8.1 STATE BOARD OF HIGHER EDUCATION REGULATIONS on Academic Freedom and Tenure, Academic Appointments; and UND Procedures Implementing State Board of Higher Education Policy; Reviewed and approved, UND Standing Committee on Faculty Rights, 2006. (Board Policy is in lightface type; UND implementation procedure is printed in boldface type.)

8.1.1 Academic Freedom and Tenure; Academic Appointments

1. General Principles

a. A college or university is a forum for ideas, and it cannot fulfill its purpose of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. Academic freedom and tenure are both important in guaranteeing the existence of such a forum. This policy is intended to enable institutions under the authority of the Board to protect academic freedom.

b. The purpose of tenure is to assure academic freedom. Academic freedom applies to all scholarly pursuits. Freedom in scholarship is fundamental to the advancement of knowledge and for the protection of the rights of the faculty members and students. It carries with it duties and responsibilities correlative with rights. These duties and rights are set forth in policy 401.1, relating to Academic Freedom, and the 1940 Statement of Principles on Academic Freedom and Tenure (Rev. 1990), adopted by the American Association of University Professors and the Association of American Colleges. These policies apply to all institution faculty unless otherwise indicated.

c. Tenure is awarded by the Board upon recommendation of the Chancellor, following review and recommendations made pursuant to the procedures established at the institution and a recommendation by the institution's president to the Chancellor. A favorable recommendation means that the applicant meets all of the prerequisites and criteria and the award of tenure is consistent with the sound fiscal management and academic priorities of the institution and the system of education under the control of the Board. Tenure recommendations submitted to the Board shall include a brief summary of the candidate's qualifications and reasons for the recommendation. Tenure is not an entitlement, and the granting of tenure requires an affirmative act by the Board. Tenure is limited to the academic unit or program area in the institution in which tenure is granted and shall not extend to an administrative or coaching position.

2. Definitions of terms used in sections 605.1, 605.2, 605.3, and 605.4

a. "Academic Year" means the period, approximately nine months in duration, starting with the beginning of the Fall semester and ending following completion of the Spring semester.

b. "Board" means the North Dakota State Board of Higher Education. [No implementation required]
c. "Faculty" means all members of the academic staff, excluding only coaches and administrators in their capacities as coaches or administrators. [No implementation required]

d. "Receipt" means either actual or constructive receipt. Constructive receipt means the sending party has taken all reasonable steps to ensure that the receiving party has received actual notice. [No implementation required]

3. General Procedures

a. Because of the variety of scope and organizational structure of the institutions under the control of the Board, the faculty governance structure at each institution, in accordance with section 305.1 of these policies, shall recommend procedural regulations to the president to implement policies 605.1, 605.2, 605.3 and 605.4, including:

i. procedures for continuing evaluation of both probationary and tenured faculty members; and

ii. criteria and procedures by which faculty members are evaluated and recommended for tenure.

b. The criteria for tenure evaluation and continuing evaluation of probationary and tenured faculty shall include scholarship in teaching, contribution to a discipline or profession through research, other scholarly or professional activities, and service to the institution and society. Institutions may adopt additional criteria. The regulations defining these criteria shall be consistent with the nature and mission of the institution.

i. Institutions shall establish various tenure "plans" appropriate to the diverse missions of individual institutions, designed to encourage emphasis on research, scholarship in teaching (including, for example, utilization of technology in teaching and innovative teaching methods), service (including, for example, technology transfer and economic development) and other areas of emphasis. Institution regulations shall include guidelines for determining weight to be given each of the criteria for tenure evaluation and continuing evaluation. The guidelines shall provide for varying emphases on the enumerated criteria based upon the faculty member's plan, the needs of the institution and the background, abilities and interests of the faculty member.

ii. Tenured and probationary faculty contracts shall identify the faculty member's tenure plan and describe the faculty member's duties and goals. The contracts shall specify the weight to be given the criteria for evaluating performance. The contract provisions shall be reviewed and, when appropriate, revised as a part of the faculty member's periodic evaluations.

