

MEMORANDUM

TO: Faculty Assembly Delegates
Faculty Senate Presidents, UNC System Campuses¹

FROM: Faculty Assembly Executive Committee²

RE: Background Materials: Code 603/604 Committee Recommendations Relating to Discharge of Tenured Faculty, Non-Reappointment Review, Grievances, Post-Tenure Review, Non-Tenure Track and Special Faculty Procedures, and Proposed Faculty Assembly Action for September 28, 2007 Meeting

DATE: September 13, 2007

I. Introduction

We are writing with considerable urgency. As some of you are aware, the Board of Governors Committee on Personnel and Tenure began a discussion of post-tenure review at its November 2006 meeting. Subsequently, University System Vice President Harold Martin appointed a committee (the “Code 603/604 Committee, chaired by Provost Larry Nielsen of NCSU) to review a variety of topics under Chapter VI of the University Code. The charge and other materials relating to the Code 603/604 Committee are attached as Appendix E to this memorandum.

Faculty Assembly Chair Brenda Killingsworth received the proposed report and Code revisions developed by the “Code 603/604 Committee “in mid-July. She and Faculty Assembly Secretary Judith Wegner met with Provost Nielsen on July 17, 2007. She then circulated the Code 603/604 Committee’s proposals to the Faculty Assembly Executive Committee and to Faculty Senate Presidents. The Faculty Assembly Executive Committee (FAEC) met with Provost Nielsen on August 17 to discuss the report further and to hear his views. Although the amendments to the University Code proposed by the Code 603/604 Committee were initially slated for presentation to the Board of Governors at its September 5 meeting, University System Vice President Harold Martin indicated that he would postpone consideration of the Code 603/604 Committee’s proposals until a subsequent meeting this fall.

The recommendations of the Code 603/604 Committee would significantly modify portions of the University Code. These portions relate to the grounds and procedures for discharge of tenured faculty members, non-reappointment review of tenure-track faculty members, rights of “special faculty” (those who are not on the tenure-track), rights of EPA non-faculty personnel, post-tenure review, and grievances.

The FAEC developed alternative language for key aspects of the original proposal, and prepared this memorandum expressing its rationale for proposed alternative changes. It hoped that, despite grave misgivings, this approach would allow the Faculty Assembly and Faculty Senates to speak constructively about important changes to the University Code.

The FAEC has also developed a proposed resolution for consideration at the Faculty Assembly’s September 28, 2007 meeting. That resolution and the specific text changes proposed by the FAEC as a better alternative to

¹ Copies of this memorandum and related materials will also be sent to UNC System Vice President Harold Martin, Members of Code 603/604 Committee, and Campus Provosts

² Members of the Faculty Assembly Executive Committee who discussed and commented on this matter included: Brenda Killingsworth (ECU, Faculty Assembly Chair), Gary Jones (WCU, Vice Chair), Judith Wegner (UNC-CH, secretary, and principal drafter), Bonnie Yankaskas (UNC-CH, self-study committee chair), Greg Starrett (UNCC, academic freedom and tenure committee chair), Sandie Gravett (ASU, budget committee chair), Dennis Dailey (NCSU, faculty benefits committee chair), and Acha Debala (NCCU, outgoing historically minority institutions chair). Relevant information was also circulated for comment to those on the Executive Committee who were unable to attend the August meeting (educational programs chair Eileen Kohlenberg (UNCG), governance committee chair Mark Taggart (ECU), and faculty development chair Meg Morgan (UNCC). In addition, Chair Killingsworth circulated the Code 603/604 Committee’s proposals to faculty senate leaders across the system in August 2007 and requested comments. Formal comments were received from NCSU and UNC-CH, and informal comments from ASU (from Gary Jones).

recommended changes submitted by the Code 603/604 Committee are included as Appendix A of this memorandum. Other appendices include background on the relationship of University Code provisions to other official documents and to other recent activities affecting University policies (Appendix B), relevant portions of the University Code as it currently exists (Appendix C), information on current post-tenure review policies, guidelines, and revised guidelines submitted to the Board of Governors Personnel and Tenure Committee in June 2007 (Appendix D) and a full set of materials provided by NCSU Provost Larry Nielsen, chair of the Code 603/604 committee, in connection with meetings of the FAEC in August 2007 (Appendix E).

The FAEC asks that Faculty Assembly delegates and Faculty Senates review all this material very carefully, and seek counsel with your colleagues in advance of the September 28 Faculty Assembly meeting. The resolution and alternative language (included in appendix A) will be considered at that meeting.

II. Specific Proposals.

A. Discharge of Tenured Faculty Members (Code Section 603, portion of Section 602)

The Code 603/604 Committee recommended major changes in two areas under existing Code Sections 602 and 603 relating to discharge of tenured faculty members.

1. Grounds.

a. *Code 603/604 Committee Proposal*

Currently, under existing Code section 602, tenured faculty members can be discharged only for “incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.” The Code 603/604 Committee recommended adding a fourth grounds for discharge (“unsatisfactory performance, including but not limited to multiple unsatisfactory post-tenure reviews”) and added very broad definitions of each of the grounds for discharge.³ The Code 603/604 Committee also recommended shifting the reference to suspension and demotion in rank, which had previously been listed in the same sentence as discharge (thus limiting the grounds for any of these sanctions to the listed criteria) and placing it later in the Code section, thereby raising questions whether tenured faculty members might be subject to suspension or demotion in rank on grounds other than those specified.⁴

³ The Code 603/604 Committee proposed to incorporate the following definitions of the bases for possible discharge:

(1.1) As used in this Code, the following words and phrases shall mean:

- a. Incompetence: failure to demonstrate the requisite skills, knowledge, or ability in performing faculty responsibilities. Examples include, but are not limited to, using poor teaching techniques or outdated knowledge of the subject matter. This use of “incompetence” is not to be equated with the legal concept of mentally incompetent.
- b. Neglect of duty: failure to perform one or more faculty responsibilities due to a deliberate act, unwillingness to act, or insufficient attention.
- c. Unsatisfactory performance: inadequate performance, including results which are less than satisfactory on the cumulative review required by UNC Policy 400.3.3.
- d. Misconduct: conduct that violates law, policy, professional expectations (including mismanagement), or ethics, or involves dishonesty or moral turpitude.

⁴ The text proposed by the Code 603/604 Committee would read:

(1) A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged from employment only for reasons of (a) incompetence, (b) neglect of duty, (c) unsatisfactory performance, including but not limited to multiple unsatisfactory post tenure reviews, or (d) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty. A faculty member may also be suspended or demoted in rank for misconduct of a serious

Provost Nielsen advised the FAEC that the Code 603/604 Committee's recommendations were based on a desire to add clarity to the current Code provisions (in which key words like "incompetence" are undefined) and the Code 603/604 Committee's judgment that repeated and continuing unsatisfactory performance should be grounds for discharge. In the Code 603/604 Committee's view, the current language does not adequately specify that chronic poor performance is grounds for serious sanction, since "incompetence" might be interpreted to refer to mental incompetence only, "neglect of duties" is unclear, and "misconduct" might not apply to a failure to perform professional duties. Provost Nielsen also indicated that the Code 603/604 Committee had considered two alternatives in addressing the unsatisfactory performance issues, including adding definitions to the existing criteria or adding an additional ground for discharge (they adopted the latter approach).

b. *Faculty Assembly Executive Committee Proposal.*

The FAEC discussed this matter at length, and concluded that there are indeed situations in which tenured faculty members may properly be subject to discharge. It also concluded that the existing language of the Code is potentially ambiguous. The FAEC also believed that the proposed additional definitions of the grounds for faculty discharge proffered by the Code 603/604 Committee were extremely vague, and that the inclusion of the proposed new grounds for discharge ("unsatisfactory performance, including but not limited to multiple unsatisfactory post-tenure reviews") was even vaguer. The reference to "results which are less than satisfactory on the cumulative review under UNC Policy 400.3.3" is also confusing since the word "the" might be understood to refer to a single post-tenure review (rather than recurring reviews). The shift from sanctions for "deficient" performance to sanctions for "less than satisfactory" performance raises special concerns because it might be used to sanction anyone performing at a level "below average" (when the point of the standard is to set an absolute standard of poor performance rather than a subjective criterion that is potentially subject to manipulation). Concerns about the changes proposed were echoed in the comments from Faculty Senate Chairs received to date from NCSU and UNC-CH.

The FAEC therefore developed the following proposed language that it proposes to be used in Code Sections 603 and 602⁵ instead of the language recommended by the Code 603/604 Committee:

nature but not so serious as to indicate that the individual is unfit to continue as a member of the faculty. These sanctions may be imposed only in accordance with the procedures prescribed in this section. For purposes of this Code, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. These procedures shall not apply to nonreappointment (Section 604) or termination of employment (Section 605).

Currently, the provision reads:

- (1) A faculty member, who is the beneficiary of institutional guarantees of tenure, shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged or suspended from employment or diminished in rank only for reasons of incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty.

⁵ The Code 603/604 Committee recommended that Section 602 also be amended in pertinent part as follows:

- (6) Institutional tenure policies and regulations shall distinguish among the following:
 - (a) the nonreappointment (or nonrenewal) of a faculty member at the expiration of a specified term of service;
 - (b) the discharge from employment of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires only for reasons of (a) incompetence, (b) neglect of duty, (c) unsatisfactory performance, including but not limited to multiple unsatisfactory post tenure reviews, or (d) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty. A faculty member may also be suspended or demoted in rank for misconduct of a serious nature but not so serious as to indicate that the individual is unfit to continue as a member of the faculty;

The FAEC proposes that University Code Section 602 paragraph (6) (b) be revised to read as follows:

- (b) the discharge from employment of a faculty member with permanent tenure or of a faculty member appointed to a specified term of service before that term expires only for reasons of (a) incompetence, (b) neglect of duty, ~~(c) unsatisfactory performance, including but not limited to multiple unsatisfactory post tenure reviews,~~ or (d) (c) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, *as specified in Code Section 603.*

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

(a) *incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time;*

(b) *neglect of duty including sustained failure to meet assigned classes or to perform other core faculty professional obligations, or*

(c) *misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including significant demonstrated violations of professional ethics, substantial mistreatment of students, significant research misconduct, willful financial fraud related to university duties, or demonstrated criminal conduct sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties.*

An action to discharge a faculty member will ordinarily be used only in instances in which the faculty member's conduct is so serious as to render the individual permanently unfit to continue as a member of the faculty. Lesser sanctions including suspension and demotion in rank might be used in other instances.

The FAEC believe that its proposed language is preferable for a number of reasons. This language is intended to accomplish the following goals. The FAEC's language

- Anchors “incompetence” to “significant, sustained unsatisfactory performance” in situations when a faculty member has been given an “opportunity to remedy such performance” and “fails to do so in a reasonable time.” The FAEC believes that the Code 603/604 Committee’s proposal to treat “poor teaching techniques” and “outdated knowledge” as bases for finding “incompetence” would incorporate considerable subjectivity into the situation and instead concluded that “significant, sustained” poor performance was a more appropriate measure of true incompetence. The FAEC notes that the Board of Governor’s existing post-tenure review policy (Policy Manual Section 400.3.3, Section 1.a.3 already provides that “for those whose performance remains deficient, providing for the imposition of appropriate sanctions which may, in the most serious cases, include a recommendation for discharge”), so that it is best that relevant policies reference that fact.
- Anchors “neglect of duty” to situations such as “sustained failure” to “meet assigned classes” or to perform “other core faculty professional obligations.” The FAEC believes that sustained failures of this sort warrant sanction, quite apart from any failures to perform satisfactorily that are evident in the course of periodic performance reviews.
- Clarifies the types of misconduct that may warrant sanction. Several of the types of misconduct listed are addressed under other policies. For example, Section 500.7 of the University Policy Manual already addresses research misconduct and provides that dismissal, suspension, or demotion may be appropriate penalties.⁶ Significant demonstrated violations of professional ethics (for example, by those in the health professions), substantial

⁶ V. Administrative and Disciplinary Actions.

