - C. External Professional Activities of Faculty and Other Professional Staff**
- IV. Categories and Examples of Potential Conflicts
- V. **Conflict of Interest Procedures**
- ~~V. Submission of Conflict Evaluation Forms (Disclosures)~~
- VI. Review and Approval of Activities and Plans for Eliminating or Managing Conflicts
- VII. Institutional Conflict of Interest
- VIII. **External Professional Activity for Pay Procedures**
- ~~VIII. Enforcement of the Policies~~
- IX. ~~Definitions~~ **Enforcement of Policies**

~~Example Forms:~~

- ~~A. Annual Faculty/Professional Staff Disclosure Form of Potential Conflict of Commitment or Interest Activities or Relationships.~~
- ~~B. Report of Activities and Relationships with Enterprises Sponsoring University Activities or Doing Business with the University.~~
- ~~C. Report of Potential Conflicts of Interest Related to Students' Activities with External Enterprises.~~
- ~~D. Report of Potential Conflicts of Interest Related to Teaching and Ownership of Intellectual Property.~~
- ~~E. Notice of Intent to Engage in External Professional Activities for Pay.~~

## I. Introduction, **Applicability, and Responsibility for Compliance**

~~Effective July 1, 1995, a~~All EPA faculty members and ~~other professional Non faculty~~ EPA staff of East Carolina University are subject to revised policies concerning conflicts of interest and conflicts of commitment affecting University employment and external professional activities. This policy covers full-time faculty and EPA non-faculty employees, part-time faculty and EPA non-faculty employees, **(those UNC employees who are not subject to the State Personnel Act – hereinafter referred to as ‘EPA employees’)**. ~~insofar as their University responsibilities are concerned, and faculty and EPA non-faculty employees who are on leave if the leave is funded at least partially from University sources. The revised ECU policies are~~ **This policy is** based on policies and guidelines adopted by the UNC system Board of Governors, **federal and state law**, and federal agency **sponsor** requirements. Any questions regarding these procedures or the Board of Governors' policies upon which they are based should be directed to the ~~appropriate divisional vice chancellor~~ **ECU Office of Research Compliance Administration.**

## II. ~~The Concepts at Issue~~

~~The distinction between conflicts of interest and commitment is not always clear. In general, conflict of commitment relates to allocation of time and should become apparent in the annual review process conducted by the administrative superior. Conflict of interest involves matters which might unduly influence employee judgment in the conduct of employee affairs, such that personal financial advantage is or might be unduly gained.~~

~~More specifically, conflict of interest occurs when related personal considerations, e.g., employment of a spouse, potentially compromise the faculty or professional staff member's objectivity in fulfilling University duties or responsibilities, including research activities. Conflict of commitment occurs when the pursuit of outside activities involves an expenditure of time that potentially interferes with the faculty or professional staff member's obligations to students, to colleagues, and/or to the missions of the University.~~

## II. Definitions

- A. **Business** means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal **entity organized for profit, not-for-profit, or charitable purposes. "Business" excludes University-related entities, which is inclusive of the University, and any private medical practice or any other entity controlled by, controlling, or under common control with the University or with which the University has a contractual relationship for the purpose of providing patient care.**
- B. **Conflict of commitment** relates to an individual's distribution of effort between obligations to his or her University employment and participation in activities outside of University employment. The latter may include such generally encouraged extensions of professional expertise as professional consulting. A conflict of commitment occurs when the pursuit of such outside activities involves an inordinate investment of time that interferes

with the EPA employee's obligations to students, to colleagues, and/or to missions of the University

- C. *Conflict of interest* relates to situations in which financial or other personal considerations may compromise, may involve the potential for compromising, or may have the appearance of compromising an EPA employee's objectivity in fulfilling University duties or responsibilities, including research activities.
- D. ***Executive Position*** refers to any position that includes responsibilities for a material segment of the operation or management of a business, including Board membership.
- E. ***External professional activities for pay*** means any activity that 1) is not included within one's University employment responsibilities; 2) is performed for any entity, public or private, other than the University employer; 3) is undertaken for compensation; and 4) is based upon the professional knowledge, experience and abilities of the EPA employee. Activities for pay not involving such professional knowledge, experience and abilities are not subject to advance disclosure and approval requirements of this Policy, although they are subject to the basic requirement that outside activities of any type not result in neglect of primary University duties, conflicts of interest, inappropriate uses of the University name or resources, or claims of University responsibility for the activity.
- F. ***Department*** means an academic department, a professional school without formally established departments, or any other administrative unit designated by the chancellor of an institution or by the president for the office of General Administration, for the purposes of implementing this policy.
- G. The ***Immediate Family*** of a faculty or EPA non-faculty employee includes his or her spouse, dependent children and/or other dependent(s) as defined in the Internal Revenue Code.
- H. ***Inappropriate use or exploitation of University resources*** means using any services, facilities, equipment, supplies, or personnel that members of the general public may not freely use. A person engaged in professional activities for pay may use, in that connection, his or her office and publicly accessible facilities such as University libraries; however, an office shall not be used as the site for compensated appointments with clients, e.g., for counseling or instruction. Under no circumstances may a supervisory employee use the services of a supervised employee during University employment time to advance the supervisor's external professional activities for pay.
- I. ***Participate*** means to be part of the described activity in any capacity, including but not limited to serving as the principal investigator, co-investigator, research collaborator or provider of direct patient care. The term is not intended to apply to individuals who provide primarily technical support or who are purely advisory, with no direct access to the data (e.g., control over its collection or analysis) or, in the case of clinical research, to

the trial participants, unless they are in a position to influence the study's results or have privileged information as to the outcome.

- J. ***Significant Financial Interest*** has the same meaning as in 42 C.F.R. 50.603 as it currently exists and as it may later be amended. This provision of the Code of Federal Regulations defines a Significant Financial Interest to mean: anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include:
1. Salary, royalties, or other remuneration from the applicant institution;
  2. Any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program (SBIR);
  3. Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;
  4. Income from service on advisory committees or review panels for public or nonprofit entities;
  5. An equity interest that when aggregated for the Investigator and the Investigator's spouse and dependent children, meets both of the following tests: Does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or
  6. Salary, royalties or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next twelve months, are not expected to exceed \$10,000.
- K. ***"Sponsored Programs"*** means research, public service, training and instructional projects involving funds, materials, or other compensation from outside sources under grants, contracts, or cooperative agreements.
- L. ***"Technology"*** means any process, method, product, compound, drug, device, or any diagnostic, medical, or surgical procedure developed using University time, facilities, equipment, or funds whether intended for commercial use or not.
- M. ***University employment responsibilities*** include both "primary duties" and "secondary duties." Primary duties consist of assigned teaching, scholarship, research, institutional service requirements, and other assigned EPA employment duties. Secondary duties consist of professional affiliations and activities undertaken by EPA employees outside of the immediate University employment context that redound to the benefit of the profession and to higher education in general. Such endeavors, which may or may not entail the receipt of honoraria (See also UNC Policy Manual 300.2.2.2[R]) or the reimbursement of expenses, include membership in and service to professional associations and learned societies; membership on professional review or advisory panels;

presentation of lectures, papers, concerts or exhibits; participation in seminars and conferences; reviewing or editing scholarly publications and books; and service to accreditation bodies. Such integral manifestations of one's membership in a profession are encouraged, as extensions of University employment, so long as they do not interfere with the timely and effective performance of the individual's primary University duties.

The goal of this policy is to ensure that all potential conflicts of interest or commitment are disclosed so that appropriate administrative interventions may eliminate, avoid, or manage them. These policies, however, are not intended to limit responsible external activities.

### III. Policies

#### A. Conflict of Interest

It is the policy of the University that ~~faculty and EPA non-faculty~~ **Employees** shall avoid conflicts of interest that ~~have the potential to affect adversely the University's interests, to compromise objectivity in carrying out University responsibilities, or otherwise to compromise the performance of University responsibilities.~~ **Compromise, may involve the potential for compromising, or may have the appearance of compromising the EPA employee's objectivity in fulfilling University responsibilities, including research activities.** Accordingly, outside activities and financial interests must be disclosed **by EPA employees** on an annual basis. ~~Disclosures must be updated when new external interests develop.~~ **This notwithstanding, EPA employees have a continuing obligation to timely update these disclosures as new external interests develop.** Outside activities and financial interests should be arranged to avoid such conflicts. ~~Related policies are also discussed in the ECU Faculty Manual, Part VII. Research Information.~~

#### B. Conflict of Commitment

It is the ~~policy of the University that faculty and EPA non-faculty~~ **Employees** shall devote their primary professional loyalty, time, and energy to their teaching, ~~research, service, and, where applicable, patient care at the University~~ **employment responsibilities, including research activities.** Accordingly, ~~outside activities and financial interests must be arranged to avoid interference with the primacy of these commitments. Policies and Procedures for those potential conflicts of commitment situations that do not involve conflict of interest are discussed in the ECU Faculty Manual, Part VI, General Personnel Information. The policy on External Professional Activities of Faculty and Other Professional Staff should be used for these potential conflicts of commitment situations.~~ **Accordingly, EPA Employees shall not engage in activities outside of their employment that involves an inordinate investment of time that interferes with the EPA employee's obligations to students, to colleagues, and/or to missions of the University. Such activities are unacceptable outside activities. Conflicts of commitment may also arise in connection with non-compensated activities and a conflict of commitment may exist notwithstanding that an EPA employee received no economic benefit from the outside activity. The issue, in each case, is whether the employee is meeting the requirements of the**

requirements of the job (as such responsibilities and requirements may be defined by applicable University policy and as may be further described in an individual's job description or appointment letter).

The policy on External Professional Activities of Faculty and Other Professional Staff should be used for these potential conflicts of commitment situations.

Although full-time faculty and other EPA employment is not amenable to precise, time-clock analysis and monitoring, administrators at the department and school levels are charged with the evaluation of the work of employees under their supervision. The formal occasions for determining whether an individual is devoting sufficient time and energy to University employment include regular reviews in connection with annual salary decisions and scheduled reviews incident to promotion, reappointment or tenure decisions and reviews of Notices of Intent to Engage in External Professional Activities for Pay.

#### **IV. Categories and Examples of Potential Conflicts**

Activities that may involve conflicts of interest **can be categorized under four general headings:** ~~or commitment fall into three general categories that differentiate relationships according to potential for adverse impact.~~

Category I: **consists of activities that appear to involve a conflict of interest but in, fact, do not.** ~~consists of relationships that, while including some that are conflicts in a technical sense, are allowable because they do not compromise the objectivity of research results or other interests of the University, the sponsor, or the public. These relationships are generally minimal in their personal financial impact, and otherwise do not represent a potential source of bias.~~

Category II: **consist of activities that present potential conflict of interest and must be reported, but that may be allowable with administrative approval.** ~~consists of relationships that may be permissible following disclosure and, where necessary, the initiation of supervisory procedures designed to preclude bias or other inappropriate actions and to ensure the maintenance of academic standards and institutional integrity.~~

Category III: **consists of relationships that are generally not allowable because they involve potential conflicts of interest or they present obvious opportunities or inducements to favor personal interests over institutional interests. Before proceeding with such an endeavor, the EPA Employee must demonstrate that *in fact* his or her objectivity would not be affected and University interests otherwise would not be damaged. An approved conflict of interest management plan must be in place before any activities involving this category are initiated.**

~~consists of relationships that presumptively may be inappropriate for a faculty member or EPA non-faculty employee. In such cases, the individual must demonstrate to the University's satisfaction the compatibility of such practices with University policy prior to going forward with the proposed activity.~~

**Category IV: consists of activities that have the potential for creating conflicts of interest that are prohibited by North Carolina and/or federal law and, therefore, may not be undertaken.**

Provided below are representative, but not all-inclusive, examples of activities in each of these ~~three~~ **four** categories. Please refer to Section ~~IX~~ **below above** for important definitions.

Category I:

**Activities allowable, with no reporting required. The examples cited below involve activities external to University employment, and thus may present the appearance of a technical conflict, but they in fact do not have the potential for affecting the objectivity of the EPA employee's performance of University responsibilities; at most, some such situations could prompt questions about conflicts of commitment.**

- a) **An EPA Employee receiving royalties from the publication of scholarly works and other writings or for the licensure of patented inventions pursuant to the University's Patent and Copyright Policies (Faculty Manual, Part VII, Research Information).**
- b) **An EPA employee receiving nominal compensation, in the form of honoraria or expense reimbursement, in connection with service to professional associations, service on review panels, presentation of scholarly works, and participation in accreditation reviews. Senior Academic and Administrative Officers may also be subject to special regulations regarding honoraria which require leave to be taken when external activities for pay will take place during the regular work week (UNC Policy Manual, 300.2.2.2[R]).**
- c) **An EPA Employee having an equity interest in a corporation used solely for the individual's consulting activities provided such consulting activities are appropriately reported and approved in accordance with the policy on, External Professional Activities of Faculty and Other Professional Staff and the corporation is not directly or indirectly conducting any business or sponsoring any projects with the University.**

Category II:

**Activities requiring disclosure for administrative review.**

**1. Research Activities**

- a) **An EPA employee accepting support for University research under conditions that require research results to be held confidential, unpublished, or inordinately delayed in publication. Research conducted by faculty or students under any form of sponsorship must maintain the University's open teaching and research philosophy and must adhere to a policy that prohibits secrecy in research. Such conditions on publication must be in compliance with UNC Policy Manual, 500.1 and 500.2.**
- b) **Related persons working on the same funded or unfunded project.**

## **2. External Activities**

- a) An EPA Employee serving on the board of directors or scientific advisory board of an enterprise or business that provides financial support for University research, and the employee or a member of his or her immediate family may receive such financial support.
- b) An EPA Employee serving in an executive position in a for profit or not-for-profit business which conducts research or other activities in an area related to the University duties of the employee.

## **3. Ownership**

- a) An EPA Employee having a financial interest or a significant financial interest in a business that competes with the services provided by the University.
- b) An EPA Employee having significant equity or a Significant Financial Interest in a for-profit business which conducts research or other activities in an area related to the employee's University duties. An EPA Employee requiring students to purchase the textbook or related instructional materials of the employee or members of his or her immediate family, which produces compensation for the employee or family member.

## **4. Other**

- a) An EPA employee receiving compensation or gratuities (other than occasional meals, gifts or desk copies of textbooks, and the like) from any individual or entity doing business with the University. This notwithstanding, see Category IV example (f).
- b) Engaging in any other activity that has the potential for creating a conflict of interest or commitment as defined herein.

## **Category III:**

**Activities or relationships that are generally not allowable.**

### **1. Research Activities**

- a) An EPA Employee participating in University research involving a technology owned by or contractually obligated (by license, option, or otherwise) to a business in which the individual or an immediate family member has a consulting relationship, has an ownership interest, or holds an executive position.
- b) An EPA Employee participating in University research which is funded by a grant or contract from a business in which the individual or member of his or her immediate family has an ownership interest and/or significant financial interest;
- c) An EPA Employee assigning students, postdoctoral fellows or other trainees to University research projects sponsored by a business in which the individual or a member of his or her immediate family has an ownership interest and/or significant financial interest.

### **2. External Activities**

- a) Assuming an executive position in a not-for-profit business with which the University has a contractual relationship known to the individual and

which is engaged in commercial or research activities in a field related to the individual's University responsibilities.

- b) An EPA Employee making referrals of University business to an external business or company in which the individual or a member of his or her immediate family has a financial interest, including a consulting relationship.
- c) An EPA Employee associating his or her own name with the University in such way as to profit financially by trading on the reputation or goodwill of the University. An example of a context in which such an association might occur is external professional activity for pay. Mere identification of the University as the employer of the individual and of the individual's position at the University is permitted by this section, provided that such identification is not used in a manner that implies sponsorship or endorsement by the University.
- d) An EPA Employee serving as an expert witness for pay in litigation which requires the disclosure of research data in a manner that will compromise the University's or a student's ability to publish.

### **3. Public Disclosure**

- a) An EPA Employee publishing or formally presenting University sponsored research results, or providing expert commentary on a subject, with out simultaneously disclosing any significant financial interest relating to such results or such subject.
- b) An EPA Employee making unauthorized use of privileged information acquired in connection with one's University responsibilities. See also Category IV activities.

### **4. Administrative Responsibilities**

- a) An EPA Employee taking administrative action in the course and scope of University responsibilities that is beneficial to a business in which the individual or an immediate family member has a significant financial interest, including a significant consulting relationship. See also Category IV activities.
- b) An EPA Employee influencing the negotiation of contracts between the University and an outside organization with which the individual or an immediate family member has a significant financial interest, including a significant consulting relationship. See also Category IV activities.