c. Eligibility for tenure requires a probationary period of six years of continuous academic service to the institution, during which the faculty member is evaluated at least annually according to an evaluation process designed to
foster continuous improvement. The term may be extended beyond six years or the continuous service requirement may be waived in exceptional circumstances. Institutions shall establish procedures for granting extensions or waivers of the continuous service requirement in exceptional circumstances, which must include maternity or parental leave and appropriate accommodations for faculty members with disabilities. Institution procedures may define additional exceptional circumstances including, for example, family emergencies or extended illness.

d. An institution may, subject to procedural requirements stated in this policy and sections 605.2, 605.3, and 605.4, decline to renew the contract of a probationary faculty without cause at any time during the probationary period.

4. Faculty appointments shall be probationary, tenured or special.

a. PROBATIONARY APPOINTMENTS are renewable annually and yield credit toward tenure. The probationary term is limited to six years of continuous academic service, excluding extensions to the term or exceptions to the continuous service requirement granted in exceptional circumstances.

   i. An individual with previous professional experience may, at the discretion of the institution, be given tenure credit not to exceed three years for this experience, with such credit to be regarded as academic service to the institution for the purpose of these regulations. The faculty member shall be informed in writing of this policy and the institution's decision prior to or at the time of appointment.

   ii. Time spent on leave of absence or developmental leave may be counted, up to a maximum of two years, as academic service for the purposes of these regulations. The amount shall be determined, and the faculty member informed in writing, including any applicable conditions, prior to authorization of the leave.

b. TENURED APPOINTMENTS recognize a right, subject to Board policy, to continuous academic year employment in an academic unit or program area as defined by an institution and stated on the contract. A faculty member shall qualify to be recommended for a tenured appointment by satisfying the criteria for tenure developed in accordance with subsection 3 of this policy.

   i. The following persons are not eligible for tenured appointment:

      a. Faculty members with a part-time or temporary appointment. However, faculty members who have been awarded part-time tenure as established by previous Board policy and those who accept a part-time appointment after being awarded tenure in a full-time position shall continue to have such tenure recognized.

         b. An institution's president.

   ii. The Board may, following review and recommendations made pursuant to the procedures established at an institution award tenure in exceptional
c. SPECIAL APPOINTMENTS do not involve either tenure credit or status. Special appointments are all appointments except tenured or probationary appointments, including:

i. Courtesy adjunct appointments awarded in accordance with Board policy to professional people who contribute to the academic or research program of the institution; [No implementation required]

ii. Visiting appointments for people holding academic rank at another institution of higher education; [No implementation required]

iii. Appointments of retired faculty members on special conditions; [No implementation required]

iv. Initial appointments supported wholly or partially by other than state appropriated funds; [No implementation required]

v. Appointments clearly limited to a brief association with the institution, as defined by the institution;

vi. Terminal appointments given with notice of non-renewal to faculty members who were previously on probationary appointment. A terminal appointment with notice of non-renewal must be given to a faculty member no later than the end of the sixth year of probationary appointment if the decision is made to deny tenure; [No implementation required]

vii. Part-time faculty;

viii. Lectureship appointments, which shall be for performance of specifically assigned academic duties only, without general faculty responsibilities;
ix. Members of the faculty appointed to lectureship positions, who wish to serve on the University Senate, University Senate Committees, and or the Council of College Faculties may do so. Membership or service does not change appointment criteria outlined in NDUS policy.

x. Graduate teaching assistant appointments; [No implementation required]

xi. Postdoctoral fellowships and clinical appointments; and

xii. Other faculty appointments, not probationary or tenured, that are designed to help fulfill the institution's mission or meet long-term needs. The appointments shall be subject to an agreement describing the faculty member's duties and goals, criteria and weight assigned each criteria for evaluation. The term of an appointment and agreement, or renewal thereof, may not exceed three years. The faculty member's performance and achievement of goals shall be evaluated during the final year of an appointment. An appointment may be renewed only if the evaluation demonstrates satisfactory performance.

