Response to GA letters concerning WCU’s PTR and TPR document (July 31, 2009).

**GA Letter #1: Review of Post Tenure Review Policy:**

1. (4.08 E page 25)

The tenured faculty of each department shall establish a procedure for post-tenure review. These procedures must be approved by the dean of the college and the Provost. Each department establishes a PTR committee (approved by the departmental faculty) with at least three tenured departmental colleagues, excluding the department head. Whenever a department finds it impossible to form a committee containing at least three tenured faculty, the matter will be referred to the Provost. The Provost, with the approval of the tenured faculty of the department and the dean of the college, will, by selecting tenured faculty from similar departments, constitute a committee of three tenured faculty for the department. Faculty members being reviewed are not permitted to select a member of the committee. However, this does not preclude such faculty members from voting on committee membership along with their colleagues.

2. (4.10 C2 page 40) **The Faculty Post-Tenure Review Appeals Committee.** Why is this section needed? See note on GA letter dated May 13, 2009.

 2. Duties and responsibilities

a. The committee is authorized to hear, and advise with respect to the adjustment of grievances of faculty members of the general faculty who have concerns relating to the post-tenure review. The power of the committee is solely to hear representations by the persons directly involved in the appeal and to hold a hearing if necessary, and to inform appropriate administrative officials. The mediation hearing shall be conducted by someone other than a member of the Faculty Post-Tenure Review Committee and be closed to the public unless the faculty member requests otherwise. The decision of the Post-Tenure Review Appeals Committee will be binding. Adjustment in favor of an aggrieved faculty member will be given to the Chancellor only after the dean, department head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.

b. Appeals within the province of this committee include all those matters related to the faculty member's post-tenure review status.

**GA Letter #2 Review of Campus Tenure Related Policies:**

**1a. (4.03C2(2) page 5**

(2) Special faculty members who are paid 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 paid special faculty member concludes at the end of the specified period set forth in the letter of appointment, and the letter of appointment constitutes full and timely notice that a new term will not be granted when that term expires. However, full-time appointees at the rank of instructor or above (including lecturers and visiting assistant/associate/full professors) shall be given the notice of non-reappointment specified in Section 4.09B1. if the conditions of appointment to the rank of instructor or above include a provision that the appointment is subject to renewal.

**1b. Recommend the Provost making the final decision on reappointment and then the appeal process begins.**

**(4.04 E 8-9 p. 12)**

8. The Office of the Provost

1. Provides training for deans and department heads to assist them with the responsibilities involved in the collegial review process.
2. Hears appeals from departments concerning the appropriateness of the departmental criteria.
3. Consults with the appropriate department head and deans to grant prior service credit for new faculty.
4. Develops guidelines for the specific contents and format of the dossier annually.
5. Hears the initial appeal from candidates denied tenure or promotion by the Provost.
6. Make recommendations to the Chancellor on tenure and promotion
7. Make decisions for reappointment.

9. The Chancellor

1. Hears appeals from candidates denied tenure or promotion by the Provost, following the Provost’s negative decisions on reconsideration of appeals.
2. Presents recommendations to the Board of Trustees for tenure and promotion.

**(4.06 Reappointment for Tenure Track Faculty p. 17-18)**

**4.06 Reappointment For Tenure Track Faculty**

**A. Overview**

The reappointment process is a review of a tenure–track faculty member’s annual progress toward meeting departmental criteria for tenure and promotion during the probationary period (See Section 4.07A.3). This process is a significant part of the basis of a tenure-track faculty member’s annual contract renewal. Reappointment recommendations are made at the department and/or college level and are forwarded to the Provost. Tenure review occurs no later than the final year of a faculty member’s probationary period. A decision not to reappoint a faculty member may be made for any reason that is not an impermissible reason.

**B. Application and Review Process**

Each faculty member submits a reappointment dossier to the department head, which is a cumulative record documenting progress toward tenure. The dossiers for reappointment and tenure have a similar format but a different review process.

1. The Provost, in consultation with the Collegial Review Council, will provide instructions for the preparation of dossiers in April for the next TPR cycle.