### **5. Committee Participation**

- a) An EPA Employee serving on a committee of a governmental agency or private entity during the consideration by such a committee of the regulation or application of a technology that is owned by or contractually obligated to a business in which that individual or immediate family has a significant financial interest, including a significant consulting relationship.

**Category IV: Activities that have the potential for creating conflicts of interest that are prohibited by North Carolina and federal law (including N.C. Gen. Stat. 14-234**

and 14-234.1 as they currently exist and as may later be amended) and, therefore, may not be undertaken.

- (a) N.C.G.S. (a1)(4) defines "direct benefit from a contract" to mean where a state officer or employee *or his or her spouse*: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to contract with a state agency; (ii) derives any income or commission directly from the contract with a state agency; (iii) acquires any property under the contract with a state agency.
- (b) N.C.G.S. 14-234 (a1)((2) states that a public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.
- (c) N.C.G.S. 14-234 (a1)((3) states in part that a public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract.
- (d) North Carolina law prohibits a state officer or employee who is involved in making or administering a contract on behalf of a state agency from deriving a direct benefit from the contract (N.C.G.S. 14-234 (a)(1)).
- (e) North Carolina law prohibits a state officer or employee who receives a direct benefit from a contract with the state agency he or she serves, but who is not involved in making or administering the contract, from attempting to influence any other person who is involved in making or administering the contract. (N.C.G.S. 14-234 (a)(2))
- (f) North Carolina law prohibits a state officer or employee from soliciting or receiving any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the state agency he or she serves. (N.C.G.S. 14-234 (a)(3))
- (g) *Contracts made in violation of N.C.G.S. 14-234 are void as a matter of law and anyone violating this statute may be prosecuted criminally.*
- (h) N.C.G.S. 14-234.1 prohibits a State officer or employee from benefiting financially, or helping someone else benefit, from non-public information gained by the employee in his or her official capacity. *Anyone violating this statute may be prosecuted criminally.*
- (i) *Note that the North Carolina Ethics Act (Ethics Act) also regulates Conflicts of Interest for "Covered Persons". Questions regarding the Ethics Act should be directed to the University Attorney.*
- (j) *Medicare Anti-Kickback Law.* The Medicare Anti-Kickback law (42 U.S.C. 1320a-7b(b)) prohibits compensation from research sponsors that provide or supply healthcare services or products to researcher-physicians or hospitals for their participation in clinical research if such compensation is intended to induce physicians or hospitals to purchase drugs or services of the research sponsor that will be paid by Medicare or Medicaid.
- (k) *False Claims Act.* Researchers must certify in their grant applications that they are in compliance with statutory and regulatory requirements, including applicable statutes and regulations prohibiting conflicts of

interest. Falsely certifying compliance could result in criminal prosecution and civil penalties under the False Claims Act (31 U.S.C. 3729, *et seq.*),

~~Activities that are routinely allowable and are not required to be disclosed pursuant to this policy.~~

- ~~d) Receiving royalties for published scholarly works and other writings or for inventions pursuant to the University's Patent and Copyright Policies (Faculty Manual, Part VII, Research Information).~~
- ~~e) Membership in and service to professional associations and learned societies; membership on professional review or advisory panels; presentation of lectures, papers, concerts or exhibits; participation in seminars and conferences; reviewing or editing scholarly publications and books; and service to accreditation bodies are permitted under the ECU Policy Statement on External Professional Activities of Faculty and other Professional Staff (Faculty Manual, Part VI, General Personnel Information) so long as they do not conflict or interfere with the timely performance of primary University duties. These activities are permitted even if they are performed for nominal honoraria or reimbursement of expenses, provided that the receipt of nominal honoraria or reimbursement of expense is not in conflict with any other applicable University, state, or federal policy, rule or regulation. These activities are not required to be disclosed in this Policy's Annual Faculty/Professional Staff Disclosure Form. However, a "Notice of Intent to Engage in External Professional Activity" may be required pursuant to ECU's policy (Faculty Manual, Part VI, General Personnel Information).~~
- ~~f) Ownership of or equity in a corporation used solely for the individual's consulting activities provided such consulting activities are appropriately reported and approved in accordance with Faculty Manual, Part VI, General Personnel Information, External Professional Activities of Faculty and Other Professional Staff.~~

~~Category II:~~

~~Activities that may be allowable following disclosure and, where necessary, the implementation of monitoring procedures.~~

~~1. Research Activities~~

- ~~e) Participating in University research (basic, applied, and clinical) on a technology developed by that individual or a member of his or her immediate family, unless the activity is specifically disallowed under the guidelines of Category III.~~
- ~~d) Participating in University research involving a technology owned by or contractually obligated (by license, option or otherwise) to a business in which the individual or immediate family has a consulting relationship.~~
- ~~e) Receiving through contract or gift University sponsored research support (whether in dollars or in kind) for research from a business in which the individual or immediate family has a consulting relationship.~~

~~2. External Activities~~

- ~~e) Serving on the board of directors or scientific advisory board of a business from which that individual or immediate family receives University-sponsored research support or with which the University has a substantial contractual~~

~~relationship known to the individual, unless the activity is specifically disallowed under the guidelines of Category III.~~

- ~~d) Assuming an executive position in a not-for-profit business with which the University has a substantial contractual relationship known to the individual and which is engaged in commercial or research activities in a field related to the individual's University responsibilities, unless the activity is specifically disallowed under the guidelines of Category III.~~

### ~~3. Ownership~~

- ~~e) Possessing a significant financial interest, including a significant consulting relationship, in a business that competes with the services provided by the University as a part of their academic, research, or service mission.~~
- ~~d) Possessing a significant financial interest, including a significant consulting relationship, in a business field related to the individual's University responsibilities, unless the activity is specifically disallowed under the guidelines of Category III.~~
- ~~e) Requiring or recommending one's own textbook or other teaching aids, materials, or equipment to be used in connection with University programs or those of immediate family. Such a requirement or recommendation must be preceded by disclosure and review according to this policy.~~

### ~~4. Other~~

- ~~e) Acceptance by the University employee or immediate family of other than nominal gratuities or special favors from one whom the individual knows is doing business with or proposing to do business with the University.~~
- ~~d) Engaging in any other activity that has the potential for creating a conflict of interest or commitment as defined herein.~~

### ~~Category III:~~

~~Activities that are presumptively not allowable. Many of the examples below may seem to overlap examples in Category II above; however, the addition of 'significant financial interests' in the activities below creates the presumption that these activities are not allowable.~~

#### ~~1. Research Activities~~

- ~~d) Participating in University research involving a technology owned by or contractually obligated (by license, option, or otherwise) to a business in which the individual or immediate family holds significant stock or similar significant ownership interest, or has any other significant financial interest, other than a receipt of University sponsored research support, or receipt of royalties under University royalty sharing policies.~~
- ~~e) Receiving, through contract or grant, University sponsored research support (whether in dollars or in kind) for research from a business in which the individual or immediate family holds a significant stock or similar significant ownership interest or has any other significant financial interest.~~
- ~~f) Assigning students, postdoctoral fellows or other trainees to University projects sponsored by a for-profit or not-for-profit business in which the individual or immediate family has a significant financial interest, including a significant consulting relationship.~~

#### ~~2. External Activities~~

- e) ~~Assuming an executive position in a not-for-profit business with which the University has a substantial contractual relationship known to the individual and which is engaged in commercial or research activities in a field related to the individual's University responsibilities.~~
- f) ~~Making referrals of University business to an external business or professional office in which such individual or immediate family has a significant financial interest, including a significant consulting relationship.~~
- g) ~~Associating one's name or one's work with an external activity in such a way as to profit monetarily by trading on the reputation or good will of the University or to imply sponsorship or endorsement by the University. An example of a context in which such an association might occur is external professional activity for pay. Mere identification of the University as the employer of the individual and of the individual's position at the University is permitted by this section, provided that such identification is not used in a manner that implies sponsorship or endorsement by the University.~~

### 3. ~~Public Disclosure~~

- c) ~~Publishing or formally presenting University sponsored research results, or providing expert commentary on a subject, with out simultaneously disclosing any significant financial interest relating to such results or such subject.~~
- d) ~~Unauthorized use of privileged information acquired in connection with one's University responsibilities to further one's own personal interests.~~

### 4. ~~Administrative Responsibilities~~

- e) ~~Taking administrative action in the course and scope of University responsibilities that is beneficial to a business in which the individual or an immediate family member has a significant financial interest, including a significant consulting relationship.~~
- d) ~~Influencing the negotiation of contracts between the University and an outside organization with which the individual or an immediate family member has a significant financial interest, including a significant consulting relationship.~~

### 5. ~~Committee Participation~~

- b) ~~Serving on a committee of a governmental agency or private entity during the consideration by such a committee of the regulation or application of a technology that is owned by or contractually obligated to a business in which that individual or immediate family has a significant financial interest, including a significant consulting relationship.~~

## V. ~~Submission of Conflict Evaluation Forms (Disclosures). COI Procedures~~

~~Policy: Effective July 1, 1995, eEach faculty member and all other EPA eEmployees will be required to disclose annually **relationships and circumstances that may raise questions about conflicts of interest and conflicts of commitment relating to University employment responsibilities, including, but** for both him/her selves and their immediate families (see definition in Section IX) the extent of their relevant external activities and relationships and their financial holdings that are related to the employee's university activities. These university activities include but are not limited to sponsored research activities. These external activities, relationships and financial holdings are described above in Section IV under Categories II & III. All potential Category II, III, and III IV relationships or financial holdings must be reported regardless of the dollar~~

amounts involved. Category I activities and relationships are not required to be disclosed under this policy; however, other university reporting requirements may apply to these activities (see Section IV). Where there is some question whether an activity should be considered a Category I or II activity as described above, the ~~faculty/EPA non-~~ ~~faculty~~ EPA Employee should include the activity in the disclosure for consideration by his/her supervisor.

~~All faculty and other EPA personnel are charged by the University to provide a full good faith disclosure. Failure to provide such a full disclosure may be considered a serious breach of this policy and may be cause for disciplinary action (see Section VIII).~~

Revisions or updates of the yearly disclosures are required between yearly disclosures whenever there is a significant change in the ~~faculty member's~~ EPA **employee's** or his/**her** immediate family's affairs that may lead to or may be perceived to lead to a conflict with the ~~faculty member's~~ **EPA employee's** university activities, e.g., the faculty member's spouse begins to receive consultant fees from a company that currently contracts with university for research services from the faculty member's laboratory.

Procedures: To facilitate disclosure and to ensure appropriate uniformity across the University, each individual will complete the "Annual Faculty/Professional Staff Disclosure Form." Each unit administrator will distribute this form annually to all faculty and professional staff (EPA non faculty) under his or her supervision and assure that completed forms are returned. **Unit Administrators shall summarize the disclosure completed by EPA employees to the Office of Research Compliance Administration.**

The purpose of this form is to identify employees' activities that may lead to actual or potential conflicts of commitment or interest so that appropriate administrative intervention may address the problems. The employee and the administrative superior are to complete and sign the annual disclosure form, which implies that the administrative superior has reviewed the form. No further action will be required if all questions are answered "no".

Further disclosure and review are required if questions elicit any "yes" responses on the Annual Faculty/Professional Staff Disclosure Form or on any mid year revisions or updates of the annual form. The employee must then complete and sign the appropriate additional forms. Suggested provisions or plans for eliminating or managing conflicts should be included in these additional forms where indicated. Examples of some (but not all) possible provisions for conflict management plans are:

1. Public disclosure of the significant financial interests or external activities;
2. Monitoring of activities by disinterested university officials to assure that conflicts do not arise;
3. Cessation of the pertinent outside activities;
4. Divestiture of the pertinent financial interests; **and**
5. Severance of the relationships that create actual or potential conflicts.

Since these forms have direct bearing on the employment of individuals with the University, all disclosure forms (the annual form and accompanying forms) and associated documents will be maintained in the administrative office of the employee's unit in his/her personnel folder for a period of at least three years following termination of the pertinent activities.

#### **VI. Review and Approval of Activities and Plans for Eliminating or Managing Conflicts.**

The unit administrator (chair, dean, or the employee's supervisor in the case of a senior administrator) has the initial responsibility to review and approve or disapprove the disclosure forms filed with him or her by the EPA employees within that unit. The review shall follow the provisions of this Policy. The Unit administrator should be familiar with the definition of 'Significant Financial Interest' (~~See Section IX~~) to differentiate between Category II and Category III activities and relationships. Category III activities are presumptively considered to be non-allowable.

The unit administrator may refer any question regarding an annual disclosure form to the next higher administrative level for review and decision and must refer to the next higher level for review and approval all annual disclosures (and updates/revisions) which require additional forms (as described in the annual disclosure form) for EPA employees involvement in possible Category II and III activities as described above.

If a potential conflict is determined to exist, written plans for eliminating or managing the conflict will be developed in consultations between the employee, **the Office of Research Compliance Administration**, and his/her supervisors (**up to and including deans of academic units as appropriate**) and presented to the Vice Chancellor of **Research and Graduate Studies** of the appropriate division for concurrence. **For Category II through IV Conflicts of Interest, the plan will also be submitted to the appropriate division's Vice Chancellor for informational review.** It will then be presented to the ECU Research Ethics Oversight Committee (see below) for final approval. An adverse decision of the Committee to a proposed management plan may be appealed to the Chancellor. The supervisor of the EPA employee will be responsible for assuring the implementation and/or monitoring of the conflict management plan.

Documentation of all decisions on activities and associated conflict management plans will be maintained in the employee's personnel folder.

In order to fulfill the certification requirements of grant and contract funding agencies (e.g., the NIH and NSF), each unit administrator shall also provide annually to the Vice Chancellor for Research and Graduate Studies a list of all faculty members and EPA staff in the administrator's unit who have submitted approved current annual disclosure forms and, where needed, an indication when such approval required development of an acceptable conflict management plan. This list may be amended as needed during the year. The Vice Chancellor for Research or his designee will use this information to **report any perceived or potential COI to the sponsor or to** certify to potential funding agencies that this Institution has a conflict of interest policy consistent with NIH and NSF

guidelines and that to the best of our knowledge all provisions of the policy have been followed with respect to proposals submitted to the agencies by ECU faculty and staff.

If after initial review **of any disclosure** by the department head, dean, and vice chancellor, questions remain regarding ethical issues or if disagreement exists between the EPA employee and the administration regarding the permissibility of activities, **or if the COI management involves more than disclosure and minor oversight**, the situation may be referred to a faculty/administrative advisory committee for review of conflicts of interest and commitment. This committee, the *Research Ethics Oversight Committee*, will be chaired by the Vice Chancellor for Research & Graduate Studies. **Appropriate individuals will be appointed members to the committee by the Vice Chancellor for Research and Graduate Studies.** ~~and will have representatives from the faculty senate as members.~~ When the committee reviews conflict management plans, a representative of university attorney's office shall be present. ~~In addition, when a management plan involves graduate students, a representative from the graduate council will also be present. Other appropriate individuals will be appointed members to the committee by the Vice Chancellor for Research & Graduate Studies.~~ Decisions by this committee will be presented to the Chancellor for his or her concurrence and, if approved, will become the University's final position subject only to appeal in accordance with Section 501C(4) of The Code of the University of North Carolina.

If the activity at issue involves external support (grant, contract or cooperative agreement), the ~~vice chancellor for research~~ **Director of Sponsored Programs** shall inform the sponsor **in accordance to Sponsor policy and guidelines of the COI.** ~~whenever the University determines that it is unable to develop a satisfactory conflict management plan for an actual or potential conflict of interest.~~

Whenever human subjects are involved in an activity presented to the ~~Research Ethics Oversight Committee~~ **University's Office of Research Compliance Administration** (including approvals of conflict management plans), the University & Medical Center Institutional Review Board (UMCIRB) will be confidentially notified of the issue and the Committee's actions.