- a. Seriousness of the Misconduct. In deciding what administrative or disciplinary actions are appropriate, the institution or entity should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowing, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.
- b. Possible Administrative and Disciplinary Actions. Administrative and disciplinary actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; written warning; demotion; suspension; salary reduction; dismissal; or other serious discipline according to the appropriate policies applicable to students, faculty or staff. With respect to administrative actions or discipline imposed upon employees, the institution or entity must comply with all relevant personnel policies and laws. With respect to administrative actions or discipline imposed upon students, the institution or entity must comply with all relevant student policies and codes.

mistreatment of students, willful financial fraud, or demonstrated criminal conduct that is sufficiently related to the faculty member's academic responsibilities to disqualify the individual from effectively performing their university duties. The references to "demonstrated" conduct are intended to indicate that findings would be required through other processes (such as existing systems for review of violations of professional ethics by licensing authorities, review of research misconduct under University and other policies, and review of alleged criminal conduct through the justice system)

- Once again anchors sanctions of suspension or demotion in rank to the stated grounds for sanction, while also including the statement by proposed by the Code 603/604 Committee indicating that lesser sanctions should ordinarily be used.

2. Process

a. *Code 603/604 Committee Proposal.*

The 603/604 Committee proposed several changes to the processes by which discharge, suspension, or demotion actions would be pursued. Many of the detailed provisions that currently exist would stay the same, except as to the following most important points:

- (a) provisions regarding notice and reasons for proposed sanction are clarified and expedited (currently, a faculty member receives notice but would have to request reasons to be stated; the proposal would provide that notice and reasons must be given at the outset at one time); references to "days" are also clarified to indicate that weekends and institutional holidays are not to be included in computation;
- (b) the timing and length of faculty hearing processes would be set and limited to 90 days (not including official university breaks and holidays);⁷
- (c) the burden of proof and standard of proof for faculty hearing committee review would be specified (which it is not at present), and statements would be added indicating that the University must bear the burden of proving grounds for the proposed sanction using under a relatively lax evidentiary standard ("preponderance" or "weight of the evidence" rather than "clear and convincing evidence");
- (d) the current system of providing appeals to the Board of Trustees and then to the Board of Governors (following review by the institutional faculty hearing committee and the Chancellor) would be changed to eliminate the Board of Trustees and to provide an appeal directly to the Board of Governors; this proposal would allow the time line for appeals to be shortened and would bring the process for review of serious sanctions more closely into line with the process for review of decisions not to reappoint or grant tenure to tenure-track faculty (which already provides an appeal to the Board of Governors but not the Board of Trustees)

b. *Faculty Assembly Executive Committee Proposal.*

The FAEC believes that features of the proposal summarized in items (a) and (d) above are beneficial in that they expedite and simplify the review process. With regard to point (b), it recommends that specifications regarding duration of hearing processes should be stated in aspirational rather than mandatory terms. With regard to point (c), it believes that

⁷ The proposal by the Code 603/604 Committee reads as follows:

- (5) If the faculty member makes a timely written request for a hearing, the chancellor shall ensure a process is in place so that the hearing is timely accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 20 days from the time it receives the faculty member's written request for a hearing to prepare a defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. This hearing *shall be concluded* within 90 days from the date the committee receives the request for hearing (not including summer and winter breaks). The chancellor may grant an enlargement of this time for good cause.

a higher standard of proof (“clear and convincing evidence”) is warranted because faculty members who have institutional tenure hold a legally protected property right in employment that should not be adversely affected except based on very solid evidence. If serious sanction is warranted, administrators should be able to document and present a well-substantiated case.

The FAEC’s proposed language is as follows:

- (5) If the faculty member makes a timely written request for a hearing, the chancellor shall ensure a process is in place so that the hearing is timely accorded before an elected standing committee of the institution's faculty. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 20 days from the time it receives the faculty member’s written request for a hearing to prepare a defense. The hearing committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The hearing committee will ordinarily endeavor to complete the hearing within 90 calendar days *except under unusual circumstances* such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled, *or when additional fact-finding is required apart from the university discharge process.*
- (8) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The university has the burden of proof. *In evaluating the 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.* The committee shall make its written recommendations to the chancellor within ten days after its hearing concludes or after the full transcript is received, whichever is later.

D. Non-Reappointment of Tenure-Track Faculty Members (Code Section 604)

a. Proposals by the Code 603/604 Committee

Current Code Section 604 is relatively short, providing simply that notice be afforded tenure-track faculty members who will not be reappointed, specifying impermissible reasons for non-reappointment, and stating without much elaboration that an appeal may be had to the Board of Governors. This provision also includes language indicating that no notice is required to “special faculty members,” which is proposed to be moved to a separate section as discussed below.

(a) Proposed Section 604B continues to specify impermissible grounds for non-reappointment, making modest revisions to add references color as well as race, creed as well as religion, and “veteran’s status.”

The major proposed changes involve an addition of extended language regarding the processes to be used on campuses and by the Board of Governors when a tenure-track faculty member seeks further review of a decision not to reappoint (for example, when a faculty member in an initial term as an assistant professor is not reappointed to a second term, or when a second-term assistant professor is denied tenure so that their term of employment ends after notice and a specified period). These provisions are designed to provide a minimum framework, since regulations of the Boards of Trustees for the individual campuses provide more detailed elaboration in most cases.

The major elements of the proposed review process would include requiring each campus⁸ to provide for procedures that allow an affected tenure-track faculty member to

⁸ 604 D. Appeals and Grievances.

(1) Campus Based Appeal. Subject to limitations contained in this Code and the Policies of the Board of Governors, each constituent institution shall have a procedure whereby a tenure track faculty member may appeal or grieve the decision of the constituent institution not to reappoint the faculty member. Such procedures shall at a minimum provide for the following:

- (a) A reasonable time within which after receiving the notice of non-reappointment, the faculty member may appeal or grieve. If the faculty member does not timely appeal or grieve the notice of non-reappointment, the non-reappointment is final without recourse to any institutional grievance or appellate procedure.

- receive notice of the proposed non-reappointment, and be assured an opportunity to request further review by “appeal[ing]” or “griev[ing]” the decision within “a reasonable time”;
- have access to an elected faculty committee through which to seek review,
- receive review using specified procedural standards (including requiring the faculty member in question to bear the burden of proof using a “preponderance of evidence” standard), and
- allow limited grounds on which such review could be sustained (prohibited forms of discrimination, First Amendment, “personal malice”) or material procedural irregularities that cast doubt on the integrity of the decision not to reappoint (without allowing the faculty committee to “second-guess professional judgments based on permissible considerations”)

In addition, if after review and recommendations by the faculty hearing committee, the chancellor upheld the decision not to reappoint, an affected faculty member

- would be allowed to request review by the Board of Governors only to assure (1) that the campus-based process for making 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.⁹

b. Faculty Assembly Executive Committee Proposal.

The FAEC appreciates the importance of clarifying the basic rights of review for non-reappointed tenure-track faculty members from across the whole University system. It recommends that several relatively modest changes be made to this proposal to add greater clarity:

- (a) Accept the suggested additions of impermissible grounds for non-reappointment, but request addition of language that would clearly allow campuses to add additional impermissible grounds as appropriate (such as “sexual orientation” and “age”, for example). In addition, for ease of use and clarity, include as part of this Code section a brief definition of “personal malice” drawn from the more detailed language of

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- (b) If the faculty member timely files an appeal or grievance, the chancellor shall ensure a process is in place so that a hearing is timely accorded before an elected standing committee of the institution’s faculty.
- (c) In reaching decisions on which its written recommendations to the chancellor shall be based, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The faculty member shall have the burden of proof. In evaluating the evidence the committee shall use the standard of preponderance of the evidence (which is the same as the greater weight of the evidence.)
- (d) The purpose of the campus based review process is to determine (1) whether the decision was based on considerations that *The Code* provides are impermissible; and (2) whether the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint. *The review process is not to second-guess professional judgments based on permissible considerations.*

⁹ (2) Appeal to the Board of Governors. If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor’s decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within 10 days after the faculty member’s receipt of the chancellor’s decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for making 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.

section 101 of the UNC Policy Manual.¹⁰ The proposed further revision of Section 604B under the FAEC would read:

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, ~~or~~ veteran's status *or other forms of discrimination prohibited under regulations adopted by campus Boards of Trustees*, or (c) personal malice. For purposes of this section, *the term "personal malice" means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual.*

- (b) Change language referring "appeals and grievances" throughout the section and instead use neutral language ("review of non-reappointment decision") throughout so as not to confuse faculty and administrators on campuses that use "grievance" as a term of art applicable only with regard to matters covered by Code Section 607 (matters other than non-reappointment, as discussed below).¹¹ In addition, specify a minimum number of days in which the faculty member could seek review (perhaps 14 days) or a longer time if determined appropriate by individual campuses
- (c) Accept the allocation of the burden of proof on the faculty member and the "preponderance of the evidence" standard for reviewing evidence (as appropriate in a situation involving an untenured faculty member, although not in a case in which a faculty member already has tenure and is being subject to serious sanction, as discussed above).
- (e) Remove the unnecessary statement ("The review process is not to second-guess professional judgments based on permissible considerations") since the burden of proof and stated grounds for review are sufficiently specific.

¹⁰ UNC Policy Manual Section 101 defines "personal malice" as follows:

II.B. Definition of "personal malice": As used in *The Code*, the term "personal malice" means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. For example, personnel decisions based on negative reactions to an employee's anatomical features, marital status or social acquaintances are intrinsically suspect. If reappointment is withheld because of personal characteristics that cannot be shown to impinge on job performance, a wrong likely has been committed. On the other hand, if personal characteristics can be shown to impede a faculty member's capacity to relate constructively to his or her peers, in a necessarily collegial environment, withholding advancement may be warranted. For example, the undisputed record evidence might establish that the responsible department chair declined to recommend a probationary faculty member for reappointment with tenure because of the faculty member's "unpleasant personality and negative attitude." Disposition of such a case requires a determination of whether the personality and attitude impeded the faculty member's job performance. While the terms "ill-will," "dislike," "hatred" and "malevolence" may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the prohibition. Any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions

¹¹ As amended, the proposed language would read:

604D. *Review of Non-Reappointment Decisions* [~~Appeals and Grievances~~]

- (2) Campus Based *Review Appeal*. Subject to limitations contained in this Code and the Policies of the Board of Governors, each constituent institution shall have a procedure whereby a tenure track faculty member may seek review of the decision of the constituent institution not to reappoint the faculty member. Such procedures shall at a minimum provide for the following:
 - (a) A reasonable time *of no less than 14 calendar days* within which after receiving the notice of non-reappointment, the faculty member may request review of the decision by the appropriate faculty committee and administrative officers.. If the faculty member does not request review the notice of non-reappointment *in a timely fashion as specified by campus tenure policies*, the non-reappointment is final without recourse to *any further review by faculty committees, the institution, or the Board of Governors*.
 - (b) If the faculty member files *a request for review* in a timely fashion, ~~timely files an appeal or grievance~~, the chancellor shall ensure a process is in place so that a hearing is timely accorded before an elected standing committee of the institution's faculty.

- (f) Slightly refine language relating to appeals to the Board of Governors to clarify that the basis for such an appeal relates to procedural problems in connection with the institutional review process (rather than the initial departmental decision).¹²

E. Proposed New Code Section 610 (“Special Faculty Appointments”)

a. Code 603/604 Committee Proposal.

As noted previously, current Code Section 604 includes language regarding “Special Faculty Appointments” (appointments of “visiting faculty, adjunct faculty, or other special categories of faculty such as lecturers, artists-in-residence, or writers-in residence”), specifying that the review rights applicable to tenure-track faculty under Code Section 604 do not apply to those in positions such as these.¹³ The Code 603/604 Committee has recommended the following proposal:

SECTION 610. SPECIAL FACULTY APPOINTMENTS.

