

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 days¹ 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. 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 The procedures for the hearing are set forth in Section 4.10B.3.
6. 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.

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.

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.

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. The 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.
- 2) 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 605B)*.
- 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 4.10A below.

F. Grounds for Non-Reappointment

1. The decision not to reappoint a faculty member when a probationary term of appointment expires may be based on any factor considered relevant to the total institutional interests, but it must consider the faculty member's demonstrated professional competence, the potential for future contributions, and institutional needs and resources.
2. These considerations may form, in whole or in part, the basis of the ultimate decision, except that a decision not to reappoint may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution, (2) discrimination based upon the faculty member's race, color, sex, religion, creed, national origin, age, sexual orientation, disability, veterans' status, or (3) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See UNC Policy 101.3.1 II.B. for details.
3. A faculty member has 14 calendar days from receipt of the non-reappointment decision from the Chancellor within which to request the Faculty Hearing Committee to review the matter. The review request must be written, addressed to the chair of the Faculty Hearing Committee, and otherwise conform to the requirements of Section 4.10A. If a faculty member makes no request to the

committee in the time allowed, further recourse to institutional grievance and hearing procedures is waived.