#### VII. Institutional Conflict of Interest

East Carolina University, from time to time, forms relationships with profit-making entities (including the holding of equity interests) for mutual benefit. However, such relationships may put the University into actual or apparent conflict of interest situations when accepting grants or contracts from the profit making entities for research or other activities. (See exclusion at the end of this section for certain types of relationships.) To assure that these grants and contracts are performed with the highest level of integrity by University employees and to assure that the public maintains its trust in University activities, the following procedures shall be followed:

1. At the beginning of each calendar year, the Director, Office of Technology Transfer shall prepare a disclosure listing all profit-making entities in which the University has a significant financial interest (~~See Section IX.4~~). This disclosure shall be updated during the year as new relations develop and old ones terminate. This disclosure and its updates will be submitted to the Vice Chancellor for Research and Graduate

Studies who shall distribute the disclosure to the Chancellor, the other Vice Chancellors and Deans, and the Research Ethics Oversight Committee. Copies of the disclosure and updates shall also be distributed to those university administrative offices charged with approving and administering grants and contracts and **other regulatory committees** ~~human subjects research protection~~ (for example, Office of Sponsored Programs, Office of Grants and Contracts Administration and the UMCIRB).

2. Units submitting proposals for external funding to commercial entities may not be aware of possible institutional conflict of interest issues. Thus, the Office of Sponsored Programs shall have the primary responsibility of notifying **Office of Research Compliance Administration**, Vice Chancellor for Research and Graduate Studies and the submitting unit of the University's conflict of interest as part of its regular procedures for the review and approval of such applications. The **Office of Research Compliance Administration or the** Vice Chancellor or his designee shall then develop a plan to manage the institutional conflict of interest after consultation with the submitting unit and other relevant university offices. The conflict management plan shall be submitted to the Research Ethics Oversight Committee for review. The Committee may approve the plan (with or without mandatory changes) or disapprove the plan. University acceptance of grants and contracts related to a management plan is contingent upon approval of the management plan by the Committee. A negative decision of the Committee may be appealed to the Chancellor. An institutional conflict management plan may range from a simple disclosure of the University's interest in publications and reports emanating from the grant or contract to complete University divestiture of the financial interest. The institutional conflict of management plan shall be separate from and in addition to any conflict management plans for conflicts of interests of individuals (e.g., the principal investigator) involved in the grant or contract.
3. When considering an institutional conflict of interest management plan, the Research Ethics Oversight Committee shall a) include as voting members, one or more individuals from the general public who have no direct or indirect relationship with the University, i.e., the individuals and their spouses or other dependents must not be current employees or students of the University; and b) recuse from the deliberations of the Committee any ECU member of the Committee who has been involved in the negotiation, approval, or implementation of the relationship that is the basis of the actual or perceived conflict of interest. The general public members of the Committee should be individuals that have sufficient education or experience to understand both the issues before the Committee and the possible impacts of the Committee's decisions on the general public.
4. Arrangements for plan implementation and oversight shall explicitly be part of an institutional conflict management plan. Implementation and oversight will usually be the joint responsibility of the submitting unit and the Office of the Vice Chancellor for Research and Graduate Studies. However, other arrangements shall be made for plan implementation and oversight if, in the judgment of the Research Ethics Oversight Committee, such arrangements are necessary for the effective management of the conflict.

Excluded Relationships: A relationship with a profit making organization for the purposes of this institutional conflict of interest policy shall not include ordinary investments of the university's endowment that are managed by the Board of Trustees of the Endowment Fund or ordinary client-vender relationships where the University contracts for specific goods or services from a profit-making organization.

### VIII. External Professional Activity for Pay Procedures

1. An EPA Employee who plans to engage in external professional activity for pay shall complete the "Notice of Intent to Engage in External Professional Activity for Pay" (hereinafter referred to as "Notice of Intent") in a format as described in section 2 of this Part VIII. The Notice of Intent shall be filed with the head of the department in which the individual is employed. A separate "Notice of Intent" shall be filed for each such activity in which an employee proposes to engage. Unless there are exceptional circumstances, the "Notice of Intent" shall be filed not less than ten (10) calendar days before the date the proposed external professional activity for pay is to begin.
2. The Notice of Intent Format: The format for giving notice of Intent should follow the sample notice form.

#### ~~NOTICE OF INTENT TO ENGAGE IN EXTERNAL PROFESSIONAL ACTIVITIES FOR PAY~~

Date: \_\_\_\_\_

\_\_\_\_\_ (Name) intends to engage in external professional activity for pay under the following conditions:

1. ~~Name and address of contracting organization;~~
2. ~~Nature of proposed activity;~~
3. ~~Beginning date and anticipated duration of activity;~~
4. ~~On average, how many hours per week will be devoted to this activity?~~
  - a. ~~For twelve-month employees, for the anticipated duration of the activity, within the current fiscal year ending June 30:~~  
\_\_\_\_\_;
  - b. ~~For 9-month employees, for each component part of the academic year, as applicable, within the current fiscal year ending June 30:~~
    - i. ~~Second summer session (post July 1) \_\_\_\_\_~~
    - ii. ~~Fall Semester \_\_\_\_\_~~
    - iii. ~~Spring Semester \_\_\_\_\_~~
    - iv. ~~First Summer Session (pre July 1) \_\_\_\_\_~~
5. ~~Total number of hours to be devoted to activity: \_\_\_\_\_~~
6. ~~Identify any classes, meetings, or other university duties that will be missed because of involvement in the proposed activity (respond separately for each applicable component part of the academic calendar if 9-month employee) and state what arrangements have been made to cover any such duties;~~

~~Duties Missed~~ \_\_\_\_\_ ~~Arrangements to Cover~~  
\_\_\_\_\_  
\_\_\_\_\_

7. ~~Use of University resources in connection with proposed activity:~~  
1. ~~Will the activity entail the use of any university resources?  
(see Section II(G) above and UNC Policy Manual, 300.2.2,  
Section I, Item G) \_\_\_ Yes \_\_\_ No~~  
2. ~~If yes, describe what resources will be used;~~  
\_\_\_\_\_
8. ~~To your knowledge, does the contracting organization provide funding  
which directly supports any of your University duties or activities?: Yes( )  
No( ) To be completed if the contracting organization is a private firm:~~  
a. ~~Do you or any member of your immediate family own an  
equity interest in the contracting organization: Yes( ) No ( )~~  
b. ~~Do you hold an office in the contracting organization? Yes( )  
No ( )~~
9. ~~Performance of the above described activity is consistent with the Board  
of Governors Policy on Conflicts of Interest and Commitment and External  
Professional Activities~~

~~Signatures follow..~~

10. ~~Each EPA faculty and EPA non faculty participating in external activity  
for pay must report the activity during the past fiscal year. Such reports (a  
sample form for reporting external activity for pay is available at the  
Academic Affairs's webpage) will contain the following information for each  
external professional activity for pay engaged in during the last fiscal year  
preceding the date of filing of a "Notice of Intent":~~
11. ~~Contracting organization;~~  
12. ~~Beginning and ending date of activity (if completed);~~ 3. ~~Average hours  
per week devoted to this activity;~~  
13. ~~Total number of hours devoted to this activity;~~  
14. ~~Nature of professional activity;~~  
15. ~~Date Notice of Intent was filed; and~~  
16. ~~Administrative Action on Notice of Intent which will have the following  
signatures and information:~~  
17. ~~Signature and date of unit head certifying activity determined to be  
consistent with university policy;~~  
18. ~~Other action (as required);~~  
19. ~~Signature and date of Dean or Other Administrative Officer (Approval by  
dean or next higher administrator is required if the contracting organization  
is providing funding to the University or if a family member or the EPA  
faculty or EPA non faculty owns equity or hold an office in the contracting  
organization) if activity determined not to be consistent with university  
policy;~~  
20. ~~Action on appeal (if any) and date action taken;~~

- ~~21. Signature and date of Dean or next higher administrator if appealed; and~~  
~~22. Signature of Chancellor if appealed.~~

~~23. Any administrative action approving a "Notice of Intent" shall be effective only for the remaining balance of the fiscal year (in the case of twelve-month employees) or for the balance of the academic year (for nine-month employees).~~

3. Approval of a "Notice of Intent" may be granted for a period not to exceed the balance of either 1) the fiscal year (in the case of twelve-month employees and employees with contract service periods that include the summer session) or 2) the academic year (in the case of nine (9) month employees with no summer session contract period) remaining as of the date of approval; if the approved activity will continue beyond the end of the relevant fiscal or academic year in which it was begun, an additional "Notice of Intent" must be filed at least ten days before engaging in such activity in the succeeding relevant year.
4. Except as set out in paragraph 5 below, the "Notice of Intent" shall be considered as follows: If, after a review of the "Notice of Intent" and consultation with the EPA employee, the unit head determines that the proposed activity is not consistent with this policy statement of the Board of Governors and East Carolina University, the EPA Employee shall be notified of that determination within ten (10) calendar days of the date the "Notice of Intent" is filed. In the event of such notification by the unit head, the EPA Employee shall not proceed with the proposed activity but may appeal that decision to the next higher administrator and then to the Chancellor or the Chancellor's designee. A decision on any such appeal shall be given to the EPA Employee within ten calendar days of the date on which the appeal is received. The decision of the Chancellor is final. Appeals shall be made in writing on the "Notice of Intent" form.
5. If question 8, question 9a, or question 9b on the Notice of Intent, above, is answered in the affirmative the procedure set out in paragraph 4 above shall be modified as follows: The decision of the unit head to approve the activity shall be reviewed promptly and approved or disapproved within ten (10) days of receipt by the next higher administrator, and appeal of a disapproval by that officer shall be to the Chancellor or the Chancellor's designee. In addition, the Vice Chancellor for Research and Graduate Studies must review the external activity for management of any Conflicts of Interest and notify the University and Medical Center Institutional Review Board if the EPA Employee is participating in a protocol involving human subjects at ECU to ensure compliance with applicable IRB laws and regulations.
6. Departmental summaries of all "Notices of Intent" filed and of actions taken in response to such "Notices of Intent" during the preceding fiscal year shall be submitted by unit heads to the Chancellor each July. As initiated by the UNC General Administration on or before September 1 of each year, the Chancellor will provide an annual summary report to the President.

7. If the external professional activity for pay is wholly performed and completed outside of the academic year by EPA employees serving on academic year contracts, said EPA Employees do not need to file Notices of Intent with their unit head provided that the activity does not conflict with this policy statement of East Carolina University and of the Board of Governors and is not conducted concurrently with a contract service period for teaching, research, or other services to East Carolina University during a summer session
8. University employees not complying with these procedures will be subject to disciplinary action. Unit heads are held responsible for proper reporting.

### III IX. Enforcement of the Policies

~~Faculty and non-faculty~~ EPA **Employees** staff are under a clear obligation to adhere to the ECU policies and procedures to disclose and to remove or appropriately manage conflicts of interest or commitment. Breaches of the policy/procedures will be viewed as serious ethical violations by the persons involved. Possible breaches of the policy/procedure include, but are not limited to:

1. Furnishing false, misleading or incomplete information on the disclosure forms;
2. Failure to promptly update disclosure forms before the required annual update when a significant change in a person's financial or fiduciary status places the individual into an immediate potential conflict of interest or commitment situation;
3. Failure to comply with the procedures described above (e.g., refusal to respond to inquiries, responding with incomplete or knowingly inaccurate information, or otherwise);
4. Failure to remedy conflicts as determined by the Procedures; and
5. Failure to comply with a prescribed monitoring plan.

If a possible breach in the policy/procedures occurs, the appropriate dean shall consult with the faculty person and his chair. If no resolution is forthcoming, the dean shall refer the case to the appropriate vice chancellor. The vice chancellor shall consult with the vice chancellor for research and shall initiate an investigation and/or hearing as prescribed in Faculty Manual, Part VII and Appendix D and apply sanctions as determined by university policies. Such sanctions may range from administrative intervention to dismissal from employment, all in accordance with applicable university policies.

### ~~IX. Definitions~~

1. ~~"Business" means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes. "Business" excludes University-related entities, which is inclusive of the University, and any private medical practice or any other entity controlled by, controlling, or under common control with the University or with which the University has a contractual relationship for the purpose of providing patient care.~~
2. ~~"Executive Position" refers to any position that includes responsibilities for a material segment of the operation or management of a business, including Board membership.~~

3. ~~The "Immediate Family" of a faculty or EPA non-faculty employee includes his or her spouse, dependent children and/or other dependent(s) as defined in the Internal Revenue Code.~~
4. ~~"Significant Financial Interest" means anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights, license agreements, and royalties from such rights). The term does not include:~~
  - (1) ~~Salary, royalties, or other remuneration from East Carolina University to its faculty or staff;~~
  - (2) ~~Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;~~
  - (3) ~~Income from service on advisory committees or review panels for public or nonprofit entities;~~
  - (4) ~~An equity interest that when aggregated for the faculty/staff and the faculty/staff's immediate family, meets both of the following tests: Does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity;~~
  - (5) ~~Salary, royalties or other payments that when aggregated for the faculty/staff and the faculty/staff's immediate family over the next twelve months, are not expected to exceed \$10,000 from any one source.~~
  - (6) ~~Mutual, pension, investment or other funds over which the employee or the University does not exercise direct control.~~
5. ~~"Participate" means to be part of the described activity in any capacity, including but not limited to serving as the principal investigator, co-investigator, research collaborator or provider of direct patient care. The term is not intended to apply to individuals who provide primarily technical support or who are purely advisory, with no direct access to the data (e.g., control over its collection or analysis) or, in the case of clinical research, to the trial participants, unless they are in a position to influence the study's results or have privileged information as to the outcome.~~
6. ~~"Sponsored Programs" means research, public service, training and instructional projects involving funds, materials, or other compensation from outside sources under grants, contracts, or cooperative agreements.~~
7. ~~"Technology" means any process, method, product, compound, drug, device, or any diagnostic, medical, or surgical procedure developed using University time, facilities, equipment, or funds whether intended for commercial use or not.~~

Example Forms A-E are available online at

<http://www.ecu.edu/cs-acad/fsonline/customcf/facultymanual/appendixi/appendixi.htm>

**Faculty Senate Agenda  
December 1, 2009  
Attachment 3.**

**FACULTY GOVERNANCE COMMITTEE REPORT  
Additional Revisions to the *ECU Faculty Manual*, Appendix D.**

Please note these additional revisions follow those already adopted by the Faculty Senate (FS Resolutions #09-11, Chancellor's response, #09-12, Chancellor's response, #09-20, and Chancellor's response) in Spring 2009 and reviewed by the Chancellor and Board of Trustees. Linked here is a copy of the correspondence from **General Administration Letter, dated May 2009** necessitating the need for additional revisions to this Appendix.

Also included here is a link to changes made to the UNC Code, Section 603 that necessitated revisions specifically to Section VI.

Original proposed revisions (included in resolutions 09-11, 09-12, and 09-20) are noted in **bold** print and deletions are noted in ~~strikethrough~~.

Additional revisions are noted in **yellow highlighted bold** print.

**APPENDIX D.  
TENURE AND PROMOTION POLICIES AND PROCEDURES  
OF EAST CAROLINA UNIVERSITY**

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## **Tenure and Promotion Policies and Procedures of East Carolina University**

### Prologue

Academic freedom, the set of norms and values that protects a faculty member's freedom of intellectual expression and inquiry, is essential to the achievement of knowledge and understanding. East Carolina University supports academic freedom of inquiry, discourse, teaching, research, and publication for all faculty members. See *Part III, Academic Freedom of the ECU Faculty Manual*. East Carolina University shall not penalize or discipline faculty members because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

With respect to personnel matters relating to Appendix D of the *East Carolina University Faculty Manual*, academic units are defined as departments described in the codes of operation of professional colleges and schools, the departments in the College of Arts and Sciences, professional colleges and schools without departments, Academic Library Services, Health Sciences Library, and any other units in which faculty appointments are made. In the College of Arts and Sciences and in professional colleges and schools whose unit codes describe departmental structures, departmental chairs are the unit administrators. In schools that do not have departments described in their unit codes, the dean of the school is the unit administrator.

I. Tenure

Academic tenure serves to insure academic freedom by guarding faculty members against negative consequences of expressing unpopular points of view. Academic tenure refers to the conditions and guarantees that apply to a faculty member's professional employment. Tenure protects a faculty member against involuntary suspension or discharge from employment or reduction in rank except upon specified grounds and in accordance with the procedures provided in Section VI.; or against termination of employment except as provided for in Section VII. During the term 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, misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, or demonstrable, bona fide institutional financial exigency or major curtailment or elimination of a teaching, research, or public service program as detailed in Sections VII.A.1 and VII.A.2. (Faculty Senate Resolution #03-44)

A. Tenure While Under Contract to East Carolina University

A faculty member who does not have permanent tenure has the protection of tenure until the expiration of the faculty member's employment contract.