Appointments of visiting faculty, adjunct faculty, or other special categories of faculty such as lecturers, artists-in-residence, or writers-in-residence may be for a specified term of service or at-will, as set out in the letter of appointment. Any term shall be set forth in writing when the appointment is made, and the specification of the length of the appointment shall be deemed to constitute full and timely notice that a new appointment will not be granted when that term expires. The provisions of Sections 602 (4) and 604 shall not apply in these instances.

A special faculty member may not grieve or appeal the decision of a constituent institution not to grant a new appointment to the special faculty member.

This proposal thus

- (a) places provisions relating to “special faculty appointments” in a separate (new) section of the University Code;
- (b) changes existing policy that had specified that such appointments must be for specified fixed terms, and instead specify that such appointments may be either for a specified term or “at will”; and
- (c) specifies that special faculty members have no rights to seek review of decisions not to reappoint, either through campus review processes or through the Board of Governors.

b. Faculty Assembly Executive Committee Proposal.

The FAEC has no objection to (a) (moving the provisions relating to special faculty appointments to a separate section) or to (c) (specifying that there is no right to review on decisions not to reappoint).

The FAEC has significant concerns about provisions permitting either fixed-term or at will appointments as summarized in (b), however. Universities across the country have increasingly moved to short-term and part-time

¹² The purpose of appeal to the Board of Governors is to assure (1) that the campus-based process for ~~making~~ 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

604 C. Special Faculty Appointments. All appointments of visiting faculty, adjunct faculty, or other special categories of faculty such as lecturers, artists-in-residence, or writers-in-residence shall be for only a specified term of service. That term shall be set forth in writing when the appointment is made, and the specification of the length of the appointment shall be deemed to constitute full and timely notice of non-reappointment when that term expires. The provisions of Sections 602 (4) and 604 A shall not apply in these instances.

instructional personnel as a means of saving money. Faculty members in such positions have little job security, even when serving in fixed-term positions. Moreover, special faculty who serve as lecturers, artists-in-residence or writers-in-residence are already constrained in terms of the freedom with which they can express their opinions for fear that unpopular opinions or use of innovative teaching techniques may cause these faculty members not to be reappointed. The Code 603/604 Committee's proposal that such appointments need no longer be for fixed terms, but can instead be "at will" further weakens any assurance that faculty members in such positions will be accorded even that limited job security associated with a specified term. The effect of such a policy change is to put an increased proportion of faculty members in positions in which they are at risk of being treated in arbitrary ways, and to erode well-established traditions that link educational quality to job security, intellectual integrity, peer review, and academic freedom. The FAEC therefore believe sthat the reference to "at will" appointments should be removed rather than added as the Code 603/604 Committee has proposed. In addition, the FAEC believes that, if a separate section is to be used in order to specify the limited rights of special faculty members, that section should at least be clear and complete in stating the extent to which these faculty members may seek review of adverse actions other than non-reappointment.

The FAEC accordingly recommends that proposed section 610 be revised as follows:

Section 610. Rights of Special Faculty Members.

- (1) *Faculty members who are appointed as visiting faculty members, adjunct faculty, lecturers, artists-in-residence, writers-in-residence or other special categories are regarded as "special faculty members" for purposes of the University Code.*
- (2) *Special faculty members shall be appointed for a specified term of service, as set out in writing in the letter of appointment. The term of appointment of any special faculty member concludes at the end of the specified period set forth in the letter of appointment, and the letter of appointment constitutes full and timely notice that a new term will not be granted when that term expires. Special faculty members are not covered by Section 604 of the University Code and may not seek additional review of a decision by a constituent institution not to grant a new appointment at the end of a specified fixed term.*
- (3) *During the term of their employment, special faculty members are entitled to seek recourse under Section 607 of the University Code (relating to faculty grievances). They are also entitled to protection under any other applicable policy or law.*

F. EPA Non-Faculty (new Code Section 611)

a. Proposal by the Code 603/604 Committee.

The Code 603/604 Committee proposes adding a new section 611 to the University Code to address review rights of EPA non-faculty personnel who are subject to adverse personnel actions. The proposal provides minimum procedural rights to covered EPA non-faculty personnel on individual campuses and those employed by General Administration. The proposal in some respects accords such employees more rights than are given to "special faculty" as discussed in the previous section, since covered EPA non-faculty personnel can seek review in narrow instances with regard to non-reappointment (when notice requirements are not met), even though special faculty may not seek such review (assuming that they are on fixed term contracts with definite ending dates). The proposal also calls for establishment of a review committee (similar, apparently to existing faculty hearing or grievance committees) but makes no provision for the membership or character of such committees.

b. Faculty Assembly Executive Committee Proposal.

The FAEC generally believes that fair process should be accorded employees and commends the Code 603/604 Committee for attending to the circumstances of EPA non-faculty personnel. Apparently no consultation has yet been had with affected employees and the FAEC urges that such consultation take place. The FAEC also believes that it will be important to address the composition of review committees and how they are chosen. The FAEC found that the basis on which review might be sought was somewhat unclear, and suggests that language similar to that used in Section 604 ("review" rather than "appeal and grievance") be employed. For the convenience of the Code 603/604 Committee,

the FAEC has developed proposed revised language for this section, but suggests that the Faculty Assembly itself not take action on a matter that is outside its province, given that it represents only faculty members, not EPA non-faculty employees.

G. Post-Tenure Review (Proposed Policy 400.3.3)

a. Code 603/604 Committee Proposal.

The Code 603/604 Committee presented a proposal for substantial modification of the existing Policy on post-tenure review, set forth in the University Policy Manual (not the University Code) at Section 400.3.3. The Policy Manual also includes “Guidelines” that interpret the underlying policy (Section 400.3.3.1(G)). The University’s current policy and guidelines on post-tenure review (Policy 4.3.3) are included in Appendix D, along with revised guidelines on post-tenure review submitted to the Board of Governors’ Personnel and Tenure committee in June 2007.

The Code 603/604 Committee’s proposal¹⁴ would modify existing policy in a number of important ways including:

- (a) Emphasizing efficiency in post-tenure processes by including options for administrative rather than faculty peer review;
- (b) Specifying details about compilation of post-tenure review dossiers rather than leaving those details to individual institutions, and emphasizing compilation of yearly reviews as a means of satisfying post-tenure review requirements;
- (c) Emphasizing possible imposition of serious sanctions in the event of continuing unsatisfactory performance;
- (d) Limiting the scope of review by the elected university-wide faculty hearing committee based on the assumption that any proposed sanction would reflect the widely-held judgment of department peers, and specifying that an administrative recommendation of discharge would presumptively be upheld unless the faculty member could demonstrate by a preponderance of evidence that the recommended sanction stemmed from prohibited forms of discrimination, First Amendment violations, personal malice or material procedural irregularities that cast doubt on the integrity of the decision to seek serious sanctions.

b. Faculty Assembly Executive Committee Proposal.

The FAEC recommends that this proposal be rejected for a number of reasons. Quite apart from the merits,

- (a) review of section 400.3.3 of the Policy Manual was not within the mandate of the Code 603/604 Committee;
- (b) the Board of Governors Personnel and Tenure committee approved a revision of the guidelines on post-tenure review (Policy Manual Section 400.3.3 (G) in June 2007, based in part on feedback provided throughout spring 2007 by the Faculty Assembly, and the proposal is inconsistent with this revision;
- (c) provisions relating to discharge or other serious sanction are addressed in proposed revisions of Section 603 of the University Code as previously discussed, so need not be addressed here.

As to the merits, the Code 603/604 Committee’s proposal

- (d) erodes the core principle that both decisions to award tenure and decisions to impose serious sanctions relating to inadequate performance must fundamentally rely on principles of peer review in order to assure sound judgments based on disciplinary expertise and accountability within the professoriate;

¹⁴ Because of the length of the Code 603/604 Committee’s proposal, it is attached in Appendix E to this memorandum.

- (e) mistakenly assumes that recommendations for serious sanction reflect the views of a substantial portion of departmental faculty rather than primarily the departmental chair; and
- (f) inappropriately limits review by the elected university faculty hearing committee and directing that recommendations for discharge be reviewed not with an eye to the legitimacy of judgments regarding inadequate performance but instead with regard to discrimination, First Amendment concerns, and personal malice.

The FAEC nonetheless recognizes that two modifications in the University Policy Manual and Code may be appropriate to address limited aspects of the post-tenure review process:

- (g) Some provosts and faculty at constituent institutions may wish to incorporate provisions for faculty to request that their department chair or head review their dossier before it is reviewed by a faculty post-tenure review committee. The FAEC wishes to go on record as interpreting the language of Policy Manual Section 400.3.3(G)(6) (guidelines on post-tenure review) to permit individual faculty members to request this review procedure from the faculty post tenure committee itself, which would consider and vote whether to give permission in individual cases for the department chair or head to review the dossier before it is submitted to the faculty post-tenure review committee.
- (h) There should be greater clarity regarding the institutional review procedures through which a faculty member may challenge findings and conclusions regarding the adequacy of their performance in connection with post-tenure review processes. In the FAEC's view, requests for review of departmental or institutional findings and recommendations are most appropriately raised pursuant to Section 607 of the University Code (relating to faculty grievances).
- (i) The FAEC therefore recommends that the following amendments to Section 607 of the University Code (relating to faculty grievances) be adopted:
 - (3) "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution, *including matters related to post-tenure review*. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

III. Summary and Conclusions

The FAEC has carefully reviewed the Code 603/604 Committee's proposals to revise portions of the University Code and related policies. The FAEC believes that the proposed revisions are vague in important respects and create significant risks of compromising the academic freedom of tenured and "special" faculty. The FAEC has accordingly developed alternative language that it believes effectively addresses these potential problems. The FAEC requests that the Faculty Senates of constituent campuses, and delegates to the Faculty Assembly support the alternative language it has developed as a means of constructively addressing the substantial deficiencies in recommendations advanced by the Code 603/604 Committee constituted by the University of North Carolina General Administration as a means of developing possible revisions of the University Code and related policy statements.

Discussion Outline

Meeting with Provost Nielsen

Notes from Brenda Killingsworth and Judith Wegner, Faculty Assembly Representatives

July 17, 2007

Note: The responses written here were made by Larry Nielsen, August 16, 2007, with the assistance of Charles Waldrup, UNC system attorney and committee member, or behalf of the committee. Several of the concerns cited below relate to issues that the committee did not address. However, I believe that three recommendations are major—(1) addition of a fourth reason for discharge, (2) elimination of BOT review of appeal, and (3) addition of an option for an administrative post-tenure review. I have surrounded my responses regarding these three issues with a box, so readers can find them easily. – Larry Nielsen

1. Overall: major, major level of concern by faculty for range of reasons; will need much more time before taking to BOG

RESPONSE: I am very interested in hearing the responses from a broad range of faculty regarding these ideas. I hope that the intervening month has allowed for some of that. Our intention is to get a set of recommendations to the BOG sometime this fall. Since we met, I have conducted two telephone conference calls with the system's CAOs (almost all of them), and several had had discussions with faculty at their institutions.

2. Initial questions:

- a. Charge and goals of the committee?

RESPONSE: Senior Vice President Martin and Vice President Winner delivered the charge to the committee orally. The attached document, drafted by GA Legal Affairs, was a summary of potential matters to consider, but was not intended to be limiting.

- b. Coverage of post-tenure review when that has been dealt with by BOG in June and FA had spent considerable time and expressed grave concerns re shift to administrative rather than peer review (unanimously opposed by FA Exec. Comm., Academic Freedom Committee, Faculty Development committee; resolution opposing from FA in May 2007)

RESPONSE: We decided to consider post-tenure review issues in the committee because they are relevant to the discharge procedures. I also personally felt that we should address this because it is related and because our faculty and administrators have expressed concern about the current post-tenure review procedures.

I was surprised to learn of the objections to an administrative review, as these were never conveyed to our committee. Upon my request to receive a copy of the resolution that is cited here, Brenda sent me what exists—a vote by one of the FA committees opposed to administrative review.

Because of the work that our committee had been doing on this, the proposals that GA had put forward for consideration by the BOG were removed from the June BOG agenda, and

have not been moved forward since. I believe that Vice President Martin is interested in considering the work of our committee before making any further proposal to the BOG (but that is my uninformed assessment).