5. The general terms and conditions of appointment shall be provided the appointee in a written contract. The contract shall state whether the appointment is probationary, tenured or special. The term of a contract, except contracts made pursuant to paragraph 4(c)(xi), shall generally not exceed one year. A multiple-year contract must be subject to termination upon discontinuance of the program in which the faculty member is employed, non-appropriation or loss of funds, or other financial exigency. For faculty on nine- or ten-month contracts covering the traditional academic year (generally, August to May), institutions shall, not later than June 30 each year, provide notice of renewal terms with a contract, agreement or appointment letter to be signed by both parties. Absent good cause or agreement extending or establishing a different deadline, faculty must sign and return a contract or other document indicating acceptance of contract terms not later than July 20. Institutions shall establish procedures providing that failure to return a signed contract or other document indicating acceptance of contract terms by July 20 constitutes a resignation resulting in termination of employment, effective July 20, except for good cause shown by the faculty member or unless the institution has granted an extension. Prior to the end of the spring semester each year, institutions shall provide notice to faculty summarizing the process and deadlines for contract renewal, including information on extending deadlines to accommodate faculty who may be traveling or not able to readily receive and respond to communications during summer months.

6. The institutional process for evaluation of faculty, the criteria and minimum expectations for promotion and for tenure, and provisions concerning required notices, shall be made known to the appointee at the time of appointment. This disclosure may be accomplished by a published description of the process, criteria, and expectations in a faculty handbook or similar document. Such provisions are subject to change according to processes established for adoption or amendment of Board and institutional policies. Institution procedures shall provide for annual evaluation of all full-time faculty. The procedures shall include provisions requiring that evaluations are completed in a timely and appropriate fashion and that the institution takes appropriate remedial action in response to unsatisfactory
evaluations. Evaluation criteria shall relate to a faculty member’s duties and goals and be appropriately weighted in accordance with the terms of the faculty member’s contract. Evaluations of all teaching faculty must include significant student input.

State Board of Higher Education Policy Manual, 11-16-01, Section 605.1

8.1.2 Standing Committee on Faculty Rights

1. Each institution shall have a Standing Committee on Faculty Rights consisting of three or five tenured faculty members elected for staggered terms by the faculty governance structure. The Committee shall elect its own presiding officer annually and shall hold formal hearings in accordance with the procedures described in section 605.4 on all matters referred to it under these policies. The Committee shall judge any allegation of bias or conflict of interest. In the event that an individual member is judged by the Committee to be biased or to have a conflict of interest in a specific case, the Committee shall replace the member with a substitute member for that case.

2. Each institution shall adopt procedures concerning mediation implementing section 605.5 of these policies. Institutions shall pay all mediation costs.

3. Chapter 44-04 of the North Dakota Century Code, relating to open meetings and records, including section 44-04-19.2 concerning confidential or closed meetings, applies to Standing Committees on Faculty Rights. Pursuant to N.D.C.C. § 44-04-20, each committee chair shall file in the president's office the name, address, and telephone number of a person who may be contacted to obtain information concerning meetings or to request notice of meetings. Proceedings concerning the appointment or removal, including non-renewal, of a faculty member may, pursuant to N.D.C.C. § 15-10-17, be closed, unless the faculty member requests that the proceedings be open, in which case the proceedings shall be open. Proceedings not concerning the appointment or removal of a faculty member, including proceedings concerning discipline not involving dismissal, shall be open.

State Board of Higher Education Policy Manual, 11-16-01, Section 605.2

Implementation at the University of North Dakota:

The University of North Dakota Standing Committee on Faculty Rights shall consist of five tenured faculty members to be elected one per year for staggered terms of five years each by the Senate.