B. Permanent Tenure

1. Permanent tenure may be conferred only by action of the Board of Trustees of East Carolina University, and is always held with reference to employment by East Carolina University rather than to employment by The University of North Carolina. The conferral of permanent tenure is allowed only as the result of the processes enunciated in this document.
2. Conferral of permanent tenure shall be based on the faculty member's demonstrated professional competence in teaching, research and creative activity, and service; a potential for future contributions; and the institution's needs and resources. While teaching is the first consideration, neither teaching nor research and creative activity nor patient care nor service is the sole measure of a faculty member's competence and contribution. Permanent tenure is independent of promotion but sound academic practice supports the concept that an assistant professor eligible for tenure should qualify for promotion to associate professor.

II. Faculty Appointments

A. General Provisions

1. Categories of Appointments

There are three kinds of faculty appointments:

- (a) Fixed-Term Appointments [cf. Special Faculty Appointments, the UNC Code, ~~610 604G~~ and ECU Faculty Manual, Appendix C.]. Fixed-term appointees do not hold professorial ranks, but are appointed with the following titles: teaching instructor, teaching assistant professor, teaching associate professor, teaching professor, research instructor, research

assistant professor, research associate professor, research professor, clinical instructor, clinical assistant professor, clinical associate professor, clinical professor, visiting instructor, visiting assistant professor, visiting associate professor, visiting professor, artist in residence, writer in residence, adjunct instructor, adjunct assistant professor, adjunct associate professor, and adjunct professor. **Fixed-term faculty members may be paid or unpaid, per letter of appointment.** Fixed-term appointments are without permanent tenure and do not entitle the faculty member to consideration for reappointment or conferral of permanent tenure. **The term of appointment in the appointment letter, and the letter of appointment, constitute full and timely notice that a new term will not be granted when that term expires** (except as specified in Section II.B.1). No obligation exists on the part of East Carolina University to give any notice before a current fixed-term appointment expires as to whether **a new appointment will be granted at the end of a specified fixed term.** ~~the contract will be renewed~~

- (b) Probationary Appointments and Reappointments. Probationary appointments are made at the professorial ranks of instructor, assistant professor, associate professor, or professor. Probationary appointees are entitled to reappointment reviews and, if reappointed throughout the probationary period, are entitled to a tenure review. The timing of these reviews is explained below.
- (c) Appointments with Permanent Tenure. Appointments with permanent tenure are continuous until retirement, resignation, or removal according to the provisions of Section VI or VII of this document. Appointments with permanent tenure may be made at the professorial ranks of assistant professor, associate professor, or professor.

2. Criteria for Initial Appointment and Reappointment

All appointments, including fixed-term appointments, and all reappointments of candidates to probationary-term positions shall be based on assessments of candidates' demonstrated professional competence, potential for future contributions, and the institution's needs and resources.

3. Terms and Conditions for Appointment and Reappointment

The chancellor or the chancellor's designee<sup>1</sup> shall set out in writing, with a copy to the faculty member, the terms and the conditions of each appointment, including fixed-term appointments, and each reappointment. The terms shall incorporate by reference appropriate sections of the *Faculty Manual* and shall state any conditions placed on the appointment or reappointment.<sup>2</sup> The responsibility for initiating the inclusion of special terms

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<sup>1</sup>References to the chancellor's designee shall include and be limited to the vice chancellor for academic affairs and the vice chancellor for health sciences.

and conditions in documents of appointment is with the unit administrator. Prior to initial appointment the unit administrator shall provide a copy of the unit's criteria for evaluating faculty performance to persons offered a faculty appointment in the unit. Criteria for evaluating faculty performance shall be discussed by the unit administrator in a meeting with each fixed-term and probationary-term faculty member at the beginning of the first term of employment and at the beginning of each academic year thereafter. A summary of this discussion shall be placed in the faculty member's personnel file. The responsibility for calling this meeting is with the unit administrator. Notice of reappointment or non-reappointment to probationary-term persons shall be written. The decision not to reappoint probationary term faculty shall not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution; (2) discrimination based upon the faculty member's race, color, national origin, **creed**, religion, veteran's status, gender, age, sexual orientation, political affiliation, or disability; or (3) personal malice. (Faculty Senate Resolution #03-37)

#### 4. Continued Availability of Special Funding

The appointment or reappointment 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 continuance of the faculty member's services, whether for a specified term or for permanent tenure, shall be contingent upon continuing availability of such funds.

**Exceptions to the foregoing contingency requirement are:**

**(a) 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 is attached to the tenure.**

**(b) That such a contingency shall not be attached to the faculty member's contract if the faculty member held permanent tenure in East Carolina University on July 1, 1975, and the contract was not contingent upon the continuing availability of sources than continuing state budget or permanent trust funds.**

**(c) 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.**

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<sup>2</sup>The chancellor, in consultation with the office of the Faculty Senate, is responsible for the publication of the *Faculty Manual*. The Senate office shall be responsible for the maintenance of the *Faculty Manual*. The *Faculty Manual* shall contain the tenure and personnel policies and regulations of East Carolina University, including the complete text of Chapter Six of The Code of The University of North Carolina. The *Faculty Manual* shall be provided to new faculty and changes as they occur shall be distributed to each faculty member.

~~This contingency shall not be included in a faculty member's contract if the faculty member held permanent tenure in the institution on July 1, 1975, and the contract was not then contingent upon the continuing availability of sources other than continuing state budget or permanent trust funds.~~

5. Notice of Resignation

A fixed-term or probationary-term faculty member should provide the unit administrator with 90 days advance notice, in writing, of resignation from employment. A permanently tenured faculty member should provide the unit administrator with 120 days advance notice in writing of resignation from employment. In no case should a resignation occur in mid-semester.

B. Fixed-Term Appointments [cf. Special Faculty Appointments, The UNC Code, **610 604G**]

~~Fixed term faculty appointments are without permanent tenure and do not entitle the faculty member to consideration for conferral of permanent tenure. No obligation exists on the part of East Carolina University to give any notice before a current fixed term appointment expires as to whether the contract will be renewed~~

1. Contract and Notice

A contract for a fixed-term appointment shall set forth in writing the beginning and ending dates of the term, **the type of appointment and the pay status (i.e., paid or unpaid). The specification of the length of the appointment in the contract/letter of appointment shall be deemed to constitute full and timely notice of non-reappointment when that term expires** ~~†this specification of the length of the appointment constitutes full and timely notice of non-reappointment when the term expires.~~ Whenever possible multi-year contracts, of up to five years, ~~with eligibility for renewal,~~ will be offered to fixed-term faculty members who have demonstrated their effectiveness and contributions and/or who have outstanding credentials. **These faculty members are eligible for a new appointment.** The provisions of Section 604 and 602(4) of The Code of The University of North Carolina do not apply to these special faculty appointments. ~~No obligation exists on the part of East Carolina University to give any notice before a current fixed term appointment expires as to whether a contract will be renewed for a succeeding term.~~ If **a** the fixed-term faculty member, not earlier than 180 calendar days nor later than 90 calendar days before the current term expires, provides the unit administrator with a written request for **a new appointment** ~~contract renewal,~~ the unit administrator shall so notify the chair of the unit Personnel Committee. Within 30 calendar days of receiving the request the Personnel Committee and the unit administrator shall notify the faculty member in writing of their respective recommendations and that any recommendation is subject to the availability of position, funding, administrative approval, and continued effective performance.

2. Fixed-Term Employment Evaluation Policy [cf. Special Faculty Appointments, The UNC Code, **610 604G**]

Any faculty member employed in a fixed term position shall be evaluated annually in accordance with the provisions of the employment contract. A fixed-term faculty member should submit a portfolio to the Personnel Committee and the unit administrator prior to the unit administrator and the Personnel Committee recommending **a new appointment** ~~contract renewal~~. The portfolio should contain information that demonstrates the effectiveness of the fixed-term faculty member in carrying out the duties specified in the contract. The specific contents of the portfolio shall be determined by the unit.

3. Initial recommendations for advancement in title for faculty holding fixed-term appointments is the responsibility of the unit Personnel Committee (see Section IV, A.1.).

C. Probationary Appointments

**Probationary appointments are made at the professorial ranks of instructor, assistant professor, associate professor, and professor. Persons appointed as instructors shall not be considered for reappointment with permanent tenure until promoted to a higher rank. Persons appointed as assistant professor, associate professor, or -professor are eligible for permanent tenure.**

**A faculty member appointed to an administrative position is eligible for permanent tenure only as a faculty member in one of the professorial ranks. There is no permanent tenure in an administrative position.**

1. **Notice of Reappointment or Non Reappointment. (UNC Code 604).**

**The decision not to reappoint a faculty member at the expiration of a term of service shall be made by the appropriate unit committee and the 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:**

**(a) During the first year of service at East Carolina University, 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 East Carolina University, the faculty member shall be given not less than 180 calendar days' notice before the employment contract expires.**

(c) After two or more years of continuous service at East Carolina University, the faculty member shall be given not less than 12 months' notice before the employment contract expires.

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 chancellor thereafter to offer a terminal appointment of one academic year.

~~Probationary appointments are made at the professorial ranks of instructor, assistant professor, associate professor, and professor. Persons appointed as instructors shall not be considered for reappointment with permanent tenure until promoted to a higher rank. Persons appointed as assistant professors, associate professors, and professors are eligible for permanent tenure.~~

~~In accordance with the UNC Code, 604A1, the faculty member shall be notified not later than twelve months before the end of the probationary period whether he or she will be recommended for permanent tenure. faculty member appointed to an administrative position is eligible for permanent tenure only as a faculty member in one of the professorial ranks. There is no permanent tenure in an administrative position.~~

~~During the second year of continuous service at East Carolina University, no fewer than 180 calendar days of notice of reappointment or nonreappointment shall be given before the employment contract expires. During the third and all succeeding years of continuous service, the faculty member shall be given not fewer than twelve months notice of reappointment or nonreappointment before the employment contract expires.~~

## 2. 4. Probationary Terms

Although the chancellor may recommend that a faculty member be granted permanent tenure at any time, **the faculty member shall be notified not later than twelve months before the end of the probationary period whether he or she will be recommended for permanent tenure.** The normal probationary term for the professorial ranks, as established at the time of initial appointment, shall be as follows:

- (a) Instructor. The rank of instructor is reserved for persons who lack the qualifications for appointment as assistant professor. Faculty members appointed as instructors are eligible for an initial three-year appointment and one successive reappointment of two years. Instructors promoted to the rank of assistant professor no later than the beginning of the fourth year of employment are eligible for a final two-year probationary appointment in the higher rank. The maximum probationary term is seven years.

- (b) Assistant Professor. The maximum probationary term is seven years, consisting of an initial three-year appointment and two successive two-year appointments.
- (c) Associate Professor. The maximum probationary term is five years, consisting of an initial three-year appointment followed by a two-year appointment.
- (d) Professor. The probationary term is three years, consisting of one three-year appointment.

All time served in a probationary appointment at East Carolina University must be continuous, excluding any leaves of absence as noted in Section II.C.3.

When a faculty member in probationary appointment requests and is awarded promotion in rank before the end of the probationary term, the original contractual probationary term shall not be altered.

In order to afford the maximum opportunity for tenure, the probationary term for personnel hired at the professorial ranks, whose contract date occurs earlier than the beginning of the Fall semester (or July 1 for faculty in the Division of Health Sciences and Academic Library Services), will be measured from the beginning of the subsequent Fall semester (or July 1 for faculty in the Division of Health Sciences and Academic Library Services).

### **3.-2- Reduction of the Normal Probationary Term for Previous Academic Employment**

Reduction of the normal probationary term may be granted for previous full-time faculty employment at the time of initial appointment as assistant professor, or associate professor. The granting of such reduction shall require the agreement of the appointee, a simple majority of the unit Personnel Committee, the unit administrator, the dean, and the appropriate vice chancellor. The maximum reduction at each professorial rank shall be as follows:

- (a) For a candidate appointed at the rank of instructor, no reduction is allowed.
- (b) For a candidate appointed at the rank of assistant professor, a maximum reduction of three years is allowed.
- (c) For a candidate appointed at the rank of associate professor, a maximum reduction of two years is allowed.
- (d) For a candidate appointed at the rank of professor, no reduction is allowed.

#### 4. ~~3.~~ Extensions of the Probationary Term

Leaves from all employment obligations which are granted to probationary-term faculty may include extension of the length of the probationary term. (Leaves of absence normally should be for not more than two academic years or occur more often than once in three years). Extensions of the probationary term **must** ~~should~~ be requested by the faculty member and shall be granted only in cases of severe personal exigency, such as illness, childbirth, child care, or other compelling personal circumstances, and shall be limited to a total of no more than two years. Probationary term faculty who have received paid leave of at least 15 weeks under the ECU Serious Illness and Disability Leave Policy shall receive an extension of the probationary term if requested. Extensions of the probationary term must be expressly stated in appointment or reappointment documents or added by a written memorandum of amendment by the unit administrator during the term of an appointment. The probationary term may be extended in increments of one or more academic years: one year for leaves of one or two semesters, two years for leaves of three or four semesters. All such extensions must be approved in writing by the faculty member, the unit Personnel Committee, the unit administrator, the dean, the appropriate vice chancellor, and the chancellor or the chancellor's designee. A probationary-term faculty member who assumes a full-time administrative position for one or more semesters may be granted extensions of the length of the probationary term in the same way.

#### 5. ~~4.~~ Progress Toward Tenure Letters

Each Spring semester, the unit Tenure Committee and unit administrator will review the annual reports of each probationary term faculty member. On the basis of this review, the unit administrator, in consultation with the unit Tenure Committee, will write a progress toward tenure letter to each probationary term faculty member. **This letter will address the cumulative expectations of the candidate's contributions to date.** In the event the unit Tenure Committee and the unit administrator cannot agree on the contents of the letter, the next higher administrator shall confer jointly with the unit Tenure Committee and unit administrator, determine at his or her discretion the content of the letter, and prepare the progress toward tenure letter. Copies of the progress toward tenure letter will be placed in the faculty member's personnel file, and a copy will be sent to the unit Tenure Committee and to the next higher administrative level. The unit administrator and a representative of the unit Tenure Committee will discuss the progress toward tenure letter with the faculty member. In the event that the faculty member disagrees with the contents of the progress toward tenure letter, it is the responsibility of the faculty member to make this disagreement known in writing addressed to the unit administrator for inclusion in the personnel file and the PAD. Copies of this letter will be placed in the faculty member's personnel file, and a copy will be sent to the unit Tenure Committee and to the next higher administrative level. (See Section IV.D.3.)

#### ~~5.6~~ **Request for Early Permanent Tenure** ~~Request for Permanent Tenure~~ ~~Prior to the End of the Probationary Term~~

During the Spring semester of the academic year, a faculty member who has not completed the probationary term (see Section II.C.1-3) and who requests in writing that consideration be given to conferral of permanent tenure will be considered for permanent tenure during the Fall semester of the next academic year.<sup>3</sup>

D. Initial Appointment with Permanent Tenure

A faculty member whose initial appointment is to a professorial rank with permanent tenure shall be regarded as having permanent tenure until retirement, resignation, or removal according to the provisions of Sections VI or VII of this document.

E. Joint Appointments

Joint appointments are made when faculty members are appointed with responsibilities in more than one unit. The source of funds for joint appointments may come solely from one unit, or it may come separately from two or more units to which the faculty member has a joint appointment.

Faculty members who hold joint appointments in more than one unit or center within East Carolina University shall be assigned to a primary academic unit with a greater than half-time appointment in the primary academic unit. The letter of appointment will specify the terms of the appointment, will identify the primary academic unit and will reference all units in which the faculty member holds joint appointments. A single appointment letter signed by all supervising administrators is preferable, but in instances where a jointly appointed faculty member has disparate duties in the various units, a separate joint appointment letter may be issued by the administrators of the units in which the faculty member holds joint appointments, provided that a copy of each joint appointment letter is forwarded to the unit administrator(s) of the other supervising unit(s).

Each appointment letter issued by the primary and joint appointment units will specify the faculty member's responsibilities, performance expectations, and compensation, if any, for that department and/or program. Annual, written evaluations of the faculty member will be prepared by the unit administrator of the faculty member's primary academic unit, in consultation with the administrator(s) of the unit(s) to which the faculty member is jointly appointed. If the administrators of the units to which the faculty member is jointly appointed

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<sup>3</sup>~~A faculty member considering such action is encouraged to seek consultation with the unit Personnel Committee and the unit administrator. When a faculty member applies for and then withdraws a request for early consideration for permanent tenure, a copy of all documents submitted to support the request and a record of all decisions by the appropriate committee and any administrator(s) shall be directly forwarded to the appropriate vice chancellor. Because a faculty member will be considered for permanent tenure if he or she reaches the end of the probationary term, denials of requests for permanent tenure made before the end of the probationary term are not subject to appeal.~~

disagree on the annual evaluation, the next higher administrator to the primary academic unit will arbitrate the disagreement and will write the final annual faculty evaluation, if agreement cannot be reached among all joint appointment units.