- c. Reason for blending appeals with grievances when these are separate for good reason now on most campuses? (e.g. for ECU, grievances apply to matters directly related to employment status or institutional relationships; shall also be limited to remedial injuries attributable to violation of a right or privilege based on a federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment or wrongful conduct that deprived the faculty member of an advantage that he or she apparently otherwise would have received) (grievance is not about "a formal proceeding for the suspension, imposition of serious sanction, discharge, or termination of a faculty member's employment, or that is within the jurisdiction of some other committee)

RESPONSE: The Committee was obviously aware of the language in the Code sections about appeals and grievances. We understand that some campuses view any hearing on their campus as a "grievance," and certain matters that leave their campus for Board of Governors' review to be "appeals." In deference to those institutional differences, we tried to make the documents accommodate however an institution approached these hearings.

Questions had arisen in the past about details of several types of hearings, such as burden of proof and evidentiary standards. By setting these out in most Code sections discussing a hearing, we were seeking to clarify these issues. (Note that Code section 607 on terminations still lacks detail. Since we were not aware of questions or problems that had arisen under that Section, we did not recommend changes to it.)

- d. Review of impact on existing BOT tenure policies and grievance policies on campuses?

RESPONSE: We have not reviewed campus BOT policies, but assume that if the proposed revisions are adopted that some changes will be required at the campus level. We do not expect major changes to be needed. We were trying to accommodate campus differences in terminology but retain the substantive nature of each type of hearing.

- e. Level of participation by faculty? (have tried to reach faculty appointees but not successful given summer schedules); would be surprised if they gave full support without any misgivings (which is what the cover memo suggests)

RESPONSE: The 3 faculty appointees had been suggested by the Chair of the Faculty Assembly. One of them only attended the charge meeting. The other 2 faculty appointees regularly attended and provided suggestions/ feedback. They and all other members of the committee had many opportunities to discuss, refine and object to the findings of the group.

I see no reason why you should doubt what the report says about the level of agreement that the faculty representatives or other members have with the recommendations.

- f. Intent for mesh with BOT tenure regulations on the campuses and Faculty Code provisions regarding grievances? Why supplant these?

RESPONSE: Except for trying to work discharge for unsatisfactory performance reviews (under the Post-Tenure Review Policy) into Code section 603, and speed up the process, we did not seek to make significant changes to Code 603. Thus, we assume that most campuses will have to make some changes if our proposed changes are adopted, but believe that the detail we added, such as the burden of proof and evidentiary standard, is already being practiced at campuses and should be expressly stated,

3. Policy 101.3.1 Comments

- a. Title: "Appeals or grievances of non-reappointment decisions" makes no sense since grievance process relates to topics other than non-reappointment

RESPONSE: As indicated in the Response to 2.C. above, the addition of "grievances" was intended to accommodate those campuses that, at the campus level, call these matters grievances.

- b. Basis for appeal: several campuses include discrimination on the basis of sexual orientation in current BOT tenure regulations; some probably also cover age; is this provision intended to curtail campus-based policies? Why?

RESPONSE: Policy 101.3.1 presently covers age. The changes proposed were made to bring this policy into conformity with Code section 103 as to color and creed. The intent of Legal Affairs at GA is to amend Code section 103 to change the language about the military to what is proposed in 101.3.1. This general statement of bases for appeal has been in place for many, many years. No change was made with any intent to place any more limit on campuses than presently exists.

I understand from GA's Legal Affairs that the State Personnel Commission has recently added sexual orientation to its list of protected classes under Chapter 126. GA's Legal Affairs and Human Resources have begun discussions internally about proposing the addition of sexual orientation to the protected groups in Code 103 and other Code sections/policies that discuss protected groups. This issue has not yet been raised with the Board of Governors, so there is no indication how its members will respond to such a proposal.

- c. Definition of "personal malice": concerns re ambiguity re collegiality (a matter FA has been discussing as a concern)

RESPONSE: The Code 600 Committee did not make any proposed change in this subject matter.

- d. Reference that institution should consider extending service of appropriately trained committee chairs (the committee memberships are elected)?

RESPONSE: The Code 600 Committee did not make any proposed change in this subject matter.

- e. Use of professional court reporter will be very expensive; most campuses currently use taped evidence?

RESPONSE: The Code 600 Committee did not make any proposed change in this subject matter.

- f. Removal of BOT from appeals process on tenure denials?

RESPONSE: The Code 600 Committee did not make any change in this subject matter.

- g. Procedural flaws: what is meant by "institutional requirements"?

RESPONSE: We assume this means policies, regulations, guidelines, or whatever a campus calls its controlling documents. The Code 600 Committee did not make any change in this subject matter.

- h. Sufficiency of the evidence: "clearly erroneous" definition appears to preclude any challenge at all, but then a later reference to whether the decision reached was a "reasonable one" seems to apply a different test and is confusing.

RESPONSE: The Code 600 Committee did not make any change in this subject matter.

- 4. Code 609 and policies 300.1.1 and 300.2.1 (relating to EPA non-faculty)
 - a. Have any EPA non-faculty representatives been consulted?

RESPONSE: As of this time, they have not yet been consulted. Such a consultation has been discussed within General Administration.

- b. Confusion between grievances and appeals? Why?

RESPONSE: See the above answers about trying to accommodate different campus practices in nomenclature.

- c. Language about when appeals permitted: many campuses (or at least UNCCH and ECU?) use "at will" appointments for many EPA non-faculty positions; this policy refers to reappointment, and might be read as conferring a right to reappointment; many EPA non-faculty positions may be for researchers on soft money

RESPONSE: The intent in the proposed Code section 611 was to retain the same level of grievance/appeal rights for non-faculty EPA employees as now exists in Policy 300.1.1 and 300.2.1. A word search has been performed on the Code 609/611 proposal document, and it does not show any use of the word "reappointment." We sought to be careful about using the word "reappointment" in this section because we were sensitive about not creating any notion of entitlement to another appointment. But, under present policy, one can appeal not receiving a new appointment. While we did not seek to enlarge appeal rights for EPA non-faculty, we did not seek to reduce them either.

- d. This policy is confusing because it references appeals to the Board of Governors or Board of Trustees; it's really clearer and better for all concerned to have a separate codified section relating to GA rather than trying to blend everything together

RESPONSE: We are not certain if you refer to a specific section, or mean in general. There are other policies in the UNC policy manual that include the two as we have done. such as current Policy 300.1.1.

- e. Change in references about dates (under paragraph 4): why elimination of reference to "final" decision? "Final" is important for purposes of triggering time frames for appeals to the courts

RESPONSE: "Final" decision was retained later in that section. We thought the change improved comprehension.

- f. How much of the change is related to handling of GA employees v. those on campuses? The blending here is confusing and difficult for users to understand;

RESPONSE: The change was an attempt to set out more details in the Code so as to answer questions that had arisen in the past and provide clarity. It was not concerned with any particular set of EPA non-faculty employees.

5. Proposed Changes to Code 603, 604, 605, new 610 and post-tenure review policy

- a. This is really a matter of very, very grave concern
- b. Grounds for discharge or sanction have been significantly expanded and raise significant questions of vagueness for purposes of legal enforcement, as well as significantly infringing understandings of academic freedom
 - i. Many campus policies (e.g. ECU's) allow discharge for incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty
 - ii. The policy expands the meaning of incompetence (what is a "poor teaching technique" or "outdated" knowledge of the subject matter?

RESPONSE: The code currently has no definitions for the reasons for discharge, and we discussed how the various members have had seen the terms used differently (in my subsequent discussions with CAOs, we talked about the same thing). Thus, we thought that adding definitions of key undefined terms would be usefully in limiting grounds for discharge. We are eager for your help if you have better suggestions for these terms.

For this term, we were envisioning someone who was teaching in such a manner as consistently not to convey the subject matter to the students as using a poor teaching

technique. We were envisioning someone who was many, many years behind on teaching current knowledge in his/her field as teaching outdated knowledge.

- iii. The policy defines "neglect of duty" as "insufficient attention"; what does that mean?

RESPONSE: It means, to us, that someone is not being attentive to their job duties.

- iv. "Unsatisfactory performance" is a very different standard and is poorly defined

RESPONSE: This is one of the most significant changes that we are proposing. Because the current reasons for discharge are generally construed narrowly, discharge for unsatisfactory performance does not easily fit into any one of them (this perspective is illustrated by my discussions with others, who variously suggest that unsatisfactory performance belongs in either incompetence or neglect of duty). Thus, we thought that it would be appropriate and useful to add a new category regarding unsatisfactory performance. This seemed especially relevant because we have a post-tenure review process that can result, in the most extreme cases, in discharge.

My subsequent discussions with CAOs have verified that they believe that addition of unsatisfactory performance is appropriate and useful. Some suggest that we might do better by explicitly defining that unsatisfactory performance is covered under either incompetence or neglect of duty, but all felt that we needed the addition.

Of course, the explicit addition of unsatisfactory performance into these other causes for discharge will not solve the issue of unsatisfactory performance being acknowledged as a cause for discharge. If that is the issue, then where the words are placed is irrelevant.

At the recent summer meeting of the Academic Council of NASULGC, we had a session on university legal matters, led by Dr. Beverly Lee of Rutgers University, a specialist in university law. In the Q and A session, I explained our situation and asked Dr. Lee if she thought the addition of unsatisfactory performance was appropriate. She agreed that it was, and, she added, that if the university had a post-tenure review process that fed into the discharge procedure, then it was particularly appropriate and useful.

- v. "Misconduct" has historically referred to significant criminal or research misconduct; the definition refers to "mismanagement" and "professional expectations" which are not well defined

RESPONSE: Again, we thought by defining key terms that we were improving the situation. We perceive ethical misconduct in the faculty member's field to be misconduct that comes within this term. Likewise, mismanagement of a program, grant, or whatever, that is significant would seem to us to be misconduct—such as misuse of grant money.

- c. The statement that hearings shall be concluded within 90 days not counting summer may well mean that there's a longer time for getting hearings completed and may run up against AAUP notice rules; in addition, delays are likely to arise due to availability of administrators or securing of court reporter transcripts

RESPONSE: Since there is presently no time limit set out for campus hearings, we thought we were improving the situation by trying to set a general time limit, realizing that faculty are often not available for conducting such matters during the summer. The inclusion of a time limit should not change any behavior that is now getting hearings completed in less than this time, but only assure that they don't drag on. This time limit should motivate administrators to make themselves available—that was the intent. A court reporter's transcript is usually available about 2 weeks after the hearing. Our experience indicates that faculty prefer to have the transcript to consult as they finalize the committee report and recommendations.

- d. The inclusion of counsel in the hearings on both sides will make the process much more adversarial

RESPONSE: The Code 600 Committee did not make any change on this subject matter.

- e. The use of "preponderance of the evidence" standard is confusing when applied to some of the definitions above; is this standard drawn from places with experience in its application?

RESPONSE: We understand that the general evidentiary standard in most civil matters is the preponderance, or greater weight, of the evidence. We are therefore not clear from the above questions what the concern is in relation to making the evidentiary standard explicit.

- f. The stated "impermissible grounds" don't coincide with practices on many campuses (which may reference sexual orientation)

RESPONSE: See 3.b.

- g. The statement that campuses are to have policies (604D) is important but the changes in other parts of this policy undercut the discretion and shared governance traditionally exercised at the campus level

RESPONSE: The intent in the additional details in Code 604 was to provide a general structure similar to Code 603.

- h. There seem to be confusing statements regarding the burden of proof; saying that the review process "is not to second-guess professional judgments based on permissible considerations" seems to apply an additional standard; "material deviation from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint" is unclear

RESPONSE: We were seeking to resolve the present ambiguity between Code section 604 and Policy 101.3.1 interpreting that Code section.

- i. Why is there no more review by the BOT?

RESPONSE: This is the second major recommendation, as it relates to Section 603. There are several reasons why we are recommending the change to remove the appeal to the BOT.