8.1.3 Non-Renewal, Termination or Dismissal of Faculty

1. A probationary appointment may be terminated, without cause, with notice to the faculty member that the appointment will not be renewed.

   a. Notice shall be given:
i. At least 90 days prior to termination during the first year of probationary employment at the institution.

ii. At least 180 days prior to termination during the second year of probationary employment at the institution.

iii. At least one year prior to termination after two or more years of probationary employment at the institution.

b. A department chair, dean or other person authorized under institution policies to give such notice shall provide written notice of the decision, including a reference to the policy section pursuant to which the action is taken. The faculty member may within ten calendar days after receipt of the notice request a reconsideration by the deciding body or individual. The faculty member may incorporate a request for mediation in the request for reconsideration. The institution shall respond in writing to the faculty member within ten calendar days after receipt of the request.

Implementation at the University of North Dakota:

Notice to the faculty member may be achieved by any of the following methods: certified mail; placement in the office mailbox; or hand delivered to the faculty member. Date of notification is the date on which the faculty member was presented with the letter in person; it was delivered to the office mailbox; or when received by certified mail, whichever receipt is earliest.

2. An institution may terminate a probationary appointment effective at the end of any contract term, with no less than 90 days notice of nonrenewal based upon a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of organizational units or program areas or elimination of courses. The notice of nonrenewal shall include a reference to the policy section pursuant to which the action is taken. When a probationary appointment is terminated pursuant to this subsection, the provisions of subsection 1 do not apply.

3. A special appointment terminates at the end of the term stated on the contract and may be renewed at the discretion of the institution.

Implementation at the University of North Dakota:

A special appointment ends at the end of the contract term and is renewed at the discretion of the institution. No notice is required.

4. A faculty member on probationary or special appointment may, within twenty calendar days after receipt of notice of nonrenewal of a probationary appointment or termination of a special appointment or, if the faculty member requests reconsideration or the parties agree to mediation under paragraph b of subsection 1, within twenty calendar days of receipt of the results of the reconsideration or
conclusion of mediation, request review of the decision and a hearing by the Standing Committee on Faculty Rights by filing written notice with the deciding body or individual and the chair or the senior member of the Standing Committee on Faculty Rights. The request for review may be based on allegations that the institution failed to comply with applicable policies or gave the decision inadequate consideration, or that the nonrenewal decision violated (a) academic freedom, (b) rights guaranteed by the United States Constitution, or (c) terms of the employment contract or other written agreement. The allegation must be supported by a specification of the reasons why the decision violated these rights and a summary of the evidence supporting the allegation(s). The institution shall, within twenty calendar days of receipt of the written notice and specifications, provide a written response to the faculty member and the chair of the Standing Committee on Faculty Rights.

Implementation at the University of North Dakota:

Within 20 business days of notification of non-renewal or termination of a special appointment, the formal written grievance must be given to the Chair of the Standing Committee on Faculty Rights (SCFR) and the President of the University of North Dakota. The faculty member (Grievant) must deliver to the Chair of SCFR, a minimum of 8 copies of the grievance. One copy of the grievance will be kept for the final report, 5 will be distributed to SCFR members, to the external hearing officer, and one copy will be given to each person against whom the grievance is brought. Within 20 business days, the institution will provide 8 copies of its response to the SCFR Chair. If the date the information is due falls on a Saturday, Sunday, or University holiday, the response is due the following day. All information must be delivered by 4:30 p.m. on the day it is due to the office of the SCFR Chair. The SCFR Chair will be responsible for disseminating all copies to the parties and the SCFR members.

A Grievant may request a review of her/his case and a hearing by SCFR. The request for review may be based upon allegations that the institution failed to comply with applicable policies or gave the decision inadequate consideration, or that the non-renewal decision violated his/her academic freedom, rights guaranteed under the United States Constitution, or that the University violated the terms of his/her employment contract or other written agreement. SCRF is free to consider any or all of the bases in the appeal of the non-renewal, but the faculty member must specify the basis of her/his appeal in the request and the faculty member must provide a summary of the supporting evidence. Note that proof that the Grievant was doing excellent work, performing his/her responsibilities in exemplary fashion, is not generally a permitted basis for appeal. Excellent performance of the Grievant’s responsibilities would only prevent a non-renewal if the University had expressly promised to renew his/her contract if her/his performance was excellent. In proceedings brought before SCFR under this section, the Grievant has the burden to prove to SCFR, by a preponderance of the evidence, that the Grievant’s rights of the kind protected have been violated. SCRF determines the level of specification and adequacy of the evidence.
Mediation may be requested by the Grievant. SBHE Policy 605.5 covers mediation.