For probationary faculty appointments and permanently tenured faculty appointments, the policies and procedures of the primary academic unit shall be used for reappointment, tenure, and promotion of the faculty member, as appropriate to the appointment type. Annual progress toward tenure letters for probationary faculty will be prepared by the unit administrator of the primary academic unit, in consultation with the administrator(s) of the unit(s) to which the faculty member is jointly appointed, and in consultation with the Tenure Committee of the primary academic unit. If there is disagreement on the progress toward tenure letter, the next higher administrator of the primary academic unit will confer with the Tenure Committee of the primary academic unit and with the administrators of the units to which the faculty member is jointly appointed, determine at his or her discretion the content of the letter, and prepare the progress toward tenure letter.

For all faculty on joint appointments, annual salary increase recommendations will be made on each funding source of the appointment according to the guidelines of the units, the General Administration, and those of the University. If there is one source of funding, the administrators of the separate portions of the appointment will consult and recommend together. If there is disagreement, it will be appealed to the next higher administrator of the primary academic unit.

All faculty members who hold joint appointments are governed by the *ECU Faculty Manual*, and all provisions of each faculty appointment must be consistent with relevant sections of the *ECU Faculty Manual*. (Faculty Senate Resolution #02-05)

### **III. Promotion**

Persons holding the professorial rank of instructor, assistant professor, or associate professor may be promoted to the next professorial rank. Promotion shall be based primarily on the faculty member's demonstrated professional competence and achievement. See *Appendix C, Personnel Policies and Procedures for the Faculty of ECU*. Promotion is governed by the policies and procedures set forth in Section IV, below. By the first week of March of every academic year, a faculty member who wishes to be considered for promotion to the next professorial rank shall write a letter requesting a personnel action of promotion in rank to her or his unit administrator. The request for promotion shall be considered by the appropriate unit committee during the Fall semester of the next academic year.<sup>4</sup>

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<sup>4</sup> A faculty member considering such action is encouraged to seek consultation with the unit Personnel Committee and the unit administrator. When a faculty member applies for and then withdraws a request for promotion, a copy of all documents submitted to support the request and a record of all decisions by the appropriate committee and any administrator(s) shall be directly forwarded to the appropriate vice chancellor.

IV. Procedures for Initiation, Review, and Approval of Appointments, Reappointments, Promotions, and the Conferral of Permanent Tenure  
(Please refer to *ECU Faculty Manual* Interpretation #106-22.)

Recommendations for appointments, reappointments, promotion, and the conferral of permanent tenure to faculty are the responsibility of unit committees and the unit administrator. Evaluation of faculty for appointment, reappointment, promotion, and the conferral of permanent tenure shall be initiated by the appropriate unit committee on notice from the unit administrator and higher administrative authority. The appropriate unit committee shall also evaluate faculty for promotion and the early conferral of permanent tenure at the request of the faculty member. Once the evaluation has been completed, the committee's recommendation and the recommendation of the unit administrator shall be forwarded to the next higher administrator above the unit level for initiation of administrative review of the recommendations. The pertinent structures and processes are set forth in this section. The timeline for these processes is set forth in Part XIII. of the *ECU Faculty Manual*.

Confidentiality must be maintained when conducting any substantive business pertaining to initiation, review, conferral of permanent tenure, and approval of appointments, reappointments, and promotions. Email should be used with discretion because it does not guarantee confidentiality. Formal correspondences relating to any substantive business pertaining to initiation, review, conferral of permanent tenure, and approval of appointments, reappointments, and promotions should be maintained in paper form.

Description of "voting faculty"

For the purposes of Section IV, voting faculty members are determined by the permanently tenured faculty of the unit using the following criteria;

A voting faculty member of a unit is someone who:

- holds a full-time faculty position with East Carolina University and a greater than one-half time position in the unit, and
- is either a probationary term (tenure track) faculty member or a permanently tenured faculty member.
- has at least one-half of the teaching/research duties normally assigned in the unit, as determined by the permanently tenured faculty of the unit using standards appropriate to their discipline.
- is in at least the twelfth consecutive calendar month of appointment to the faculty of the unit as either a probationary term (tenure track) faculty member or a permanently tenured faculty member.
- is not a unit administrator or an individual with one half or more of his/her load assigned to administrative duties as determined by the permanently tenured faculty in consultation with the unit administrator.
- or normally meets the above conditions and is on leave of absence from all university duties but is in attendance at the meeting of the appropriate committee

at the time of the committee's vote on a personnel action (reappointment, promotion, or tenure recommendation). (Faculty Senate Resolution #03-30)

Related faculty within the same academic department (or other comparable institutional subdivision of employment) shall not participate, either individually or as a member of a committee, in the evaluation of related persons for appointment, reappointment, promotion, the conferral of permanent tenure, cumulative review, salary recommendations, or any other personnel action. A faculty member made ineligible for participation in the evaluation of a related person does not count for quorum purposes and his/her ineligibility does not constitute a recommendation against the proposed personnel action.

A. Unit Committees<sup>5</sup>

1. Personnel Committee

a. Function

The Personnel Committee shall be responsible for making recommendations regarding initial probationary appointments and initial and additional special fixed-term appointments.

b. Composition

The composition of each unit's Personnel Committee shall be determined by the unit but shall consist of at least three members. The membership of the committee shall be composed of some or all of the permanently tenured and probationary-term voting faculty members of the unit, including those who are on leave but in attendance at the meeting at the time of the committee's vote, but excluding the unit administrator. At least two thirds of the unit Personnel Committee membership shall be permanently tenured voting faculty. When there are not enough permanently tenured voting faculty members in the unit to satisfy this requirement, additional permanently tenured faculty shall be appointed. All other members of the unit Personnel Committee shall be elected by the permanently tenured and probationary-term voting faculty of the unit. The chair of the unit Personnel Committee shall be permanently tenured and shall be elected annually by and from the committee's membership.

c. Additional Roles of Unit Personnel Committee

In addition to making recommendations to the unit administrator on initial and additional fixed-term appointments and initial probationary-term appointments, the unit Personnel Committee has the following responsibilities:

1. Notifying fixed-term faculty members that the Personnel Committee will or will not recommend an additional fixed-term appointment when the fixed-term faculty member requests notification not earlier than 180 calendar days nor later than 90 calendar days before the current term expires.

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<sup>5</sup> Except as provided herein, meetings of the committees shall be conducted according to the most recent edition of *Robert's Rules of Order, Newly Revised*.

2. Reviewing requests for reduction in the normal probationary term at the time of initial appointment (see Section II.C.2).
3. Reviewing requests for the extension of the normal probationary term (see Section II.C.3).
4. Consulting with faculty members who are considering requesting conferral of permanent tenure prior to the end of the probationary term (see Section II.C.5).
5. Consulting with faculty members who are considering requesting promotion (see Section III.).
6. Reviewing additional materials submitted by faculty members for inclusion in their personnel action dossier; consulting with the unit administrator regarding responses to such materials (see Section IV.B.).
7. The personnel committee may elect a search committee as prescribed by the unit's code to fulfill the responsibilities of soliciting and screening applicants and recommending to the unit's Personnel Committee candidates for initial appointments. A majority of the search committee must be voting faculty. For the purposes of this section, administrators may not be a part of the committee.
8. Making recommendations for advancement in title for fixed term faculty.

d. Role of the Chair of the Unit Personnel Committee

The chair of the unit Personnel Committee shall be permanently tenured and shall be elected annually by and from the committee's membership. The chair shall preside over all committees making personnel recommendations to the faculty, and may participate in the decisions of any committee of which the chair is a member, except as noted below. If the chair of the unit Personnel Committee holds a professional rank lower than that to which a faculty member requests promotion, the unit Personnel Committee chair shall not be eligible to participate and shall only be responsible for calling the meetings of such committees and facilitating the election of a chair of the committee from among its membership. In such cases where the Chair of the unit Personnel Committee is ineligible to participate, he/she shall not attend any meetings of the committee except to facilitate the election of the chair as noted above. The elected chair of the committee shall obtain and distribute materials to be used during the deliberation of such bodies, insure that a valid vote has been taken, communicate the results of such votes to the appropriate faculty and to the unit administrator, and perform other duties as designated by the unit.

2. Promotion Committee

a. Function

The Promotion Committee shall be responsible for making recommendations for promotions in rank and for recommending the ranks of initial appointments at the associate professor or professor level.

b. Composition

The membership of the Promotion Committee shall be composed of those permanently tenured and probationary-term voting faculty members who

hold rank at least equal to the rank for which the candidate is being considered, including those on leave but in attendance at the committee's meeting at the time of the committee's vote, but excluding the unit administrator. The composition of the committee shall thus vary with the rank to which a faculty member is being considered for promotion. When a unit has fewer than three permanently tenured voting faculty members of sufficient rank and not holding administrative status, the next higher administrator above the unit level shall appoint permanently tenured faculty at the required rank from other units across the university to increase the committee's membership to three, with at least two-thirds of the members being permanently tenured faculty. These appointments to the committee must be from one list of candidates selected by a vote of the permanently tenured and probationary-term faculty having rank at least equal to the candidate(s) being considered for promotion. The list forwarded to the next higher administrator by the faculty will contain at least twice the number of faculty members required to complete the membership of the committee. Before voting on the list to be forwarded to the next higher administrator, the chair of the committee will ascertain that faculty members nominated to have their names placed on the list are willing and able to serve in this important capacity. The list of faculty names recommended to the next higher administrator may not be returned for revision. Meetings of the promotion committee shall be convened by the Chair of the unit's Personnel Committee. The first order of business for a newly convened Promotion Committee shall be to elect a Chair from among its membership.

3. Tenure Committee

a. Function

The Tenure Committee shall be responsible for making recommendations for reappointments of probationary-term faculty members, the granting of permanent tenure, and conferral of tenure for initial appointments with permanent tenure.

b. Composition

The membership of the Tenure Committee shall be composed of the permanently tenured voting faculty of the unit, including those who are on leave but in attendance at the meeting at the time of the committee's vote, but excluding the unit administrator. When a unit has fewer than three permanently tenured voting faculty members not holding administrative status, the next higher administrator above the unit level shall appoint permanently tenured faculty from other units to increase the committee's membership to three. These appointments to the committee must be from one list of candidates selected by a vote of the permanently tenured and probationary-term faculty of the unit. The list forwarded to the next higher administrator by the appropriate faculty will contain at least twice the number of faculty members required to complete the membership of the committee. Before voting on the list to be forwarded to the next higher administrator, the voting faculty will ascertain that faculty members

nominated to have their names placed on the list are willing and able to serve in this important capacity. The list of faculty names recommended to the next higher administrator may not be returned for revision.

c. Additional roles of the unit Tenure Committee.

A Code Unit may establish, in its Code of Operation, procedures for fulfilling their additional roles; however, if the Code of a unit is silent in this regard, it is hereby established that the entire membership of the unit Tenure Committee will participate in these additional roles. In accordance with the unit code, if the unit's Tenure Committee has more than five members, the unit Tenure Committee may elect a subcommittee of at least five members to participate in these additional roles. The unit Tenure Committee (or properly constituted subcommittee):

1. Consults with the unit administrator who writes a progress toward tenure letter to each probationary term faculty member as described in Section II.C.4.
2. Produces a list of possible external reviewers and selects external peer reviewers from lists produced by the Committee and by the candidate (see Section IV.E).
3. Selects, with the unit administrator, the research and creative activity materials to be sent to external peer reviewers (see Section IV.C).
4. Prepares a cumulative evaluation in narrative form of the candidate's teaching, research, service, and any other relevant duties.

B. Role of Unit Administrator

The unit administrator serves to provide leadership, support, and guidance to the total functioning of the unit. As indicated at the beginning of this section, the personnel recommendations of the unit administrator shall be forwarded to the next higher administrator along with the recommendation of the appropriate faculty committee.

The unit administrator is responsible for maintaining the personnel files, providing timely notification to the chair of the unit Personnel Committee on all personnel actions required or expected, and distributing all personnel documents and materials to the appropriate location. The unit administrator, in consultation with the unit Tenure Committee (or properly constituted subcommittee), will write a progress toward tenure letter to each probationary term faculty member as described in Section II.C.4. The unit administrator prepares a cumulative evaluation in narrative form of the candidate's teaching, research, service, and any other relevant duties.

In personnel matters, the unit administrator functions as an administrator rather than a faculty member. Consequently, the unit administrator does not have a faculty vote in personnel matters. Therefore, unit administrators are excluded from all unit committee deliberations concerning candidates for appointment, re-appointment, promotion, or permanent tenure, (for procedure for nonconcurring recommendations, see Appendix D, Part IV.H.). However at the invitation by a majority vote of the membership of the Personnel Committee a unit administrator

may meet with the committee to discuss initial appointments. Further, the administrator may meet with the Tenure Committee (or properly constituted subcommittee) in reference to progress toward tenure letters as noted in II.C.4.

- C. External Peer Review for Promotion and the Conferral of Permanent Tenure  
"External peer review" means a review of a candidate's research and creative activity by persons who are not faculty or employees of East Carolina University. External peer review of the quality of the research and creative activity material submitted by the candidate for promotion or conferral of permanent tenure or both will be used by the appropriate committee in conjunction with its own evaluation of the material. Qualifications of the reviewers and criteria for their selection are to be determined by the faculty of each unit. According to the provisions of unit codes, other materials that reflect the candidate's scholarly activities may be included in the selection to be sent to external reviewers.

By the last week of March of the Spring term prior to the academic year in which a promotion or tenure decision is scheduled, the unit Tenure Committee shall produce a list of possible external reviewers. The candidate for promotion and/or permanent tenure shall provide a similar list, noting for each name the professional relationship, if any, between the reviewer and the candidate. The candidate shall also provide similar relationship information for each name on the unit Tenure Committee's list. These two lists must be independently compiled and if the two lists contain a common set of prospective external reviewers, the unit Tenure Committee list shall be revisited and new possible external reviewers shall be identified as replacement for those originally on both lists.

The unit Tenure Committee shall select a sufficient number of names from the unit Tenure Committee's list and the candidate's list to ensure a minimum of three external reviewers, two from the unit Tenure Committee's list and one from the candidate's list. Code units that require more than three external reviewers shall make special provisions in their unit codes. These provisions must clearly indicate the number of external reviewers required by the unit. In those cases where a unit requires more than three reviewers, the choice of reviewers must reflect, as nearly as possible, the two to one ratio of reviewers proposed by the unit Tenure Committee to those proposed by the candidate.

The unit administrator will notify the reviewers that they have been nominated to conduct the review and will ascertain their willingness to serve as reviewers. Selected material with a cover letter prescribed by the appropriate vice chancellor shall be sent to the reviewers. Correspondence with the reviewers shall be written in neutral terms, serving to neither support nor oppose the candidate and shall not deviate substantially from the prescribed cover letter. Copies of the prescribed letters are available on the Faculty Senate website at <http://www.ecu.edu/cs-acad/fsonline/fg/facultygovernance.cfm>. Copies of all correspondence with the reviewers and the reviews shall be made a part of the Personnel Action Dossier (hereinafter, "the dossier") (see Section IV.D.2.).

Sample of an External Review Letter (used by both Academic Affairs and Health Sciences)

Only the unit administrator will communicate with the external reviewers and only on procedural matters for the duration of the personnel action.

The unit administrator and the unit Tenure Committee shall select the material from the dossier to be sent to external reviewers. The candidate may include additional published or accepted material if he or she disagrees with the initial selection. Inclusion of such additional items in the materials sent to reviewers shall be noted by memorandum of the unit administrator in the dossier and the candidate's personnel file.

Upon receipt of a review, the unit administrator will place the original review in the candidate's personnel file and copies of the review in the candidate's dossier. The unit administrator shall then notify the members of the appropriate committee and the candidate that the review is available. **Within 7 calendar days after receipt, the unit administrator will provide candidates for Tenure and/or Promotion with copies of their external review letters.**

When fewer than three external reviewers respond, this information, by memorandum from the unit administrator, shall be made a part of the candidate's personnel file and dossier.

D. Documentation for Personnel Actions

1. Employment Applications

Information on job applicants is to be kept in a file available to the appropriate committee (see Section IV.A).