First, a policy change years ago removed the campus BOTs from the non-reappointment cases. GA and campus attorneys tell us that this has worked well and generally moves those cases along faster.

Second, one of the GA attorneys did research on policies at 8 large university systems, and did not find any that had two sets of boards. He sent out a query to other university attorneys around the country about systems that have multiple levels of boards, and asked how many levels of those boards are involved in reviewing personnel matters. Of the 3 systems identified to him by the responses (Oklahoma, Florida and Utah), all only had one level of board review. Hence, we thought that removing a step in this process was consistent with national practice and would help the case move faster.

Third, the experience of the legal staff on the committee was that the BOT is very reluctant to overturn a chancellor's decision, and, they could not remember a case in which this had happened. Hence, the BOT review does not seem to be a useful step in the process.

Fourth, the inclusion of a review by the BOT creates a logistical legal problem. Because campus attorneys are the legal advisors to the chancellor in such matters, they cannot advise the BOT in their deliberations. Thus, we need to borrow an attorney from another campus or GA to advise the BOT. This is hard to manage.

So, we consider that the appeal to the BOT not useful, cumbersome, time-consuming and out of step with common practice at other universities.

- j. Special faculty provision is problematic; lecturers are on contract and are vulnerable if dismissed at will without reason or appeal

RESPONSE: The only substantive change here is making explicit that a special faculty member may not grieve or appeal the decision of the university not to give them a new appointment. We believe that this is good practice and only wished to make it explicit.

6. Performance review of tenured faculty

- a. This policy is of great concern

- b. The added purposes appear to be punitive; the focus is on sanctions

RESPONSE: This assertion is not true. The added purposes cover a range of circumstances and explicitly add the need for a review of an unsatisfactory performance finding, much in the faculty members favor.

- c. There's a reintroduction of "administrative review" rather than requiring collegial peer review in all cases; that creates significant potential for arbitrariness

RESPONSE: This is the third major recommendation in the report. We have added the option of an administrative review in response to the general feeling that post-tenure review is burdensome and not needed in the vast majority of cases (I note, for example, that in approximately 140 post-tenure reviews done this year at NC State, 2 were found to be unsatisfactory—and we tend to have more negatives than most campuses!).

Please note that the recommendation says that a campus may grant the option for an administrative review; it does not require a campus to adopt this option. So, each campus could decide to allow it or not, depending on its own conception of the relative importance of faculty ownership of the process versus doing the process with the least imposition on the time and resources of the faculty.

We believe that an administrative option would allow most faculty to go through a review that is both efficient and effective, and that it would not be arbitrary. In order to assure that a faculty member was not being arbitrarily judged to have performed unsatisfactorily by an administrator, the recommended procedure requires all subsequent reviews to be peer reviews.

There remains the problem—a rare one, I believe—that an administrator would give an arbitrarily positive review to a faculty member who is actually performing satisfactorily. In such a case, the other faculty in the unit should make the dean aware that this is going on, so that the department chair/head can be assessed and, if necessary, sanctioned or removed.

My discussions with CAOs showed that they favored this idea, as being both efficient and effective.

However, I received an interesting idea from one provost that may resolve all issues and remaining arbitrariness, as well as allowing faculty ownership of the process, if desired. So, I propose adding a step after a faculty member requests having an administrative review. If the faculty member does wish to have an administrative review, the appropriate faculty group would need to vote in the affirmative to allow such a review. This would allow the faculty to allow administrative reviews that they thought were deserved (that is, for faculty who were generally acknowledged as being productive). This would allow the faculty to reject an administrative review if they thought the review would be a whitewash of an unsatisfactorily performing faculty member. This would also allow a faculty group to decide that they would not allow any administrative reviews, if they wished to expend their time and resources conducting all the scheduled reviews.

d. The provisions regarding repeated reviews are confusing

RESPONSE: No, they aren't. Note that we were deliberately vague about what happens after a second negative review so as to provide campuses flexibility in how they handle such situations. So, if that vagueness is a concern, it was deliberate.

e. Many of the statements here seem to be at a level of detail best left to the campus as was done in the June 2007 policy on post-tenure review

RESPONSE: We added the additional detail because the addition of an optional administrative review seemed to warrant it.

SUMMARY OF CODE 600 COMMITTEE RECOMMENDATIONS

Code Section 602 [Tenure]

Changes are only proposed for sub-section (6), to bring it into conformity with proposed changes to Code 603. “Unsatisfactory performance” is added as a ground for discharge, and the grounds for suspension/demotion are revised to make clear those options are only available for lesser forms of misconduct.

Code Section 603 [Discharge and Sanctions]

Definitions of the grounds for discharge are proposed for Code 603. A new basis for discharge for unsatisfactory performance is added (to include unsatisfactory post-tenure reviews). The changes proposed in Code 602 are also proposed for 603. This section will explicitly address suspension/demotion in more detail than in the past. The burden of proof is explicitly placed on the university, and the standard of proof is stated as the preponderance of the evidence. Several changes will move the appeal process along much faster. A notice of intention to discharge a faculty member would include the specification of reasons. A fixed time limit of 90 days within which the faculty hearing should occur is proposed. Appeals would go from the chancellor directly to the Board of Governors, removing the Board of Trustees from the appeals since we are not aware of any university system in the country that has two different governing boards involved in reviewing employee appeals. The time limit for the Board of Governors’ decision is deleted, in part to allow the BOG to remand cases without concern about the time limit and to recognize that currently it takes approximately 45 days to establish the record on appeal and receive statements from the parties, often leaving the BOG a 30 to 45 day period in which to meet and decide the appeal. Since the BOG does not meet every month, this creates a need for a change. Authority to reassign a faculty member to other duties is added to the right to suspend with pay. Other changes generally seek to make the language consistent and parallel with other provisions.

Code Section 604 [Non-reappointment]

It is proposed that this section be revised to apply only to tenure track faculty. The subsection on special faculty is moved to new Code Section 610. Minimum standards for the campus appeal/grievance process are set out, leaving opportunity for campus policies to contain differences (much like the discharge requirements in Code 603). More detail is set out concerning appeals to the Board of Governors.

Code Section 605 [Termination]

An erroneous restatement of a sentence at the end of the section is deleted.

Code Section 609 [Appellate Jurisdiction]

We propose that the section on non-faculty appeals be deleted from this section and placed in a new Code Section 611.

Code Section 610 [Special Faculty]

A new section for special faculty is proposed, containing the prior Code 604 language. Special faculty could be appointed on an at-will basis, not just for a fixed term. It is clarified that there is no expectation of a new appointment, and there are no grievance/appeal rights.

Code Section 611 [Non-Faculty Appeals]

Minimum standards for campus appeals/grievances are set out, leaving opportunity for campus policies to contain differences. The standard of proof and burden of proof are set out. Appeals from the campus end with the Board of Trustees. No new appeal rights are provided beyond what the Code/Policies presently permit.

Policy 101.3.1 [Non-reappointment]

Changes are proposed to make this section consistent with its companion Code Section 604 and to delete language about the appeal that was placed in Code 604.

Policy 300.1.1 [SAAO II]

Sub-section III. is amended to be consistent with the new Code 611 and to improve language and consistency of usage. Salary payment ends after the decision by the chancellor/president.

Policy 300.2.1 [EPA Non-Faculty]

Sub-sections III.- VI. are amended to be consistent with new Code 611 and to improve language and consistency of usage. Salary payment ends after the decision by the chancellor/president.

Policy 400.3.3 [Post-Tenure Review]

Material about the original study and historical information have generally been deleted. Additional purposes have been stated, including that these reviews be conducted on a regular basis; that an administrative review, rather than an original faculty peer review, may be substituted at the request of the faculty member, but subsequent to finding a deficiency, reviews must be by faculty; and faculty members will have an opportunity to respond to post-tenure reviews. Contents of the post-tenure review dossier are set out.

More detail is provided concerning procedures subsequent to an unsatisfactory review, including creation of development plans and additional reviews.

In a discharge hearing, peer judgments by the faculty conducting the post-tenure review are to be given deference by the faculty hearing panel. The unsatisfactory findings of the post-tenure review committee are presumed to establish the grounds for discharge. The faculty member may offer evidence to rebut that presumption to show impermissible reasons for the unsatisfactory review (same as for non-reappointment) or material procedural flaw. The university may then offer evidence to rebut the faculty member's evidence. It is explicitly stated that the university has the burden of proof and that the standard of proof is preponderance of the evidence. The prior statement about not abrogating the criteria and process for discharge is deleted.

Final Report

Code 603/604 Review Committee

June 22, 2007

Committee Charge: On November 10, 2006, Senior Vice President Harold Martin charged the committee to review sections of the UNC Code dealing with various faculty and EPA discharge and appeal processes, generally encompassing Chapter VI of the UNC Code. The committee's responsibility was to make recommendations regarding ways to strengthen and streamline these processes.

Committee Membership and Process: Our committee included 12 members representing General Administration (Harold Martin, Leslie Winner and Charles Waldrup), campus provosts (Charles Harrington, Pedro Martinez and Larry Nielsen), campus legal staff (David Broome, Mary Elizabeth Kurz and Wanda Jenkins), and campus faculty members (Paul Gates, Gene Hughes and Delacy Stith). Professor Hugh Hindman (ASU) was appointed to the committee originally, but could not continue because he was on scholarly leave; Paul Gates replaced him after the first meeting. Dr. Martin and Ms. Winner did not participate in regular meetings, but provided input as needed. Dr. Stith was prevented from participating actively by his teaching schedule.

Our committee met in person and via conference call on seven dates (February 12 and 20, March 6 and 20, and April 10 and 24, May 8), generally for two-hour periods. We discussed specific issues according to a tentative agenda (see attachment), with opportunities for committee members to add agenda items as they wished. All meetings were announced and open to the public. Minutes of each meeting are attached.

Following suggestions from Vice President Martin and General Administration legal staff, we expanded our consideration to include most sections of Chapter VI of the UNC Code (primarily sections 603, 604 and 609), the post-tenure review process, and related sections of the code and policies as needed.

The active committee members are unanimous in their support of the recommendations that follow.

Recommendations:

The following recommendations comprise the narrative and other information regarding our proposed changes to Chapter VI of the UNC Code and related policies. Complete drafts of our recommended revision of the chapter itself and related policies is appended.

Section 600: No recommendations.

Section 601: No recommendations

Section 602:

Recommendation 1: Add a fourth reason for discharge of a faculty member, here and wherever appropriate, relating to unsatisfactory performance. Currently the reasons are incompetence, neglect of duty or misconduct; these reasons are generally considered in a narrow definition. Therefore, we recommend adding “unsatisfactory performance” to cover situations in which a faculty member has failed to perform his/her duties as expected for a substantial period of time.

Section 603:

The process for discharge or the imposition of serious sanctions requires substantial revision to make the process both efficient and effective. The current process allows 210 days for all steps to be concluded, not including two steps that carry no time limits (one of which is the conduct of the faculty panel appeal hearing). Our recommendations reduce the process by 75 days and set a reasonable limit for the faculty panel appeal hearing.

Recommendation 2: Combine the first two steps in the process (notification of intent to discharge or impose serious sanctions and specifications of reasons), saving 20 days.

Recommendation 3: Limit the time for conducting the faculty panel appeal hearing to 90 days, not counting days during summer or winter breaks. Although the time saved by this limit cannot be determined, we believe that the current practice of no limit often causes faculty panel hearings to drag on for many months.

Recommendation 4: Eliminate the possibility of an appeal to the campus Board of Trustees, saving 55 days. Beyond saving these days, this change would make the process consistent with other appeal processes in the UNC Code and would eliminate an awkward conflict-of-representation that occurs because campus legal staff cannot currently staff the Board of Trustee appeal after having staffed the chancellor’s appeal and decision.

Recommendation 5: Eliminate the time limits currently specified for Board of Governors’ actions on appeals, allowing the Board of Governors to remand the decision to additional review.

Recommendation 6: Revise the entire section to include mention of serious sanctions as an option in addition to discharge, to be consistent with the section title and obvious intention.