2. The reappointment dossier is reviewed by the department collegial review committee. The department collegial review committee meets to vote on reappointment within the time frame established by the Annual TPR Calendar issued by the Provost, said time frame not to exceed 15 working days following the submission deadline. In accordance with the established procedures of each college, department heads submit recommendations directly to the dean or to the college collegial review committee. The recommendations then go to the Provost for final decisions.

**4.10 Hearings and Reviews Committees and Processes**

Faculty members may seek review of negative decisions or address grievances in accordance with the policies described in the Faculty Handbook and the relevant sections of the *Code of the University of North Carolina*.

There are three main committees that deal with these types of issues: the Faculty Hearings Committee, the Faculty Post-Tenure Review Appeals Committee, and the Faculty Grievance Committee.

Here are set forth the administrative and committee reconsideration process for the appeal of negative decisions on reappointment, promotion, tenure, and post-tenure review. A reconsideration procedure affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was based on non-permissible reason as specified in Section 4.09F.2, a flawed process, or material procedural irregularity.

These review processes include the following:

* Review of non-reappointment decisions and decisions not to recommend for tenure when non-reappointment is involved
* Review for promotion and tenure decisions not involving reappointment (early tenure)
* Review of discharge or the imposition of serious sanction (for those with tenure)
* Reconsideration hearing for termination of a position for financial exigency or major curtailment/elimination of a program

**A. Administrative Reconsideration**

1. The administrative reconsideration process for review of the negative decisions/recommendations of the Provost on reappointment, promotion or tenure would include the following:

a. A faculty member who wants the Provost’s decision/recommendation to be reconsidered must file a written request for reconsideration with the Provost no later than 14 calendar days after receiving written notice of the negative recommendation. Failure to file the written request in a timely manner waives further recourse to institutional review, grievance, and hearing procedures. The written request for reconsideration shall consist of a short statement setting out the faculty member's specific reasons for believing that the negative decision/recommendation was inappropriate.

b. Review shall be limited to a reconsideration of the material and matters presented and considered during the original review in accordance with published criteria.

c. The reconsideration process is as follows:

1) Within five working days of receipt of the request for reconsideration, the Provost shall meet with the faculty member to discuss the request.

2) After meeting with the faculty member, the Provost shall seek additional advice and information. Among the options are the following:

a) Instruct the department head and/or dean to meet with the faculty member and to then reconsider the matter, after receiving advice from advisory committees and considering the statements of the faculty member

b) Consult with the university-level advisory committee

c) If a department, college, or university tenure, promotion, reappointment committee meets to reconsider the matter, the faculty member shall have the right to present in person the basis of the request for reconsideration.

d) Within 20 working days of the Provost’s receipt of the request for reconsideration, the Provost shall notify the faculty member and the Chancellor in writing of the results of the reconsideration process.

d. The Chancellor will inform the faculty member of his/her decision. A faculty member may request review of the Chancellor's negative decision on promotion, or tenure provided that 1) the negative decision was preceded by a positive recommendation from the Provost or 2) the faculty member had requested, in a timely fashion, reconsideration of the Provost’s negative recommendation.

**2. (4.09A2 p.28)** Should the first line be “probationary instead of non-probationary”? (Rich Kucharski suggested keeping this as is.)

2. Non-reappointment

 Non-reappointment decisions can apply to full-time, non-tenured, non-probationary faculty members whose appointment contract includes a provision that the appointment is subject to renewal. Decisions for non-reappointments for probationary or continuing faculty are based upon the procedures outlined in Sections 4.05 and 4.06.

**3. (4.09 Termination of Employment): Clarify Terminology (Rich suggested keeping this as is.)**

4.09 Termination of Employment

**A. Types of Termination of Employment to the University**

1. Faculty members with permanent tenure or appointed to a fixed term can be terminated from employment because of:

* Resignation or retirement
* Discharge or the imposition of serious sanctions
* Financial exigency
* Major curtailment or elimination of a teaching, research, or public-service program

2. Non-reappointment

 Non-reappointment decisions can apply to full-time, non-tenured, non-probationary faculty members whose appointment contract includes a provision that the appointment is subject to renewal. Decisions for non-reappointments for probationary or continuing faculty are based upon the procedures outlined in Sections 4.05 and 4.06.