2. Personnel Action Dossier for Reappointment, Promotion, and Permanent Tenure

The Personnel Action Dossier is a file containing materials for evaluating a faculty member's professional activity. The dossier is compiled by candidates for reappointment, promotion, and/or permanent tenure in consultation with the unit administrator and the chair of the unit Personnel Committee. The dossier will be used by the appropriate committee in making personnel recommendations. A fixed-term faculty member seeking to be recommended for a second or subsequent fixed-term appointment need not compile the dossier.

3. Disagreements as to inclusion or removal of documents

The dossier shall include the required documents and lists relevant to the faculty member's teaching, research/creative activity, and service as described above. If the faculty member disagrees with the unit administrator and/or the unit personnel committee as to the inclusion of relevant documents, the documents will be included and each may include a statement about the document in the dossier.

For details on organization, content and limitations of the dossier, see Part XII. of the *ECU Faculty Manual*.

E. Initiation of Recommendations by Unit Personnel, Tenure and Promotion Committees

1. Procedural Rules for conducting committee business

The unit administrator shall give timely notice to the chair of the unit Personnel Committee when personnel actions are to be initiated, and of the date by which the committee's recommendation must be communicated to the unit administrator. After being notified by the unit administrator that a personnel action is required, the chair of the unit Personnel Committee shall make at least three attempts at intervals of no less than five working days each to hold a meeting of the appropriate committee for the pending personnel action. In order to conduct business a committee shall not meet without a quorum.

A quorum is defined as three quarters of the membership for a committee that has twenty or fewer members; and a quorum is defined as a majority, defined as 50% plus one, of the membership for a committee that has more than twenty members. A list of all committee members who were absent during a vote on a personnel action will be forwarded to the unit administrator. The committee may develop policies to designate certain absences as excused absences. Unexcused absences should be considered in annual evaluations.

The purpose of this meeting is to hold a vote by secret ballot on the pending personnel action. All materials pertaining to the pending personnel action (see Section IV.D) must be available for inspection at least five business days prior to the meeting. Members of the committee(s) having authority over the pending personnel action shall review the materials individually in preparation for discussion at the meeting. A faculty member on leave and not in attendance at a meeting shall not be counted for the purposes of determining a quorum for that meeting. A faculty member on leave but in attendance at a meeting shall be counted for the purposes of determining a quorum for that meeting. If the committee fails to meet the deadline for receipt of the committee's recommendation, this outcome shall count as a recommendation by the committee against appointment, reappointment, promotion, or tenure. In such a case, the chair of the unit Personnel Committee shall report in writing to the unit administrator that after at least three attempts the committee has failed to meet due to a lack of a quorum, and that this outcome constitutes a recommendation against appointment, reappointment, promotion, or tenure. The unit administrator shall forward the committee's recommendation and the unit administrator's recommendation to the candidate and to the next higher administrator.

2. a. In the case of initial appointment recommendations, each member of the unit Personnel Committee will indicate by secret ballot his or her choice for the appointment. A candidate who receives a majority vote of the committee members present shall be recommended for appointment. (For

recommendations of rank of initial appointments at the associate professor or professor level, see IV.A.2.a. For conferral of tenure for initial appointments see IV.A.3.a.)

b. Faculty recommendations for reappointment, promotion, and conferral of permanent tenure shall come from the appropriate committee (see Section IV.A). The committee members may choose to vote by mail according to the latest edition of *Robert's Rules of Order, Newly Revised*. Within fifteen working days of notification by the unit administrator of the need to initiate a personnel action, the chair of the unit Personnel Committee shall convene a meeting of the appropriate committee (see Section IV.E.1). At this meeting, the chair of the unit Personnel Committee shall ascertain whether or not the committee will vote by mail. If a motion to vote by mail is approved by a majority of the committee members present and voting, voting shall be by mail. If a committee chooses to vote by mail, all members must vote by mail.

c. In the case of **recommendations for new appointments** ~~contract renewal recommendations~~ for faculty members **currently** holding fixed-term appointments, each member of the unit Personnel Committee will indicate by secret ballot his or her choice for or against **the recommendation recommending a contract renewal**. This vote may be taken at a committee meeting or by mail ballot as described in Section IV. E.2b. A vote for the recommendation by a majority of the committee members present shall constitute a recommendation for **a new appointment** ~~reemployment~~. A member who is present when a vote is taken but who does not vote counts as part of the membership of the committee for the purposes of determining what constitutes a majority vote. Failure to obtain a majority vote constitutes a recommendation against **a new appointment**. ~~contract renewal~~. (Faculty Senate Resolution #03-30).

d. If a committee votes by mail, the ballots shall be sent by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 or distributed by the committee chair. The refusal by a committee member to receive the correspondence containing the ballot within five business days of the first delivery attempt shall count as a vote against appointment, reappointment, promotion, or tenure. If ballots are distributed, the committee chair shall assure that recipients acknowledge receipt in writing. The acknowledgment must include the date of receipt. A ballot either shall be returned by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 or shall be personally returned by hand to the committee chair, at the discretion of the individual committee member. Committee members returning ballots by hand shall sign a confirmation form that is retained by the committee chair. Ballots not returned within twenty working days of verified receipt shall count as a vote against recommending appointment, reappointment, promotion, or tenure. If a committee votes by mail, a faculty member on leave may choose either to vote or not to vote, at his or her discretion. The unit administrator shall ascertain and shall inform

the chair of the unit Personnel Committee in writing as to whether or not a faculty member on leave will participate in a mail ballot. If a faculty member on leave chooses to participate in a mail ballot, the faculty member shall count in determining what is required for a majority vote in favor of the recommendation. If the faculty member on leave chooses not to participate in a mail ballot, the faculty member shall not count in determining what is required for a majority vote in favor of the recommendation. (Faculty Senate Resolution #03-30)

3. In the case of reappointment, promotion, and conferral of permanent tenure, each member of the appropriate committee will indicate by secret ballot his or her vote for or against recommending that the candidate be reappointed, promoted, and/or granted permanent tenure. This vote may be taken at a committee meeting or by mail ballot as described in Section IV.G E.2d. A vote for the recommendation by a majority of the committee members present shall constitute a recommendation for reappointment, promotion, and/or conferral of permanent tenure. A member of a committee who is present when a vote is taken but who does not vote counts as part of the membership of the committee for the purposes of determining what constitutes a majority vote. Failure to obtain a majority vote shall constitute a recommendation against reappointment, promotion, and/or the conferral of permanent tenure. (Faculty Senate Resolution #03-30)
4. The recommendation of the appropriate committee shall be communicated by the chair of the unit Personnel Committee or the Promotion Committee to the candidate and the unit administrator (see IV.A.1.d.).

F. Notification of Recommendations

The faculty member shall be informed of all recommendations at every level, beginning with the appropriate unit committee's recommendation and continuing up to the level where the final decision is made.

The notification letter from the Tenure Committee and the notification letter from the unit administrator shall contain (a) the cumulative evaluation of the candidate's teaching, research and service, and any other relevant duties, in accordance with section B.3. Recommendations for Tenure of Part XII. Personnel Action Dossier of the *ECU Faculty Manual* and (b) the statement that the candidate has four working days from the date of the notification letter to include a response to the cumulative evaluation, in accordance with section D. Supporting Materials of Part XII. Personnel Action Dossier.

G. Procedure for Concurring Recommendations

In the case of disagreement at any level refer to the procedures outlined in H. below.

If the recommendations of the appropriate committee and unit administrator agree, the next higher administrator shall either concur or not concur, then notify

the unit administrator and the chair of the unit Personnel Committee of the recommendation and forward all recommendations to the immediate supervisor. This procedure shall be repeated at each administrative level until the recommendation reaches the appropriate vice chancellor.

Immediately after the completion of each level of administrative review, the administrator's recommendation shall be communicated to all appropriate lower administrators, the candidate, and the committee of the unit which made the initial recommendation.

If the vice chancellor concurs in a recommendation for promotion and/or conferral of permanent tenure, he or she shall forward the recommendation to the chancellor. The chancellor shall consider the recommendation from the vice chancellor to promote and to confer permanent tenure.

If the vice chancellor concurs in a decision not to recommend reappointment, promotion, and/or conferral of permanent tenure, he or she shall give the faculty member being considered a simple, written statement of the decision. This decision is final except as it may later be reviewed in accordance with the provisions of Section V or the grievance procedure of Appendix Y.

If the chancellor concurs in a recommendation to confer permanent tenure, he or she shall submit the recommendation to the Board of Trustees for final approval. If the chancellor concurs in a recommendation for promotion, the chancellor's approval shall be final.

#### H. Procedure for Nonconcurring Recommendations

If the recommendations of an administrator and the appropriate committee disagree, that administrator shall discuss the potential nonconcurrence at the unit committee level before forwarding the committee's recommendation and his or her concurrence or nonconcurrence to the next higher administrator. If the unit administrator and the appropriate committee do not agree, their conflicting recommendations shall be forwarded through each administrative level, together with the recommendation of the administrator at each level, until they reach the appropriate vice chancellor. In the case of fixed term employment recommendations the decision of the appropriate vice chancellor is final. All other personnel actions shall be handled in accordance with the procedures provided in Section IV.G. Procedures for Concurring Recommendations.

In the event that the vice chancellor is considering a recommendation that is contrary to the vote of the appropriate unit committee, the vice chancellor shall meet with the committee to discuss the potential non concurrence. **If the vice chancellor decides not to recommend reappointment, promotion, and/or conferral of permanent tenure, the vice chancellor shall give the faculty member being considered a simple, written statement of the decision. This decision is final except as it may be reviewed in accordance with the**

provisions of Section V or the grievance procedure of Appendix Y as appropriate<sup>6</sup>.

If the chancellor decides not to recommend promotion or the conferral of permanent tenure, the chancellor shall give the faculty member being considered a simple, written statement of the decision. This decision is final except as it may be reviewed in accordance with the provisions of Section V or the grievance procedure of Appendix Y, **as appropriate.**

V. Procedure for **Review Appeal of Any Notice of Non-Reappointment or Notice of Non-Conferral of Permanent Tenure at the Completion of the Probationary Term.**

A. Deadlines for Appeal **Review**

Failure to submit the **review** appeals documents specified in this section within the time periods allotted constitutes a waiver of the right to **have the decision reviewed** ~~appeal the decision~~. However, before the expiration of the deadline the faculty member may request an extension, provided that the request is made in writing and presented to the **Hearing Committee**. ~~individual or committee who is next to consider the appeal~~. Within 10 **calendar** ~~working~~ days of receiving a request for extension, decisions on requests for extension of time shall be made by the **Hearing Committee**. ~~individual or committee who is next to consider the appeal~~. **The Committee will endeavor to complete the review within the time limits specified except under unusual circumstances such as when the time period includes official university breaks and holidays and when, despite reasonable efforts, the Committee cannot be assembled.**

B. Request for Hearing with the Faculty Hearing Committee

Within 25 **calendar** ~~working~~ days of receiving written notice from the vice chancellor ~~or chancellor~~ of non-reappointment or non-conferral of permanent tenure, a faculty member (hereinafter, the complainant) may request a hearing before the Faculty Hearing Committee.

1. The Hearing Committee

The Hearing Committee shall be composed of five members and five alternates each of whom is a full-time, permanently tenured voting faculty member without administrative appointment (**as per Appendix D, Section IV**). Members shall be elected in accordance with the procedures for election of appellate committees specified in the Bylaws of the East Carolina University Faculty Senate. Members and alternates shall be elected to three-

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<sup>6</sup> **Appeals of all nonreappointment and the nonconferral of permanent tenure at the end of the contract period may be filed in accordance with the provisions of Section V of this Appendix. Also, appeals of Nonreappointment coupled with the nonconferral of early permanent tenure may be filed in accordance with the provisions of Section V of this Appendix. ~~Denial of promotion may be filed in accordance with the provisions of Appendix Y.~~ A grievance (Appendix Y) may be filed in response to a denial of promotion and/or early permanent tenure.**

year terms. A quorum for the committee shall be the five members or their alternates.

Upon organization, the members of the Hearing Committee shall elect a chair and a secretary. **Because hearings in matters of non-reappointment or conferral of permanent tenure can present complex and difficult questions of fact, policy and law, and because of the central role of the committee in gathering and preserving the evidence upon which most subsequent decisions related to the matter will be based, it is important for the chancellor to ensure that faculty committee members, as well as relevant administrators and aggrieved faculty members,** ~~The members of the committee are to be~~ appropriately trained in accordance with guidelines and procedures jointly established by the faculty officers and chancellor. Should any committee officer be absent at the beginning of a hearing, the committee shall elect an alternate officer for the purposes of the hearing. (Faculty Senate Resolution #03-49)

When the committee is convened to consider any matter associated with a complainant's request for a hearing, those committee members who hold an appointment in the complainant's academic unit, those who might reasonably expect to be called as witnesses, those who might reasonably expect to be asked to serve as advisors (see Section V.D.2, Conduct of the Hearing) to any party of the hearing, or those who may have any other conflict of interest should disqualify themselves from participation in the activities of the committee related to this specific request for a hearing. The complainant and those individuals or groups who are alleged to be responsible for the action or actions described by the complainant in the request for the hearing (hereinafter, the respondents) are permitted to challenge committee members for cause. The other members of the committee will decide on any potential disqualifications if a committee member is so challenged but wishes to remain.

**When membership of the committee falls below the specified five members and five alternates, the Faculty Senate will elect additional faculty members to the committee. Vacancies on the committee will be filled first by moving alternates to regular member status and by electing new alternates and/or members as needed to fill the committee roster.**

~~When, between elections, membership of the committee falls below the specified five members and five alternates, the chair of the faculty, in consultation with the Committee on Committees, shall appoint members to the committee. Vacancies on the committee will be filled by first moving alternates to members and by making appointments as alternates.~~

Upon receipt of a request for a hearing, the chair of the committee shall determine the availability of the **regular** elected members and alternates, and shall select from those available one or more alternates, as necessary. The

ranking of the available alternates for selection shall be determined by their years of service to the University. That available alternate who is most highly ranked shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing.

The committee may at any time consult with an attorney in the office of the University Attorney who is not presently nor previously substantively involved in the matter giving rise to the hearing, nor will advise the University administrator(s) **regarding** following the committee action(s) **during the review**. (See *Part VIII, Responsibilities of Administrative Officers.*)

## 2. Initiation of the Hearing Process

The basis for a request for a hearing must be found in one or more of the following reasons: (a) the decision was based on any ground stated to be impermissible in Section 604B of The Code of The University of North Carolina; (b) the decision was attended by a material procedural irregularity.<sup>i[]</sup> In addition, the University Equal Employment Opportunity policy prohibits employment discrimination based on sexual orientation.