Recommendation 7: Add language, here and elsewhere, that establishes preponderance of evidence as the appropriate standard for judgment.

Post-tenure Review:

Although post-tenure review is not currently included in Chapter VI of the UNC Code, we believe that the process of post-tenure review should be considered in the same context as section 603 because 603 proceedings will emanate from post-tenure reviews if a faculty member is performing unsatisfactorily and has not been able to improve performance through the various post-tenure steps.

Furthermore, both faculty and administration feel that certain expectations of the current post-tenure review process cause an undue administrative burden on the university system with little real impact. Thus, for reasons of both efficiency and effectiveness, we recommend a substantial change in the post-tenure review process.

Our recommendations are embodied in a re-write of UNC Policy 400.3.3.1(G), “Guidelines on Performance Review of Tenured Faculty.”

Recommendation 8: The PTR process should allow faculty members undergoing review to select either a peer or an administrative review. The administrative review should be conducted by the lowest appropriate administrative level (typically the department chair/head).

Recommendation 9: The dossier used for PTR review should be, at a minimum, a compilation of the previous five annual faculty reports plus a cover description of the faculty member’s cumulative accomplishments and his/her goals and plans for the subsequent review period. This will accomplish the stated intention that previous annual reviews should be part of the PTR process.

Recommendation 10: If a PTR review is found to be unsatisfactory, the subsequent review must be a peer review. This assures that a peer review is conducted if the possibility of subsequent future negative actions exists.

Recommendation 11: Faculty should have an opportunity to respond to the assertions of unsatisfactory performance in post-tenure review, just as they are during the regular tenure and promotion process. The details of the response process should be formed at the institutional level, but might include a required review by the next higher level of administration if a finding of unsatisfactory performance is made, before which the faculty member could review and respond to the assertion.

Section 604:

Currently, section 604 is a mixture of matters relating to tenure-track faculty and non-tenure-track faculty. We recommend several steps to clarify the section.

Recommendation 12: Add appropriate language to all parts of section 604 to designate that the section covers tenure-track faculty only.

Recommendation 13: Add several process steps to section 604 D that define the appeal process to be consistent with appeal processes elsewhere in the UNC Code.

Recommendation 14: Create a new section in Chapter VI that addresses the appointment, notice and appeal conditions for non-tenure-track faculty (i.e., special faculty). The current wording in section 604 C is an appropriate model for the new section.

Section 605: No recommendations

Section 606: No recommendations

Section 607: No recommendations

Section 608: No recommendations (note: Some committee members wondered why this material related to students is included in Chapter VI, but we agree that because the chapter deals with academic freedom as well as tenure, this is the appropriate location for this material.)

Section 609:

This section nominally describes the kinds of appeals, hearings and other reviews that the Board of Governors undertakes. However, it also includes a seemingly misplaced statement about non-faculty EPA employee appeal rights. This should be changed.

Recommendation 15: Remove part 609 C from section 609, and create a new section that prescribes the appeal rights of non-faculty EPA employees (note: Some committee members questioned why matters relating to non-faculty employees are covered in Chapter VI, but we could find nowhere else in the Code where such matters could be placed; if such a location were found, this material should be placed there.)

Other findings and recommendations:

As we reviewed Chapter VI, our committee identified other places in the UNC Code or policies that require clarification or change in order to be consistent or to allow the conduct of these processes efficiently and effectively.

Recommendation 16: Special faculty should be able to be appointed as at-will or term employees, at the discretion of the departmental administrator. This will allow non-paid adjunct faculty to be associated with the campus for as long as relevant and will allow discharge of an undesirable adjunct faculty member without using the 603 process.

Recommendation 17: UNC policy 101.3.1 should be clarified so as not to duplicate proposed changes to Code 604, be consistent with Code 103, and improve other language (specifically related to veterans).

Recommendation 18: UNC policies 300.1.1 and 300.2.1 should be clarified so as not to duplicate and to be consistent with Code 607 and proposed Code 611.

Recommendation 19: Conduct a thorough reading and cross-referencing of Chapter VI so that formats are consistent, text is not redundant, language is clear and consistent (for example, the terms reappointment, discharge, and termination all have specific meanings such that the terms are not interchangeable).

Recommendation 20: The Faculty Assembly and Chief Academic Officers should review these proposed changes before the BOG adopts them. However, we believe that these changes are consistent with the principles and practices of shared governance and good management.

Draft Language:

We have appended draft language for the committee's recommendations. The team of university attorneys on the committee drafted the language in separate, additional meetings—a significant and daunting task.

Next Steps:

The Committee Chair, Larry Nielsen, will coordinate review of these recommendations by the Faculty Assembly and the Chief Academic Officers. Should these reviews raise significant objections or changes to the proposed revision, the chair will re-convene the committee to address those matters. Should these reviews result in minor changes (e.g., clarification of language) or recommendations that do not materially affect the principles underlying the proposed changes (e.g., extending the time for faculty review from 90 days to 100 days), the chair will make those changes without re-convening the committee.

The desired outcome is a recommendation for adoption of these changes to the Board of Governors for consideration at their September, 2007, meeting.

Final Matters:

On behalf of the committee, the chair wishes to acknowledge the conscientious and thoughtful work of the committee members. We also thank Lisa Adamson (UNC-GA) and Amy Jinnette (NC State) for their assistance in facilitating the work of our committee and Charles Waldrup for his additional service performing legal and peer research and drafting.

We believe that our recommendations for improving the processes in Chapter VI will make all the processes more fair, timely, efficient and effective. We appreciate the opportunity to serve the UNC System and our faculty and administrative colleagues on this committee.

Respectfully submitted

Larry Nielsen, Chair
David Broome
Paul Gates
Charles Harrington
Gene Hughes
Wanda Jenkins
Mary Beth Kurz
Harold Martin
Pedro Martinez
Delacy Stith
Charles Waldrup
Leslie Winner

Attachments:

1. Committee roster
2. Committee schedule
3. Committee minutes
4. Chart of current and proposed 603 discharge process
5. Recommended draft of UNC Code, Chapter VI
6. Recommend draft of Post-Tenure Review Policy
7. Recommended draft of related policies

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4 **Faculty Assembly’s Proposed Text Revisions to**
5 **Nielsen “603/604” Committee University Code Revisions**
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7 **Code Section 602: Academic Tenure**
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9 (6) Institutional tenure policies and regulations shall distinguish among the following:
10

- 11 (a) the nonreappointment (or nonrenewal) of a faculty member at the expiration of a specified term
12 of service;
- 13 (b) the discharge from employment of a faculty member with permanent tenure or of a
14 faculty member appointed to a specified term of service before that term expires only for
15 reasons of (a) incompetence, (b) neglect of duty, ~~(c) unsatisfactory performance,~~
16 ~~including but not limited to multiple unsatisfactory post tenure reviews,~~ or (d) (c)
17 misconduct of such a nature as to indicate that the individual is unfit to continue as a
18 member of the faculty, *as specified in Code Section 603.*
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20 ...

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2 **Code Section 603: Due Process Before Discharge or Imposition of Other Serious Sanction**
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4 (1) *A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection*
5 *against unjust and arbitrary application of disciplinary penalties. During the period of such*
6 *guarantees the faculty member may be discharged from employment, suspended, or demoted in rank*
7 *only for reasons of*

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9 (a) *incompetence, including significant, sustained unsatisfactory performance after the faculty*
10 *member has been given an opportunity to remedy such performance and fails to do so within a*
11 *reasonable time;*

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13 (b) *neglect of duty including sustained failure to meet assigned classes or to perform other core*
14 *faculty professional obligations, or*

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16 (c) *(c) misconduct of such a nature as to indicate that the individual is unfit to continue as a member*
17 *of the faculty, including significant demonstrated violations of professional ethics, substantial*
18 *mistreatment of students, significant research misconduct, willful financial fraud related to*
19 *university duties, or demonstrated criminal conduct sufficiently related to a faculty member's*
20 *academic responsibilities as to disqualify the individual from effective performance of*
21 *university duties.*

22
23 *An action to discharge a faculty member will ordinarily be used only in instances in which the*
24 *faculty member's conduct is so serious as to render the individual permanently unfit to*
25 *continue as a member of the faculty. Lesser sanctions including suspension and demotion in*
26 *rank might be used in other instances.*

27 ...

28
29 (5) *If the faculty member makes a timely written request for a hearing, the chancellor shall ensure a*
30 *process is in place so that the hearing is timely accorded before an elected standing committee of the*
31 *institution's faculty. The hearing shall be on the written specification of reasons for the intended*
32 *discharge or imposition of a serious sanction. The hearing committee shall accord the faculty*
33 *member 20 days from the time it receives the faculty member's written request for a hearing to*
34 *prepare a defense. The hearing committee may, upon the faculty member's written request and for*
35 *good cause, extend this time by written notice to the faculty member. The hearing committee will*
36 *ordinarily endeavor to complete the hearing within 90 calendar days except under unusual*
37 *circumstances such as when a hearing request is received during winter or summer break and despite*
38 *reasonable efforts the hearing committee cannot be assembled, or when additional fact-finding is*
39 *required apart from the university discharge process.*

40
41 (8) *In reaching decisions on which its written recommendations to the chancellor shall be based, the*
42 *committee shall consider only the evidence presented at the hearing and such written or oral*
43 *arguments as the committee, in its discretion, may allow. The university has the burden of proof. In*
44 *evaluating the evidence, the committee shall use the standard of "clear and convincing" evidence in*
45 *determining whether the institution has met its burden of showing that permissible grounds for*
46 *serious sanction exist and are the basis for the recommended action. The committee shall make its*
47 *written recommendations to the chancellor within ten days after its hearing concludes or after the full*
48 *transcript is received, whichever is later.*

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2 **Code Section 604. Non-Reappointment of Tenure-Track Faculty Members**
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4 **604B Impermissible Reasons for Nonreappointment.**
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6 In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the
7 faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by
8 Article I of the North Carolina Constitution, or (b) the faculty member's race, color, sex, religion, creed,
9 national origin, age, disability, ~~or~~ veteran's status *or other forms of discrimination prohibited under*
10 *regulations adopted by campus Boards of Trustees*, or (c) personal malice. For purposes of this section,
11 *the term "personal malice" means dislike, animosity, ill-will or hatred based on personal*
12 *characteristics, traits or circumstances of an individual.*
13

14 **604D. Review of Non-Reappointment Decisions ~~[Appeals and Grievances]~~**
15

16 (2) Campus Based *Review Appeal*. Subject to limitations contained in this Code and the Policies of the
17 Board of Governors, each constituent institution shall have a procedure whereby a tenure track faculty
18 member may seek review of the decision of the constituent institution not to reappoint the faculty
19 member. Such procedures shall at a minimum provide for the following:
20

- 21 (a) A reasonable time *of no less than 14 calendar days* within which after receiving the notice of
22 non-reappointment, the faculty member may request review of the decision by the appropriate
23 faculty committee and administrative officers.. If the faculty member does not request review the
24 notice of non-reappointment *in a timely fashion as specified by campus tenure policies*, the non-
25 reappointment is final without recourse to *any further review by faculty committees, the*
26 *institution, or the Board of Governors.*
27 (b) If the faculty member files *a request for review* in a timely fashion, ~~timely files an appeal or~~
28 ~~grievance~~, the chancellor shall ensure a process is in place so that a hearing is timely accorded
29 before an elected standing committee of the institution's faculty.
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1 **Code Section 607. Faculty Grievance Committee for Constituent Institutions**

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(3) "Grievances" within the province of the committee's power shall include matters directly related to a faculty member's employment status and institutional relationships within the constituent institution, *including matters related to post-tenure review*. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

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New Code Section 610. *Rights of Special Faculty Members.*

(1) Faculty members who are appointed as visiting faculty members, adjunct faculty, lecturers, artists-in-residence, writers-in-residence or other special categories are regarded as “special faculty members” for purposes of the University Code.