**B. Timely Notice**

1. The minimum requirement for timely notice of non-reappointment shall be as follows:

|  |
| --- |
| **Timely notice before faculty member’s employment contract expires** |
| **Amount of Service** | **Notice given not less than** |
| First year or less | 90 calendar days |
| During second year of continuous service | 180 calendar days |
| More than two years of continuous service | 12 calendar months |

2. Credit for prior service shall not be counted as continuous service at Western Carolina University for purposes of timely notice.

3. Reappointment decisions will be in writing. If the decision is not to reappoint, then failure to give timely notice of non-reappointment will oblige the Chancellor thereafter to offer a terminal appointment of one academic year.

**C. Faculty Resignation and Retirement**

1. Faculty may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes.

2. A faculty member resigning or retiring from the University should deliver written notice, containing an effective date, to the faculty member’s immediate supervisor. The University requests that it receive such written notice no later than 90 calendar days before a resignation becomes effective.

3. In order to receive retirement benefits or other benefits available at separation, if any, a faculty member must retire or otherwise separate from the University in accordance with legal requirements through the University’s Office of Human Resources.

4. The faculty member who has been approached with regard to another position should inform the department head and dean when such negotiations are in progress. When the faculty member enters into a binding agreement, he/she should promptly notify the department head and the dean of the college. Western Carolina University expects 90 calendar days notice before a resignation becomes effective.

**D. Discharge or the Imposition of Serious Sanctions**

1. A faculty member, who is the beneficiary of institutional guarantees of tenure, shall enjoy protection against unjust and arbitrary applications 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 significant 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 violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either (i) sufficiently related to a faculty member’s academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious as to adversely reflect on the individual’s honesty, trustworthiness or fitness to be a faculty member.

 These sanctions may be imposed only in accordance with the procedures prescribed in this section.

2. For purposes of these regulations, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. Different procedures shall apply to non-reappointment or termination of employment.

3. The Provost shall send the faculty member a written notice of intention to discharge the faculty member or impose a serious sanction together with a written specification of the reasons. The notice and specification of reasons shall be sent by a method of mail or delivery that requires signature for delivery. The statement shall include notice of the faculty member's right, upon request, to a hearing by the Faculty Hearing Committee.

4. If, within 14 calendar days[[1]](#footnote-1) after the faculty member receives the notice and written specifications referred to in paragraph 3 above, the faculty member makes no written request for a hearing, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure. Such a discharge or serious sanction shall be imposed by the Provost via letter sent to the faculty member by a method of mail or delivery that requires a signature for delivery. The discharge or serious sanction is imposed upon posting of the letter on the effective date identified in the letter.

5.

7. 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 the Faculty Hearings Committee. The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The hearing committee shall accord the faculty member 30 calendar days from the time it receives the faculty member’s written request for a hearing to prepare a defense. The Faculty 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 Faculty 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.[[2]](#footnote-2) The procedures for the hearing are set forth in Section 4.10B.3.

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

**4. (4.05E3b(1) page 31)**

b. Termination

1) When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of a program is not founded upon financial exigency, the faculty member shall be given timely notice as required by the *Code of the University of North Carolina (Section 605 B)*.

**5.(4.09E)**  need to add contents of the written notice of termination from Code 605C.

**E. Termination of a Position for Financial Exigency or Major Curtailment or Elimination of a Program**

 "Financial exigency" is defined as a significant decline in the financial resources of the institution that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public-service program shall be made by the Chancellor, after consulting with the academic administrative officers and faculties as required by Section 605 C(1) of the *Code of the University of North Carolina*, subject to the concurrence by the President and then approval by the Board of Governors. If the financial exigency or curtailment or elimination of program is such that the institution's contractual obligation to a faculty member may not be met, the employment of the faculty member may be terminated in accordance with institutional procedures that afford the faculty member a fair hearing on that decision

1. Reasons for terminating employment

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

2. Consultation with faculty and administrative officers

 When it appears that the institution will experience an institutional financial exigency or when a major curtailment in or elimination of a teaching, research, or public service program is being considered, the Chancellor or the Chancellor's delegate shall first seek the advice and recommendations of the academic administrative officers and faculties of the departments or other units that might be affected. The Chancellor shall assure that full discussion at all appropriate academic levels will precede a decision to eliminate positions as a result of either financial exigency or major curtailment or elimination of a teaching, research, or public service program. The Chancellor shall seek alternatives to the elimination of positions. After discussions with the affected department, the Chancellor shall consult the Chancellor's Advisory Committee before formulating the final decision.