Section 604B of The Code of The University of North Carolina states: "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** ~~honorable service in the armed services of the United States~~ **or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees**, or (c) personal malice. **For purpose 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)

"Material procedural irregularity" means a departure from prescribed procedures governing reappointment and conferral of permanent tenure **that is of such significance as to** cast reasonable doubt upon the integrity of the original decision not to reappoint or not to confer permanent tenure. Whether a ~~material~~ procedural irregularity occurred, **and whether it is material**, shall be determined by reference to those procedures which were in effect when the initial decision not to reappoint or not to confer permanent tenure was made and communicated. The Hearing Committee shall ask the chancellor to certify what procedures were then in effect if that question is a matter of dispute. (Faculty Senate Resolution #03-49)

The complainant's request for a hearing must specifically identify and enumerate all reasons for the request. The request must include (a) a description that is as complete as possible of the actions or the failures to act which support each specified contention; (b) the identification of the

respondents; (c) an enumeration and description of the information or documents which are to be used to support the contention (copies of the described documents are to be made a part of the request for a hearing); (d) the identification of persons who may be willing to provide information in support of the contention; **and (e) a brief description of the information those persons identified in (d) may provide and (f) a copy of the vice chancellor's notice of non-reappointment or non-conferral of permanent tenure.** The complainant's request for a hearing shall be made to the chair of the Hearing Committee **and delivered to the Faculty Senate office by a method that provides delivery verification.**

~~C. Validation of the Request for Hearing.~~

~~Validation of the complainant's request for a hearing is the first step in the hearing process. The Hearing Committee shall convene within 15 **calendar** days after receipt of the complainant's request for a hearing. The committee shall notify the complainant of the meeting date by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. The committee shall meet in executive session and the meeting will be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. The committee's evaluation of the complainant's request for a hearing shall be limited solely to the documents and information submitted as part of the complainant's request for a hearing.~~

~~The complainant may submit additional documentation and information supporting the request for a hearing up to 72 hours **4 calendar days** prior to the committee meeting. All documentation and information submitted after the original request for a hearing must (a) support contentions set forth in the original request for a hearing and (b) be delivered to the Faculty Senate office in the same manner as the original request for a hearing. Such information or documentation shall be made a part of the original request for a hearing. Documentation and information that do not meet criteria set forth in the previous paragraph will not be accepted and will be returned to the complainant.~~

~~The Hearing Committee's review of the complainant's request for a hearing shall be limited solely to determining whether the facts alleged by the complainant, if established, would support the contention that the decision not to reappoint or not to confer permanent tenure was based upon any of the grounds stated as impermissible in Section 604B of *The Code of The University of North Carolina* or was attended by a material procedural irregularity. Based on their review and evaluation of the submitted material, the committee shall decide whether the request for a hearing is to be validated.~~

~~If the request for a hearing is not validated, the complainant shall be notified by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, within 10 calendar days of the committee meeting. Such a determination confirms the decision not to reappoint or not to confer permanent tenure. (Faculty Senate Resolution #99-4)~~

~~The complainant, within 10 calendar days of receipt of the Hearing Committee's decision, may accept the decision of the Hearing Committee not to validate a hearing or may appeal to the chancellor **the decision not to conduct a hearing.** The chancellor, within 14 **calendar** days of the complainant's appeal, shall decide to confirm the committee's decision or shall support the complainant's request for a hearing. (Faculty Senate Resolution #99-4)~~

~~The complainant, within 10 calendar days following receipt of the chancellor's decision, may accept the chancellor's confirmation of the Hearing Committee's decision not to validate a hearing or may appeal to the Board of Governors **the decision not to conduct a hearing.** (Faculty Senate Resolution #99-4, #03-49)~~

~~If the committee validates the request for a hearing, or **if** the decision not to validate the request for a hearing is not supported by the chancellor, the committee shall so notify the complainant by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 and begin the processes necessary to set the time and date for the hearing.~~

C. Procedures for the Hearing.

1. Time and Date of Hearing

**After receiving the request for a hearing,** ~~If the request for a hearing is validated,~~ the committee shall provide a complete copy of the request for a hearing to the individuals named in the request for a hearing. The committee shall set the time, date, and place for the hearing. **The date for the hearing must be within 30 42 calendar days after receiving the request,** ~~working days of the notification to the complainant that the request for a hearing was validated,~~ **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.** The committee shall then notify the complainant, the respondents, the chair of the faculty, and the chancellor, of the time, date, and place of the hearing. At least ~~45~~ **21 calendar** ~~working~~ days before the hearing, the complainant shall notify the committee, the respondents, the chair of the faculty, and the chancellor of the identity of the complainant's advisor, if any, and whether or not the advisor is an attorney. ("Attorney" is defined as anyone with a Juris Doctor, or other recognized law degree, regardless of whether or not that person is licensed to practice law in the State of North Carolina and/or whether or not that person is "representing" the employee). **Within 14 days before the hearing, the complainant and respondent will submit documents and a list of witnesses to be used in the hearing.**

2. Conduct of the Hearing

The chair of the Hearing Committee or an **regular** elected member of the committee if the chair is unavailable, is responsible for conducting the hearing and for maintaining order during the hearing. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's*

*Rules of Order, Newly Revised.* Attendance at the hearing is limited to the committee's members and alternates, the complainant, one person who may advise the complainant, **the respondent(s), and one person who may advise the respondent(s).** If there is more than one respondent, the respondents will designate a spokesperson for the hearing. There will be an equal number of persons advising the complainant and respondent(s). The person advising the complainant ~~but who~~ may not take an active part in the proceedings. **The person advising the respondent(s) at the hearing may be the respondents, either an East Carolina University faculty member (with or without administrative appointment) selected by the Chancellor or an East Carolina University attorney, if the complainant is accompanied by an attorney.** The person advising the respondent(s) may not take an active part in the proceedings. Other persons (witnesses) providing information to the committee shall not be present throughout the hearing, but shall be available at a convenient location to appear before the committee as appropriate. For any hearing from which an appeal may be taken, a professional court reporter must be used to record and transcribe the hearing. (Faculty Senate Resolution #03-37)

Any such record is a part of the personnel inquiry and must be treated with appropriate confidentiality. Only the immediate parties to the controversy, the responsible administrators and attorneys, and the members of the University governing boards and their respective committees and staff are permitted access to such materials. (Faculty Senate Resolution #03-49)

The hearing shall begin with an opening statement by the committee member chairing the hearing. This statement shall be limited to explaining the purpose of the hearing and the procedures to be followed during the hearing. The hearing chair explicitly will note that the committee shall consider only information bearing on the allegations presented in the complainant's request for the hearing.

Following the opening remarks by the hearing chair, the complainant shall present his or her contentions and any supporting witnesses and documentary evidence. The respondent(s), through their **spokesperson representative**, may then reply to these contentions and present any supporting witnesses and evidence. During these presentations, the complainant, and the respondent(s), through their **spokesperson representative**, may cross-examine opposing witnesses. Committee members may question witnesses for purposes of clarification. At the conclusion of the hearing, **the complainant may make a summary statement of up to ten minutes in duration. If the complainant elects to do so, then the respondent(s), through their spokesperson, will be given the same opportunity** ~~the complainant and then the respondent(s) will be given the opportunity to provide summary statements.~~

D. Procedures After the Hearing

After the hearing, the committee shall meet in executive session and begin its deliberations or shall adjourn for no more than two **calendar** ~~working~~ days, at which time it shall reconvene in executive session to determine whether it sustains or does not sustain the allegations stated in the request for the hearing. In reaching its decisions the committee shall consider only the testimony and other materials entered or presented as evidence during the hearing. The Complainant shall have the burden of proof. The standard applied by the committee ~~being that the evidence is clear and convincing by the greater weight~~ **shall be that the preponderance** of the evidence ~~to establishes~~ that a basis for his or her contentions is found in one of the reasons listed in Section V.B.2. Initiation of Hearing.

Within **14 calendar** ~~40 working~~ days of finishing its deliberations the committee shall provide the complainant, respondents, and the chancellor with a copy of the committee's report and, a copy of the court reporter's transcript of the hearing. (Faculty Senate Resolution #03-37)

If the Hearing Committee determines that the complainant's contention has not been established, it shall, by simple, unelaborated statement, so notify the complainant, the respondents, the chair of the faculty, and the chancellor. Such a determination confirms the decision not to reappoint or not to confer permanent tenure.

If the Hearing Committee determines that the complainant's contention has been satisfactorily established, it shall notify the complainant, the respondents, the chair of the faculty, and the chancellor by written notice and shall recommend further substantive review.

Within **42 calendar** ~~30 working~~ days after receiving the recommendation of the Hearing Committee **and the transcript**, the chancellor shall notify the complainant, the respondents, the chair of the faculty, and the chair of the Hearing Committee what further substantive review, if any, will be made of the original decision not to reappoint or not to confer permanent tenure. If the chancellor is considering taking action inconsistent with the committee's recommendations, the chancellor shall request within **14 calendar** ~~40 working~~ days that a joint meeting with the committee occur. At the joint meeting, the chancellor will communicate his or her concerns and the committee will have an opportunity to respond. The joint meeting must occur within the **42 calendar** ~~30 working~~ day period. ~~in the preceding paragraph.~~

The chancellor must base his or her decision on a thorough review of (1) the record evidence from the hearing and (2) the report of the committee. While the chancellor should give deference to the advice of the faculty committee, the final campus-based decision is the chancellor's.

The chancellor will inform the complainant of his or her decision in writing by a method that produces adequate evidence of delivery. In the event of an adverse decision, the chancellor's notice must inform the complainant: (1) that, within ~~14~~ **14** calendar days of the complainant's receipt of the decision, the complainant may file a notice of appeal with the president requesting review by the Board of Governors in accordance with the Board of Governors Policy 101.3.1, (2) that a simple written notice of appeal with a brief statement of its basis is all that is required within this ~~fourteen~~ **fourteen** 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~~ **manner**. (Faculty Senate Resolution #03-49).

**The purpose of the 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. <sup>ii</sup> No appeals for denial of early tenure will be heard by the Board of Governors.**

## VI. Due Process Before Discharge or the Imposition of Serious Sanctions

### A. ~~Sanctions Penalties~~ **Sanctions**

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

1. incompetence, **including significant, sustained unsatisfactory performance after the faculty member has been given the 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 actions, 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 to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.**

These ~~sanctions penalties~~ may be imposed only in accordance with the procedures prescribed in this section. For purposes of *the Faculty Manual* ~~these~~

regulations, a faculty member serving a stated term shall be regarded as having tenure until the end of the term. These procedures shall not apply to non-reappointment (Section V) or termination of employment (Section VII).

B. Notice

Written notice of intent to discharge the faculty from **employment or to impose serious sanction, together with a written specification of the reasons** ~~suspend from employment or to diminish in rank~~ (these **sanctions** ~~penalties~~ hereinafter in Section VI are referred to as "**the sanction**" ~~"the penalty"~~) shall be sent by the vice chancellor with supervisory authority ~~or by the vice chancellor's designee~~ to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. The statement shall include notice of the faculty member's right, upon request, to ~~both written specification of the reasons for the intended penalty and~~ a hearing by the Due Process Committee (Section VI.E.). (Faculty Senate Resolution #99-10)

C. Penalty Without Recourse

If, within **14 calendar** <sup>1[i]</sup> ~~40 working~~ days after the faculty member receives the notice **and written specification of the reasons** referred to in Section VI.B. above, the faculty member makes no written request for ~~either a specification of reasons or a hearing~~, the faculty member may be **discharged or serious sanction imposed** ~~penalized~~ without recourse to any institutional grievance or appellate procedure.

D. ~~Specification of Reasons and Hearing Request~~

~~If, within 10 working days after the faculty member receives notice referred to in Section VI.B. above, the faculty member makes a written request to the vice chancellor with supervisory authority, method that provides delivery verification and is consistent with UNC Policy 101.3.3, for a specification of reasons, the vice chancellor with supervisory authority or the vice chancellor's designee shall supply such specification in writing by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, within 10 working days after receiving the request.~~

A faculty member's- **shall timely submit a** request for a hearing ~~is to be directed~~ to the vice chancellor with supervisory authority in writing by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. Upon receipt of such a request the vice chancellor with supervisory authority shall, within **10 calendar** ~~ten working~~ days, notify the chair of the Due Process Committee of the need to convene a hearing in accordance with Section VI.F.1. ~~If the faculty member makes no written request to the vice chancellor with supervisory authority for a hearing within 10 working days after receiving the specification, the faculty member may be penalized without recourse to any institutional grievance or appellate procedures.~~ (Faculty Senate Resolution #99-10).

**If the faculty member shall submit a timely request for a hearing, the Chancellor shall ensure a process is in place so that the hearing is timely accorded before the Due Process Committee.**

E. Due Process Committee

The Due Process Committee (**hereinafter "Committee"**) shall be composed of five members and five alternates each of whom is a full-time, permanently tenured voting faculty member ~~without administrative appointment~~ **per Appendix D, Section IV**. Members shall be elected in accordance with the procedures for election of appellate committees specified in the Bylaws of the East Carolina University Faculty Senate. Members and alternates shall be elected to three-year terms. A quorum for the committee shall be the five members or their alternates. Upon organization, the members of the ~~Due Process~~ Committee shall elect a chair and a secretary. Should any eCommittee officer be absent at the beginning of a hearing, the eCommittee shall elect an alternate officer for the purposes of the hearing.

When the eCommittee is convened to consider any matter associated with a faculty member's request for a hearing, those eCommittee members who hold an appointment in the faculty member's academic unit, those who might reasonably expect to be called as witnesses, or those who may have any other conflict of interest should disqualify themselves from participation in the activities of the eCommittee related to this specific request for a hearing. The faculty member and the vice chancellor with supervisory authority are permitted to challenge eCommittee members for cause. The other members of the eCommittee will decide on any potential disqualifications if a eCommittee member is so challenged but wishes to remain. (Faculty Senate Resolution #99-10)

When membership of the eCommittee falls below the specified five members and five alternates, the Faculty Senate will elect additional faculty members to the committee. Vacancies on the committee will be filled first by moving alternates to member status and by electing new alternates and/or members as needed to fill the committee roster.

Upon notification by the vice chancellor with supervisory authority ~~or the vice chancellor's designee~~ that a faculty member has requested a hearing, the chair of the eCommittee shall determine the availability of the elected members and alternates, and shall select from those available one or more alternates, as necessary (see Part XI of the ECU Faculty Manual, UNC Code, Section 603). The ranking of the available alternates for selection shall be determined by their years of service to the University. That available alternate who is most highly ranked shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing. (Faculty Senate Resolution #99-10)

The eCommittee may at any time consult with an attorney in the office of the University Attorney who is not presently nor previously substantively involved in

the matter giving rise to the hearing, nor will advise the University administrator(s) following the eCommittee action(s). (See *Part VIII, Responsibilities of Administrative Officers.*)

F. Procedures for the Hearing

1. Time and Date of Hearing

The ~~Due Process~~ Committee shall set the time, date, and place for the hearing. **The 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 Committee may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member.** ~~The date for the hearing must be within 30 working calendar days of the time the committee receives the vice chancellor with supervisory authority's notification of the faculty member's written request for a hearing.~~ The eCommittee shall notify the affected faculty member, the vice chancellor with supervisory authority, and the chair of the faculty of the time, date, and place of the hearing. ~~The committee may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member.~~ **The 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 Committee cannot be assembled.**<sup>1[i]</sup>

2. Conduct of Hearing

The hearing shall be on the written specification of reasons for the intended **discharge or imposition of a serious sanction** ~~penalty~~. The chair of the ~~Due Process~~ Committee, or an elected member of the eCommittee if the chair is unavailable, is responsible for conducting the hearing and for maintaining order during the hearing. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to the eCommittee's members and alternates, the faculty member requesting the hearing, counsel for the faculty member, the vice chancellor with supervisory authority, **or his/her designee, and/or** ~~and~~ counsel for the vice chancellor. Other persons (witnesses) providing information to the eCommittee shall not be present throughout the hearing, but shall be available at a convenient location to appear before the eCommittee as appropriate. For any hearing from which an appeal may be taken, a professional court reporter must be used to record and transcribe the hearing. (Faculty Senate Resolution #03-37). **The hearing shall be closed to the public unless both the faculty member and the Committee agree that it may be open.**

The hearing shall begin with an opening statement by the hearing chair limited to explaining the purpose of the hearing and the procedures to be followed during the hearing. Following the opening remarks by the hearing chair, the vice chancellor with supervisory authority, **his/her designee**, or his/her

his/her counsel shall present the university's contentions and any supporting witnesses and documentary evidence. The faculty member or the faculty member's counsel may then reply and present any supporting witnesses and documentary evidence. During these presentations, the vice chancellor with supervisory authority, **his/her designee**, or **his/her** ~~his or her~~ counsel, and the faculty member or **his/her** ~~his or her~~ counsel, **shall have the right to confront and cross-examine adverse witnesses, and to make argument** ~~may cross-examine opposing witnesses~~. Committee members may question witnesses for purposes of clarification. At the conclusion of the hearing, the faculty member and then the vice chancellor with supervisory authority, **or his/her designee**, will be given the opportunity to provide summary statements. (Faculty Senate Resolution #99-10).

#### G. Procedures After the Hearing

After the hearing, the **ε**Committee shall meet in executive session and begin its deliberations or shall adjourn for no more than two **calendar working** days, at which time it shall reconvene in executive session. In reaching its decisions the **ε**Committee shall consider only the testimony and other materials entered or presented as evidence during the hearing **and such written or oral arguments as the committee, in its discretion, may allow. The University has the burden of proof. In evaluating evidence, the Committee shall use the standard of "clear and convincing" evidence in determining whether the institution has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action.**

Within **14 calendar** ~~10 working~~ days of finishing its deliberations **or after the full transcript is received, whichever is later**, the **ε**Committee shall provide the faculty member<sup>1(i)</sup> and the chancellor with a copy of its report, including materials entered as evidence, and a copy of the court reporter's transcript of the hearing. In its report the **ε**Committee shall state whether or not it recommends that the intended **sanction** ~~penalty~~ be imposed (Faculty Senate Resolution #03-37).