(2) Special faculty members shall be appointed for a specified term of service, as set out in writing in the letter of appointment. The term of appointment of any special faculty member concludes at the end of the specified period set forth in the letter of appointment, and the letter of appointment constitutes full and timely notice that a new term will not be granted when that term expires. Special faculty members are not covered by Section 604 of the University Code and may not seek additional review of a decision by a constituent institution not to grant a new appointment at the end of a specified fixed term.

(3) During the term of their employment, special faculty members are entitled to seek recourse under Section 607 of the University Code (relating to faculty grievances). They are also entitled to protection under any other applicable policy or law.

Appendix B: Introduction to University Code and Policies and Recent Historical Context

A. General Background: Sources and Types of Documents.

Those unfamiliar with the structure governing University policies may wish initially to review the Board of Governors website to become familiar with relevant documents. There are several types and layers of inter-related documents including

- The “UNC Policy Manual” (a compendium of policies and guidelines at the University System level, adopted in most instances by the University System’s Board of Governors based on proposals from General Administration).
- The University Code (something like a charter, that governs such matters as how the Board of Governors operates, the roles of the President and Chancellors, and fundamental matters such as academic freedom and tenure). The Code appears in Chapter 100 of the Policy Manual.
- Campus-based policies and regulations, which in many instances are to be developed within the broader framework specified by the UNC Policy Manual or parts of the University Code.

It is worth becoming familiar with these basic documents in order to understand how the proposals and numerous documents developed by the Code 603/604 Committee are structured and related. The UNC Policy Manual is available at <http://www.northcarolina.edu/content.php/legal/policymanual/contents.htm> . Note that updates to the Policy Manual are not always fully incorporated into this main webpage, but are available by following the link in the upper right of this page (“Updates”). Also note the definitions of “policies,” “regulations,” “guidelines” and “transmissions” included in section 100.2 of the Policy Manual. Within the University Code itself (Chapter 100.1 of the Policy Manual) there 16 chapters covering a variety of matters.

B. Specific Existing Provisions and Recent History

Chapter six of the University Code is titled “academic freedom and tenure” but includes some other matters as well (such as student rights). There are also related policies regarding appeals and reviews of campus-based decisions, found in the University Policy Manual (section 100.3, much of which has been repealed). Note, as well, that section 602(1) of the University Code specifies that each constituent institution’s Board of Trustees is to adopt campus-based policies and regulations governing academic tenure.

Also note that existing policies relating to post-tenure review are not included in the “University Code” but are instead situated in Chapter 400.3.3 of the Policy Manual (and related guidelines). Section 400.3.3 of the Policy Manual states that post-tenure review policies are to be developed on each individual campus, within the broad framework set forth in the BOG policy (including a requirement of periodic review, plans for improvement of deficient performance, sanctions including discharge for the most serious deficiencies, and peer review). Background materials relating to existing practices with regard to post-tenure review may be found elsewhere on the University System’s website. The original committee report (from 1997) is available at <http://www.northcarolina.edu/content.php/aa/tenure/reports/report.html>. A report from 2003 (five years after initial adoption of the existing post-tenure review policies) is available at <http://www.northcarolina.edu/content.php/bog/minutes/2003/appendixmm11.htm> . In January 2007 the Board of Governors’ Personnel and Tenure committee received a report on recent patterns on the individual campuses reflecting recent experience. That report is found at <http://intranet.northcarolina.edu/content.php/docs/bog/bogdocs/2007-01/personnel/Item%204.pdf>. In February and March, the Board of Governors’ Personnel and Tenure Committee discussed possible revisions in the Guidelines relating to post-tenure review. The Faculty Assembly was given an opportunity to review drafts and its input was incorporated into a version of the proposed Guideline revision that was on the June 2007 agenda of the Board of Governors Personnel and Tenure Committee. <http://intranet.northcarolina.edu/content.php/docs/bog/bogdocs/2007-06/personnel/PUBLIC%20-%20Tab%205.pdf>

Faculty Senate Response to Code 603/604 Review Committee Final Report

The content of this response originates from a conversation among the executive committee of the NCSU Faculty Senate and was drafted by Jim Martin, Professor of Chemistry and Chair of the NCSU faculty. 8/16/07

Academic freedom and tenure are core values of the American academic system, and thus are of significant concern to faculty. The UNC system, being the oldest public university in the nation, has been and should continue to be a leader in best practices in academia. The UNC Code represents a sound document that provides for the privileges and responsibilities of members of this distinguished academy.

The “Code 603/604 Review Committee” was charged to review aspects of *The Code* in order to “strengthen and streamline these processes.” As stewards of the public trust, it is our obligation to ensure effective processes. As faculty we support several of the committee’s recommendations pertaining to efficiency. Nevertheless, the overall tenor of the review committee’s recommendations appears to us to undermine the culture of faculty-driven scholarship in the academy, instead “strengthening” the ability to administratively discharge faculty, and defining faculty responsibility in ever increasing legal terms. While in no way do we seek to diminish faculty responsibility and accountability, we do not believe scholarship and education, the primary responsibilities of faculty, to be well-served by legalistic definitions of faculty responsibility.

We recognize that issues such as faculty discharge and non-reappointment (portions 603 and 604 of *The Code*) are matters of some legal concern. Thus we accept the goal to have legal, administrative and faculty representation on this review committee. As indicated by their report, there was active committee participation of four legal staff (1 from GA and 3 from campuses), three provosts, and only two faculty. This distribution of representation seems out of balance when dealing with matters that also significantly pertain to faculty. Furthermore, we are highly disappointed that this committee’s charge expanded to consideration of post-tenure review guidelines—a process that the American Association of University Professors has specifically recommended should be a career development tool for faculty, not a dismissal and discharge tool.

It is our strong opinion that faculty must be afforded a much more significant voice and, in fact, leadership roles when developing and evaluating such policies and procedures.

That said we offer the following specific evaluations of the recommendations in the final committee report and corresponding documentation.

Section 602

*Recommendation 1: **Strongly oppose.***

The recommendation to include “unsatisfactory performance” as a fourth reason for discharge of a faculty member is at best redundant to the allowed possible causes of “incompetence” and/or “neglect of duty” and at worst administratively malicious. We particularly oppose the effort to include unsatisfactory PTR evaluations as a cause for dismissal, as discussed in more detail below.

Section 603

Though not indicated in the summarized recommendations, we **strongly oppose** the policy revision stating that a faculty member may be demoted in rank for misconduct (also indicated in proposed revisions to section 602). Academic rank is granted as a result of an evaluation of scholarship and achievement. Thus the only grounds for demotion in rank should be as a result of matters such as misrepresentation of work or research misconduct that led to a false evaluation of scholarship and achievement. Rank must not to be associated with conduct.

We further **object** to including conduct that violates “professional expectations” and “moral turpitude” in the definition of misconduct as grounds for discharge of faculty. These terms are ill-defined, and are matters for which it is virtually impossible to establish any consistent metric by which performance can or should be judged. Their inclusion appears to provide an all-inclusive basis for discharge, which is unacceptable.

*Recommendation 2: **strongly support***

We strongly support the recommendation to require that a specification of reasons for discharge is provided at the time notification of said discharge is given. This will both enhance efficiency and fairness.

*Recommendation 3: **oppose specifics, but support modification***

We support the intent of this recommendation, which is to encourage any faculty appeal process be carried out in a timely fashion. However, we strongly object to placing any fixed time limit on the faculty appeal process. Evidence from the historical record of past faculty appeals at NCSU indicates that significant amounts of time (>90 days) may be required to ensure due process including coordination of grievant, respondent and faculty panel schedules; evaluation of appropriate evidence; scheduling and gaining testimony from witnesses, etc.

However, we do believe it is appropriate to place a finite limitation on the time by which any faculty appeal process must be initiated. Furthermore, as is afforded in NCSU's grievance policy, it is recommended that policies give any party the option to challenge the timeliness or responsible function of the faculty appeal panel to the Chair of the Faculty. The Chair of the Faculty evaluates the challenge and may replace a 'problematic' member or completely reconstitute the committee in order to ensure efficient and effective operation of the hearings process. Such an option for challenge, rather than a fixed time limit, ensures that due process is afforded but provides a mechanism to prevent needless stalling of a faculty appeal.

*Recommendation 4: **accept***

It is most critical that an objective body, external to an individual campus, review any decision that is appealed to a higher level. According to *The Code*, a higher-level appeal may occur if a Chancellor declines to accept the faculty committee's recommendation or if Chancellor and faculty committee agree but find in opposition to the faculty member. Thus we accept that the BOG, which represents the entire UNC system as opposed to individual campus' BOTs, is the most appropriate unit to fill the role of objective evaluator.

Furthermore, it is to be expected that a conscientious faculty appeal panel and the Chancellor should both be seeking the best interests of the University. Therefore, we recommend that when considering an appeal in which the Chancellor declines to accept the faculty committee's recommendation, the BOG be charged to seriously consider reconciliation of the recommendation of the faculty committee and the decision of the Chancellor, in addition to the considerations of 1. procedural flaws, 2. sufficiency of the evidence and 3. interpretation of applicable law or policy. Such a condition should be added to Policy 101.3.1 section III.B.

*Recommendation 5: **accept***

Like our recommendation for faculty appeal panel review we encourage timely review but agree that fixed time limits do not often serve due process. Thus we concur with the recommendation to remove time limits for BOG consideration. We further recommend clarification as to what should initiate "remanding the decision to additional review" and the nature of said review.

*Recommendation 6: **support***

*Recommendation 7: **support***

Post-Tenure Review (PTR)

We largely **oppose** the proposed revisions to the PTR policy because a majority of the proposed revisions clearly make the PTR process a tool to facilitate faculty discharge rather than a possible career development tool. In the final committee report it is specifically stated that discharge proceedings (603) “will emanate from post-tenure reviews if a faculty member is performing unsatisfactorily...” Rather we endorse the report on post-tenure review by the American Association of University Professors (AAUP) (approved in June 1999 by the Association’s Committee A on Academic Freedom and Tenure, adopted that month by the Council and endorsed by the Eighty-fifth Annual Meeting). In that report, it is accepted that reasonable forms of PTR can be employed for accountability measures and as a career development tool. But they expressly state, “*Post-tenure review should not be undertaken for the purpose of dismissal. Other formal disciplinary procedures exist for that purpose. If they do not, they should be developed separately, following generally accepted procedures.*” It is of grave concern to us that any PTR policies and guidelines for the UNC system be consistent with nationally accepted faculty norms and best practices.

Recommendation 8: accept with caveats

Given that the vast majority of faculty are performing at a level that “meets expectations” we accept the recommendation of an administrative review option. However, we recognize that current academic tenure policy already calls for annual and periodic comprehensive review of all faculty that is to be conducted by Department Heads (Chairs). Thus, an administrative PTR is simply redundant and inconsistent with the spirit of the PACE initiative.

Recommendation 9: support with caveats

We support efficiency in preparation of any dossier for PTR review, thus are pleased with the recommendation that a primary component of the dossier be a compilation of past annual faculty activity reports. The brief faculty member statement is also reasonable. However, we caution against legalistically “writing goals and plans for the subsequent review period.” Requiring too much ‘planning and vision’ to be committed to a legal-type review document that may be used as grounds for discharge, creates a culture where success is defined by simply “meeting expectations” as opposed to risking the pursuit of greatness. The purpose of tenure is to provide a safe context from which risk in the pursuit of ideas, discovery and thought is encouraged. Such creativity and originality has no simple accountability metric, but is fostered by a community culture of scholarship.

We do not agree that the proposed dossier “accomplishes the stated intention that previous annual reviews should be part of the PTR process.” Further, while we strongly disagree with the use of the PTR process for discharge purposes, if it

is to be used in this fashion the actual annual reviews must be a part of the PTR dossier.

In addition, it is important that conditions be in place to require appropriate administrative units to have completed and complied appropriate supporting information such as annual reviews, peer review of teaching, etc. In the absence of these, a “does not meet expectations” action plan must be implemented for the supervising administrator before the faculty based PTR process can ensue.