3. Termination procedures

a. Considerations in determining whose employment is to be terminated

 In determining which faculty member's employment is to be terminated for the reasons set forth above, consideration shall be given to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

b. Termination

1) An individual faculty member whose employment is to be terminated shall be notified of this fact in writing. This notice shall include a statement of the conditions requiring termination of employment, a general description of the procedures followed in making the decision, and a disclosure of pertinent financial or other data upon which the decision was based.

12) When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of a program is not founded upon financial exigency, the faculty member shall be given timely notice as required by the *Code of the University of North Carolina*.

3) When a faculty member's employment is to be terminated because of financial exigency, the institution shall make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources to give the same notice as set forth in Section 4.09B

4) For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section 605 of the *Code of the University of North Carolina***,** the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be made by a method of delivery that requires a signature for delivery, and the faculty member will be given 30 calendar days after attempted delivery of the notice to accept or reject the offer.

c. Termination if reconsideration not requested

 If, within 10 days after the faculty member receives the notice, the faculty member makes no written request for a reconsideration hearing, the faculty member's employment shall be terminated at the date specified in the notice given pursuant to Section 4.09E3b and without recourse to any institutional grievance or appellate procedure.

d. Request for a reconsideration hearing

 Within 14 calendar days after receiving the notice of termination from the Chancellor, the faculty member may request by registered mail, return receipt requested, a reconsideration of the decision to terminate the faculty member's employment if he/she alleges that the decision was arbitrary or capricious. The request shall be submitted to the Chancellor and shall specify the grounds upon which it is contended that the decision to terminate employment was arbitrary or capricious, and shall include a short, plain statement of facts that the faculty member believes support the contention.

 Submission of such a request shall constitute on the part of the faculty member: (1) a representation that the faculty member can support his/her contention by factual proof and (2) an agreement that the institution may offer in rebuttal of the faculty member's contention any relevant data within its possession.

e. Jurisdiction of the Faculty Hearing Committee

 If the faculty member makes a timely written request for a reconsideration of the decision, the Chancellor or the Chancellor's delegate shall insure that the hearing is accorded before the Faculty Hearing Committee. The procedures for the reconsideration hearing are set forth in Section

**6. (4.10B3a p.38)** recommend to change “Chancellor” to “Provost” to designate the administrator to present the case.

3. Review before discharge or the imposition of serious sanction (or the due process hearing before discharge or the imposition of serious sanction)

a. The hearing shall be on the written specification of reasons for the intended discharge or imposition of serious sanction. The parties to the hearing shall be the faculty member and an academic administrator designated by the Provost. The Faculty Hearing Committee shall accord the parties no less than 30 calendar days from the time the committee receives a written request for a hearing to prepare their presentations. The hearing committee chair may, upon either party’s written request and for good cause, extend this time by written notice to the parties.

**7. (4.10B4c p. 40)** add CODE 605C(6) when referring a potential appellant to The Code….and The Code does not establish a time limit on such an appeal.

c. Procedure after hearing

If the Faculty Hearing Committee determines that the faculty member's contention has not been established, it shall, by a simple, unelaborated written statement, so notify the faculty member and the Chancellor. The faculty member may then appeal the decision to terminate the faculty member's employment in the manner provided by the *Code of the University of North Carolina Section 605 C (6)*.

If the Faculty Hearing Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify the faculty member and the Chancellor in writing. The committee shall also provide written recommendation for corrective action to the Chancellor.

Within 10 working days after receiving the recommendation, the Chancellor shall send to the faculty member and the Chair of the Faculty Hearing Committee written notice of what modification, if any, the Chancellor will make with respect to the original decision to terminate the faculty member's employment. If the Chancellor does not reverse the original decision, the faculty member may appeal the termination in the manner provided by the *Code of the University of North Carolina*. If the Chancellor concurs in a recommendation of the Faculty Hearing Committee that is favorable to the faculty member, the Chancellor's decision is final.

1. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted. [↑](#footnote-ref-1)
2. To meet this deadline, faculty are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two or more sessions. [↑](#footnote-ref-2)