In reaching a decision, the chancellor shall consider only the written transcript of the hearing and the report of the ~~Due Process~~ Committee. Within 30 **calendar working** days of receiving the report, the chancellor's decision shall be conveyed in writing to the ~~Due Process~~ Committee and the affected faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3.

#### H. Appeal

If the chancellor concurs in a recommendation of the **ε**Committee that is favorable to the faculty member, the decision shall be final. If the chancellor rejects a finding, conclusion, or recommendation of the ~~Due Process~~ Committee, the chancellor shall state the reasons for doing so in a written decision. If the chancellor either declines to accept a Committee recommendation that is favorable to the faculty member or concurs in the **ε**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 shall be addressed to the chair of the Board. Notice of appeal shall be **filed** ~~received by the chancellor~~ within **14 calendar** ~~ten working~~ 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 the hearing held by the Due Process Committee, but it may, in its discretion, hear such other evidence as it deems necessary, with the opportunity for rebuttal. The Board of Trustees' decision shall be made **as soon as reasonably possible** ~~within 45 working 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 **14 calendar** ~~ten~~ 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**, ~~file a written petition for review to the Board of Governors~~ **by alleging** if he or she alleges that one or more specified provisions of the *Code of The University of North Carolina* have been violated. Any such **appeal** ~~petition~~ to the Board of Governors shall be transmitted through the President. ~~and the Board shall, within 45 working days, 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 45 working days after it notifies the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, that it will review the petition.~~

~~The exercise of the Board of Governors' jurisdiction is refined to insure that primary emphasis remains properly focused on the campus grievance procedures. Requests for appellate review will be screened to determine whether the Board should consider the issues raised in a petitioner's request for review. The following basic standards will guide that screening process:~~

- ~~1. The Board will grant requests to review contentions that the grievance procedures followed by the campus in a particular case did not comport with University requirements that affect the credibility, reliability, and fairness of such inquiries, thereby arguably depriving the grievant of a valid opportunity to establish his or her contentions.~~
- ~~2. The Board will grant requests to review University policy issues implicated by a particular grievance, when the question appears to require intervention by the governing board to clarify the definition, interpretation, or application of such policies.~~
- ~~3. The Board will review questions about the sufficiency of the evidence to sustain the conclusion reached only if (a) the case involves a substantial~~

~~interest of the grievant, e.g., tenure or reappointment and/or (b) the history of the case reveals disagreement, with respect to the sufficiency of the evidence to sustain the grievant's contentions, among the responsible decision makers, i.e., the due process committee, the chancellor, or the board of trustees<sup>4(f)</sup>; if the responsible decision makers are in accord, normally no such appeal will be entertained by the Board of Governors.~~

~~Under the foregoing prescriptions, it is necessary for prospective petitioners to evaluate their circumstances carefully, to understand the purposes of permissible appellate review, and to formulate clearly and concisely their statement of the one or more grounds on which they believe the Board should exercise its appellate jurisdiction. Thus, the first step in any appeal to the Board of Governors will be an evaluation by the Board, through a designated subcommittee, with staff assistance, of the grievant's written statement of grounds for appeal, to determine whether the issues sought to be raised warrant Board attention, as judged by the three basic standards~~

I. ~~Suspension During a Period of Intent to Discharge~~

~~When a faculty member has been notified of the institution's intention to discharge the faculty member, the chancellor may **reassign the individual to other duties** or suspend the faculty member at any time and continue the suspension until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension during a period of intent to discharge shall be exceptional and shall be with full pay and benefits.~~

VII. Termination of Faculty Employment

A. Reasons Justifying Termination and Consultation Required

1. Reasons for Terminating Employment

The employment of a faculty member with permanent tenure or of a faculty member holding a fixed-term or probationary appointment may be terminated by East Carolina University because of (1) demonstrable, bona fide institutional financial exigency, or (2) major curtailment or elimination of a teaching, research or public service program.

Financial exigency is defined as a significant decline in the financial resources of the institution that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public service program shall be made by the chancellor, after consulting with the academic administrative officers and faculties as required by Section VII.A.2. below.

This determination is subject to concurrence by the President and then approval of the Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the institution's contractual obligation to a faculty member cannot be met, the employment of the faculty member may be

terminated in accordance with Section 605 of The Code of The University of North Carolina and 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 it is considering a major curtailment in or elimination of a teaching, research, or public service program, the chancellor or the chancellor's delegate shall forthwith prepare a report which identifies specifically the state of financial exigency or the program change. The report must outline the options readily apparent to the chancellor at the time, including any options which would or might involve terminations of faculty employment.

The chancellor's report shall be directed to the Educational Policies and Planning Committee for their written advice and recommendations. In considering this report the Educational Policies and Planning Committee shall have access to information on which the chancellor's report was based. The Committee may interview appropriate persons. The Educational Policies and Planning Committee shall prepare a report in response to the chancellor, to be submitted at a time determined by the chancellor.

Should the chancellor decide, following receipt of the Educational Policies and Planning Committee's report, to consider reducing a unit's faculty for reasons of financial exigency or major curtailment or elimination of a program, the chancellor shall promptly establish and convene an ad hoc Faculty Advisory Committee to advise the chancellor regarding the contemplated reduction.

Whenever such a Committee is created, it shall consist of two members and two alternates elected by the unit; the unit's administrator as an ex officio member; and four members and four alternates from disciplines complementary to the unit, nominated by the University Committee on Committees and elected by the Faculty Senate. Except for the ex-officio member, membership on an ad hoc committee shall be limited to full-time permanently tenured faculty without administrative appointment. Upon organization, the committee shall elect a chair and a secretary. The ad hoc Faculty Advisory Committee, following procedures according to the most recent edition of *Robert's Rules of Order, Newly Revised*, shall submit a report of its advice and recommendations, at a time determined by the chancellor. In preparing this report, the committee shall have access to information considered in any prior reports, and the committee may interview appropriate persons.

B. Termination Procedures

1. Consideration in Determining Whose Employment is to be Terminated  
In determining which faculty member's employment is to be terminated, the primary consideration of the chancellor and the ad hoc advisory committee

shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution. Where no conflict with this primary consideration exists, priority for retention shall be given the permanently tenured faculty who are senior in years of service to the University.

2. Timely Notice of Termination

- a. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of program is not founded upon financial exigency, the faculty member shall be given timely notice as follows: One who has permanent tenure shall be given not less than twelve months notice; and one who does not have permanent tenure shall be given notice in accordance with the requirements specified in Section II.C.
- b. When a faculty member's employment is to be terminated because of financial exigency, the institution will 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 the preceding paragraph.

3. Type of Notice to be Given

- a. Should the chancellor decide to terminate employment following receipt of the report of the Ad hoc Faculty Advisory Committee, the chancellor or the chancellor's delegate shall send the faculty member whose employment is to be terminated a written statement of this fact by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. 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 a faculty committee if the faculty member alleges that the decision to terminate employment was arbitrary or capricious; and a copy of this procedure on termination of employment.
- b. For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section VII.A.1., the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be sent by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 to the address last furnished to the chancellor's office, and the faculty member will be given thirty calendar days after **attempted delivery** transmission of the notice in which to accept or reject

the offer. The offer to resume a terminated position shall provide for tenure status, rank, and salary at least equal to those held by the faculty member at the time of termination.

- c. The institution, when requested in writing by a faculty member whose employment has been terminated, shall give reasonable assistance in finding other employment. Such assistance shall include secretarial assistance, access to the telephone (including long distance), University/unit stationary and postage, travel funds to professional meetings, and other assistance as deemed reasonable and appropriate in the profession.
4. **Termination if Reconsideration is Not Requested**  
If, within 10 working days after receipt of notice required by Section VII.B.3 above, the faculty member makes no written request for a reconsideration hearing, employment will be terminated at the date specified in the notice given pursuant to Section VII.B.3, and without recourse to any institutional grievance or appellate procedure.
  5. **Request for Reconsideration Hearing**  
Within 10 working days after receiving the notice required by Section VII.B.3, the faculty member may request by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 a reconsideration of the decision to terminate employment, if the faculty member alleges that the decision was arbitrary or capricious. The request shall be submitted to the chancellor and shall specify the grounds upon which it is contended 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 constitutes on the part of the faculty member: (1) a claim that the contention can be supported by representation of factual evidence, and (2) an agreement that the institution may offer in rebuttal of the faculty member's contention any relevant data within its possession. Upon receipt of such a request the chancellor shall, within 10 working days, notify the chair of the Reconsideration Committee of the need to convene a hearing in accordance with Section VII.B.7.
  6. **The Reconsideration Committee**  
The Reconsideration Committee shall be composed of five members and five alternates, each of whom is a full time permanently tenured voting faculty member without administrative appointment. Members shall be elected in accordance with the procedures for election of appellate committees specified in the Bylaws of the East Carolina University Faculty Senate. Members and alternates shall be elected to three-year terms. A quorum for the committee shall be the five members or their alternates.

Upon organization, the members of the Reconsideration Committee shall elect a chair and a secretary. Should any committee officer be absent at the

beginning of a hearing, the committee shall elect an alternate officer for purposes of the hearing.

When the committee is convened to consider any matter associated with a faculty member's request for a hearing, those committee members who hold an appointment in the faculty member's academic unit, those who might reasonably expect to be called as witnesses, who participated directly in the decision to terminate the faculty member's employment, or those who may have any other conflict of interest should disqualify themselves from participation in the activities of the committee related to this specific request for a hearing. The faculty member and the chancellor or the chancellor's representative are permitted to challenge committee members for cause. The other members of the committee will decide on any potential disqualifications if a committee member is so challenged but wishes to remain.

When, between elections, membership of the committee falls below the specified five members and five alternates, the chair of the faculty, in consultation with the Committee on Committees, shall appoint members to the committee. Vacancies on the committee will be filled by first moving alternates to members and by making appointments as alternates.

Upon receipt of a request for a hearing, the chair of the committee shall determine the availability of the elected members and alternates, and shall select from those available one or more alternates, as necessary. The ranking of the available alternates for selection shall be determined by their years of service to the University. That available alternate who is most highly ranked shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing. The committee may at any time consult with an attorney in the office of the University Attorney who is not presently nor previously substantively involved in the matter giving rise to the hearing, nor will advise the University administrator(s) following the committee action(s). (See *Part VIII, Responsibilities of Administrative Officers.*)

## 7. Procedures for the Hearing

### a. Time and Date of Hearing

The Reconsideration Committee shall set the time, date, and place for the hearing. The date for the hearing must be within 30 working days of the time the committee receives the chancellor's notification of the faculty member's written request for a hearing. The committee shall notify the affected faculty member, the chancellor, and the chair of the faculty of the time, date, and place of the hearing. The committee may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member.

### b. Conduct of Hearing

The Reconsideration Committee's review of the faculty member's appeal shall be limited solely to determining whether the decision to terminate employment was arbitrary or capricious. The chair of the Reconsideration Committee is responsible for conducting the hearing and for maintaining order during the hearing. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to the committee's members and alternates, the faculty member requesting the hearing, counsel for the faculty member, the chancellor or the chancellor's delegates (hereinafter, the chancellor), and counsel for the chancellor. Other persons (witnesses) providing information to the committee shall not be present throughout the hearing, but shall be available at a convenient location to appear before the committee as appropriate. The faculty member and the committee shall be given access, upon request, to documents that were used in making the decision to terminate the faculty member's employment after the decision was made that the position must be terminated. For any hearing from which an appeal may be taken, a professional court reporter must be used to record and transcribe the hearing. (Faculty Senate Resolution #03-37)

The hearing shall begin with an opening statement by the chair of the committee limited to explaining the purpose of the hearing and the procedures to be followed during the hearing. Following the opening remarks by the committee chair, the faculty member or the faculty member's counsel shall present his or her contentions and any supporting witnesses and documentary evidence. The chancellor or the chancellor's counsel may then reply and present any supporting witnesses and evidence in rebuttal of the faculty members contentions or in general support of the decision to terminate the faculty member's employment. During these presentations, the faculty member or his or her counsel, and the chancellor or his or her counsel, may cross-examine opposing witnesses. Committee members may question witnesses for purposes of clarification. At the conclusion of the hearing, the faculty member and then the chancellor or the chancellor's counsel will be given the opportunity to provide summary statements.

8. Procedures After the Hearing

After the hearing, the committee shall meet in executive session and begin its deliberations or shall adjourn for no more than two working days, at which time it shall reconvene in executive session. In reaching its decisions the committee shall consider only the testimony and other materials entered or presented as evidence during the hearing.

Within 10 working days of finishing its deliberations the committee shall provide the faculty member and the chancellor with a copy of its report, including materials entered as evidence, and a copy of the court reporter's transcript of the hearing. (Faculty Senate Resolution #03-37)

If the Reconsideration Committee determines that the contention of the faculty member has not been established, it shall, by a simple unelaborated statement, so notify the faculty member, the chair of the faculty and the chancellor. The faculty member may appeal the decision to terminate employment to the chancellor within 10 calendar days following receipt of the committee's decision. (Faculty Senate Resolution #99-4)

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

Within 30 working days after receiving the recommendation, the chancellor shall send written notice to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty, and the chair of the Reconsideration Committee giving his decision and stating what modification, if any, the chancellor will make with respect to the original decision to terminate the faculty member's employment. If the chancellor fails to reverse the original decision, the chancellor shall send written notice of such to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty, and the chair of the Reconsideration Committee. The faculty member may appeal the termination to the Board of Trustees within 10 calendar days following receipt of the chancellor's decision. (Faculty Senate Resolution #99-4)

The exercise of the Board of Trustees' jurisdiction is refined to **ensure** insure that primary emphasis remains properly focused on the campus grievance procedures. Requests for appellate review will be screened to determine whether the Board should consider the issues raised in a petitioner's request for review. The following basic standards will guide that screening process:

- a. The Board will grant requests to review contentions that the grievance procedures followed by the campus in a particular case did not comport with University requirements that affect the credibility, reliability, and fairness of such inquiries, thereby arguably depriving the grievant of a valid opportunity to establish his or her contentions.
- b. The Board will grant requests to review University policy issues implicated by a particular grievance, when the question appears to require intervention by the governing board to clarify the definition, interpretation, or application of such policies.
- c. The Board will review questions about the sufficiency of the evidence to sustain the conclusion reached only if<sup>iii</sup> (a) the case involves a substantial interest of the grievant, **e.g., tenure or reappointment** and/or (b) the

history of the case reveals disagreement, with respect to the sufficiency of the evidence to sustain the grievant's contentions, among the responsible decision makers, i.e., the reconsideration committee, the chancellor, or the board of Trustees<sup>7[1]</sup>; if the responsible decision makers are in accord, normally no such appeal will be entertained by the Board of **Trustees Governors**. Under the foregoing prescriptions, it is necessary for prospective petitioners to evaluate their circumstances carefully, to understand the purposes of permissible appellate review, and to formulate clearly and concisely their statement of the one or more grounds on which they believe the Board should exercise its appellate jurisdiction. Thus, the first step in any appeal to the Board of **Trustees Governors** will be an evaluation by the Board, through a designated subcommittee, with staff assistance, of the grievant's written statement of grounds for appeal, to determine whether the issues sought to be raised warrant Board attention, as judged by the three basic standards.

If the chancellor concurs in the recommendation of the committee that is favorable to the faculty member, the decision is final and written notification thereof shall be sent to the faculty member, the chair of the faculty, and the chair of the Reconsideration Committee.

#### VIII. Effective Date

- 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 on the date they are approved by the President of the University of North Carolina.

These regulations as amended shall apply only to those appeals following nonreappointments and nonconferrals of tenure in which the original decision not to reappoint or not to confer permanent tenure was made after the effective date of these regulations. Regulations applicable to appeals following nonreappointment or nonconferral of tenure in which the original decision not to reappoint or not to grant permanent tenure was made prior to the effective date of these regulations are those rules in effect at the time that the original decision was made.

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<sup>7[1]</sup> **A faculty member receiving a notice of non-conferral of early permanent tenure may file a grievance in accordance with Appendix Y.** The Board of Trustees will remain responsible for reviewing, on appeal, a grievant's contention that the chancellor's decision (or affirmance of a faculty committee decision) was clearly erroneous.

In compliance with UNC Code 602(1) final approval of this document involves the Faculty Senate, Chancellor, Senior Vice President for Academic Affairs/General Counsel, and President of UNC System.)

Approved (entire document)

Faculty Senate Resolution #06-19

January 9, 2007

Erskine Bowles, President of UNC System

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<sup>ii</sup> See UNC Policy 101.3.1 for additional information

<sup>iii</sup> See UNC Policy 101.3.1 for additional information