Recommendation 10: **support**

We strongly agree that in the event of an unsatisfactory PTR, subsequent reviews must be peer as opposed to administrative reviews. However, we again object to the emphasis on negative actions such as discharge in the event of unsatisfactory review. If a PTR process exists, then the actions from an unsatisfactory review should only focus on mechanisms to restore that faculty member’s performance. As stated in the AAUP report, other disciplinary measures should be (and are) in place for the purpose of disciplinary action.

Recommendation 11: **support with addition**

We support the recommendation that faculty be given the opportunity to respond to assertions in their post-tenure review. It is important that credibility be given to said faculty responses by ensuring that challenged assertions or alleged false statements or misrepresentations raised by a faculty member in response to his or her PTR report are administratively acknowledged. Thus, while the administrative unit may or may not agree with the challenge, at a minimum it should be expected that an administrative response would be provided explaining the basis on which the original statement or assertion was made.

Revision to Policy 400.3.3 section 1f (not listed in summary of recommendations): **strongly object**

This section added to the PTR policy is directly addressing how PTR reviews should be use by a faculty appeal panel when hearing an appeal of a decision to discharge a faculty member. We strongly object to PTR being a direct part of disciplinary procedures, as is also consistent with the above referenced AAUP guidelines. But this clause further obviates due process in a performance-based dismissal case. A PTR dossier and evaluation provides an important, but limited, view of a faculty member’s performance that is evaluated only at the departmental level. There is not, nor should there be, a structure to present, defend and cross-examine evidence in a PTR review. However, these are essential components of due process in any faculty appeal. Furthermore, the faculty hearing process is intended to be an extra-departmental evaluatory process to ensure fair and due process and to uphold a university culture and standard. Unfortunately, the stated clause “the findings of the post-tenure review

process shall be presumed to establish grounds for the imposition of discharge,” codifies a principle of guilty until proven innocent, as opposed to the guidelines of *The Code* that establish the standard of a preponderance of evidence. PTR is only one piece, hardly a preponderance of evidence. It is imperative that this section be removed.

Section 604 and proposed 610

Recommendation not in summary:

In the revision to section 604 B, the list of impermissible reasons for non-reappointment was amended. We accept these modifications however recommend that ‘sexual orientation’ needs to be added to this list.

Recommendation 12 and 14: oppose

The Code already has specification for tenure-track faculty in its academic tenure policy. This policy is sufficient to deal with aspects of appointment, reappointment and requirements of notice and review that are unique to the tenure track. Thus, we see no need to create a new section of *The Code* to repeat virtually all of the same information for non-tenure track faculty. The two conditions that the committee recommendations appear to make to justify a new section 610, include the ability to make at-will appointments of special faculty and to state that “a special faculty member may not grieve or appeal the decision of a constituent institution not to grant a new appointment to the special faculty member.

Both these conditions create a problem because of the broad and apparently ill-defined term of special faculty. At NCSU special faculty may include lecturers, research faculty, clinical faculty, teaching faculty, etc., many of whom are permanent employees, albeit on renewable contracts as opposed to tenured. Alternatively, special faculty may include non-paid often visiting or adjunct faculty.

The latter non-paid category could potentially fill an at-will appointment. Though it would seem that reasonable planning on the part of the appointing unit should enable an assessment of a term of appointment. Herein term appointments also provide periodic assessment of the appointment, not required of an at-will appointment.

By contrast, good personnel policy should assume that permanent NTT-faculty, also special faculty, are provided reasonable and timely notification of reappointment, and are protected by reasonable due process via a grievance or appeal policy as are even non-faculty employees (see Code 610/proposed 611). The end of such employees’ contract term should not constitute notification that their appointment expired. For that reason the existing *Code* 604 details the

basis for the timely notification of reappointment. Furthermore, even a lecturer hired to teach one course should not be hired as an at-will faculty, they must be hired for at least a term of one semester. Thus, we find no rationale for the hiring of faculty on an at-will basis.

*Recommendation 13: **accept with comment***

It is reasonable to include the process steps of section 604D to bring this portion of the policy in keeping with other portions of *The Code* discussing appeals and grievances.

Again it is important that any appeal and grievance process affords due process and is fair and effective. In this regard, we recommend removing the last proposed sentence to section 604 D.1.d that states “The review process is not to second-guess professional judgments based on permissible considerations.” While this statement is true, and implied elsewhere throughout *The Code*, the term “second guessing” is a non-definable term. To have such a statement written into policy gives the appearance of creating a loophole that could be used to prevent a comprehensive consideration of facts.

Furthermore, as noted above in comment to recommendation 4, it is to be assumed that the Chancellor and any faculty grievance/hearings committee are both concerned for the best interests of the University. Thus we recommend that to section 604 D.2 be added a charge to the Board of Governors review to seriously consider reconciliation of the recommendation of the faculty committee and the decision of the Chancellor, if the Chancellor’s decision is in opposition to the recommendation of the faculty committee.

Section 609

*Recommendation 15: **support***

Moving material from section 609C to the new 611 makes sense. However, we recommend that an appropriate EPA-staff body vet the new section 611 describing the appeals/grievances by non-faculty EPA employees prior to approval.

Other findings and recommendations

*Recommendation 16: **strongly oppose***

Our rationale for opposition to this recommendation is discussed above in comments to recommendation 12 and 14. We find the role of Faculty and the concept of an at-will appointment to be philosophically in opposition.

*Recommendation 17: **accept***

*Recommendation 18: **accept***

*Recommendation 19: **accept***

*Recommendation 20: **These policies are not generally ready for adoption by the BOG.***

We appreciate the opportunity afforded us by the Faculty Assembly to review these policies prior to their consideration by the Board of Governors. As detailed above, we have major concern regarding many of the proposed changes and believe that their adoption would have grave consequences with respect to the principles and practices of shared governance and good management. It is our opinion that the committee must reconvene, if not be reconstituted with co-equal administrative and faculty leadership and representation to reevaluate these matters.

Council requests time on changes

Proposal affects faculty dismissal

By: [Katie Loeffler, Staff Writer](#)

Issue date: 9/17/07 **Section:** [University](#)

At its Friday meeting, UNC-Chapel Hill's Faculty Council discussed proposed revisions that might change the termination process of tenured faculty.

However, the council found fault with the language of some of the revisions, which are proposed by a General Administration committee, and also wanted more time to consider the changes, pending review by more faculty members.

The faculty-debated amendments to the UNC-system Board of Governors University Code would include the addition of "unsatisfactory performance" as a means of dismissal. The current grounds for dismissal include incompetence, neglect of duty and misconduct.

Faculty members voiced concerns about the implications of vague definitions of these terms and said the General Administration committee never clearly expressed why a change is needed.

Because of these concerns, the Faculty Council passed a resolution, proposed by its executive committee, requesting that the UNC-system General Administration withhold the proposed revisions to the code from the board until after Jan. 1.

"The faculty at large has not had the opportunity to see it," said Ellen Peirce, professor at the Kenan-Flagler Business School and an executive committee member. "They didn't know it existed."

Peirce also said deans and department chairmen should be able to review the revisions and give input that will help the Faculty Council in its role of making recommendations about policy to the General Administration.

The General Administration, which oversees all of the 17 schools in the UNC system, created an initial 12-member committee to revise the code.

Several UNC-CH faculty members expressed concern about the lack of faculty representation on the initial committee.

The committee had three faculty members serving on it, and only two of those three actively participated.

The rest of the committee was made up of provosts and legal staff.

The General Administration committee issued a final report on the revisions June 22.

Joe Templeton, chairman of the faculty, who leads the council, said he supported the Faculty Council's decision to wait to give an official recommendation.

"I think additional faculty input on the proposal to revise the code of the Board of Governors would be a good idea," he said.

The Faculty Assembly, a separate advisory body made up of members from all of the UNC-system schools, will also vote on the revisions at its next meeting Sept. 28.

Judith Wegner, secretary of the Faculty Assembly and a professor in UNC-CH's School of Law, said the Faculty Assembly's executive committee will vote on a similar resolution to postpone action on the revisions.

Wegner, who also sits on UNC-CH's Faculty Council, said the Faculty Assembly resolution will provide a "detailed critique of the proposal and alternative language and a proposed resolution that will ask for more time to review and implement the language that the faculty is suggesting."

Ultimately, the Board of Governors has the final say on the revisions to the code.

The Faculty Council also passed a resolution to support a proposed smoking ban for 100 feet of all campus buildings and heard a report on the UNC Health Care system.

RESOLUTION:

Resolution 2007-10. On Proposed Revisions to the Code of the Board of Governors Pertaining to Faculty Employment

Presented by the Faculty Executive Committee

Section 1. The Faculty Council of the University of North Carolina at Chapel Hill acknowledges publication of the Final Report of the Code 603/604 Review Committee, dated June 22, 2007, and respectfully requests that implementation of its recommendations not take place before January 1, 2008, to the end that the Council and other appropriate committees of the faculty of the University of North Carolina at Chapel Hill might have adequate time to evaluate the implications of those recommendations for academic tenure and its administration at the school and departmental level in this institution, and to convey to the Executive Vice Chancellor and Provost and through her to the President and Board of Governors such commentary and recommendations as may be deemed appropriate.

Sec. 2. The Secretary of the Faculty is requested to transmit a copy of this resolution to the President of The University of North Carolina.

1 **DRAFT FACULTY ASSEMBLY RESOLUTION: On Proposed Changes in University Code**

2
3 WHEREAS, the Faculty Assembly has reviewed proposed changes in the University Code proposed by
4 the "Code 603/604 Committee" as of July 17, 2007; and

5
6 WHEREAS, Faculty Assembly delegates have sought additional review from Faculty Senates and
7 colleagues on their campuses; and

8
9 WHEREAS, the Faculty Assembly believes that there are significant problems with key aspects of the
10 proposed revisions particularly including those relating to relating to institutional guarantees of tenure and
11 grounds for discharge and rights of "special faculty"; and

12
13 WHEREAS, the Faculty Assembly also believes that there are areas in which language needs to be
14 clarified in order to avoid possible future confusion; and

15
16 WHEREAS, the Faculty Assembly believes that the Code Review committee's work exceeded its charge
17 insofar as it included recommendations regarding post-tenure review processes that are inconsistent with
18 policies reviewed and supported by the Assembly in late spring 2007, as reported to the Board of
19 Governors Committee on Personnel and Tenure in June 2007; and

20
21 WHEREAS, the Faculty Assembly understands that the Code Review committee spent considerable time
22 and effort on its proposals and wishes them to move ahead promptly, but believes that important changes
23 will lack legitimacy if more widespread consultation with faculty is not allowed; and

24
25 WHEREAS, the Faculty Assembly's Executive Committee has developed alternative language to address
26 its concerns with the original Code 603/604 proposals in an effort to move matters forward but wishes to
27 allow faculty members to review and understand these recommendations;

28
29 **NOW THEREFORE BE IT RESOLVED**

- 30
31 1. The Faculty Assembly affirms its belief that the Faculty Assembly Executive Committee's proposed
32 alternative language is strongly preferable to language proposed by the Code 603/604 Committee in
33 its July 2007 draft;
- 34 2. The Faculty Assembly asks that Faculty Senates and colleagues on the various campuses be given an
35 adequate opportunity to review this alternative language, relevant background, and up-to-date
36 proposals from the Code 603/604 Committee before General Administration and the Board of
37 Governors acts on the Committee's recommendations;
- 38 3. The Faculty Assembly asks its officers to refer this resolution, the alternative language, background
39 information, and up-to-date proposals from the Code 603/604 Committee with a request that
40 comments be submitted by the end of October for further consideration at the November Faculty
41 Assembly meeting;
- 42 4. The Faculty Assembly requests that General Administration defer submitting the Code 603/604
43 Committee's recommendations to the Board of Governors until at least December 2007 so that
44 comments can be received and meaningful review completed;
- 45 5. The Faculty Assembly requests that, in the future, changes to the Code or other University policies
46 directly affecting faculty should be undertaken only with more extensive faculty representation on
47 relevant committees or task forces, more open involvement in deliberations from the outset, and
48 adequate opportunities to comment during the academic year except under pressing and unusual
49 circumstances.
- 50