5. A faculty member may terminate an appointment by giving notice in writing. Faculty are encouraged to give notice well in advance of the date of termination of employment at the end of a contract term. For the purpose of determining eligibility for participation in the state uniform group insurance program during summer months only, the effective date of termination of a faculty member with a nine- or ten-month contract covering the regular academic year (generally, August to May) who gives notice of resignation prior to the end of the contract term but completes the contract term, or who completes the contract term and then gives notice of resignation before the beginning of the next regular contract term or does not return to work for the next regular term, is July 2. This provision does not apply if a faculty member's spouse is employed by the state and eligible for participation in the state uniform group insurance program during the summer months. Also, this provision does not apply if employment is terminated and a faculty member does not complete the contract term or if a faculty member provides notice of other health plan coverage during the summer months. If a faculty member with a nine- or ten-month contract also has a contract for the summer term and resigns but completes the term, the effective date of termination is July 2 or the ending date of the summer term contract, whichever is later.

6. An institution may terminate an appointment of a tenured faculty member following a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of academic units or program areas, or elimination of courses. In such cases, significant consideration shall be given to length of service and tenure status in the retention of faculty members within the affected academic unit or program area, curriculum requirements, professional achievements, breadth of competence, and equal employment opportunity. A tenured faculty member terminated pursuant to this subsection shall be given written notice of termination, including the reason(s) for the action, at least twelve months prior to the date of termination. Each institution shall establish procedures for implementing this policy.

   a. A tenured faculty member given notice of termination under this section may request that the institution circulate his or her vita to other academic units or program areas within the institution. In addition, the institution shall ensure that fair consideration is given to the faculty member, during the period of the terminal appointment, for vacant academic positions in the employing institution for which the faculty member is qualified. The faculty within any academic unit or program area shall have the major responsibility in determining qualifications for appointment therein. If a tenured faculty member accepts an appointment in a different academic unit or program area, the faculty member shall retain his or her tenure status, subject to approval of the Board.

   b. A position terminated under this section shall not be filled by a replacement within two years, unless the released faculty member has been offered appointment with tenure and a reasonable time within which to accept or decline it.
c. The provisions of section 605.4 do not apply when a tenured faculty member is terminated under this subsection. The faculty member may, however, within twenty calendar days of receipt of notice of termination, file a request for review under processes established at the institution for that purpose.

7. In accordance with section 305.1 of these policies, the faculty governance structure at each institution shall adopt procedures by which faculty participation is solicited before notice of termination is given any tenured faculty member pursuant to subsection 6. Faculty participation shall be solicited concerning:

   a. The extent to which there are grounds for termination of tenured appointments;
   
   b. Judgments determining where within the overall academic program termination of appointments may occur; and
   
   c. The procedure and criteria for identifying the individuals whose appointments are to be terminated.

8. A faculty member may be dismissed at any time for adequate cause. Adequate cause means: (a) demonstrated incompetence or dishonesty in teaching, research, or other professional activity related to institutional responsibilities, (b) continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement; (c) substantial and manifest neglect of duty, (d) conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others, (e) a physical or mental inability to perform assigned duties, provided that such action is consistent with laws prohibiting discrimination based upon disability, or (f) significant or continued violations of Board policy or institutional policy, provided that for violations of institutional policy the institution must notify the faculty member in advance in writing that violation would constitute grounds for dismissal, or the institutional policy must provide specifically for dismissal as a sanction.

Implementation at the University of North Dakota:

The review of SCFR is focused on whether or not the facts and/or circumstances exist, which the University asserts show adequate cause for dismissal.

   a. An authorized institution officer shall give written notice of intent to dismiss and specify the reasons for the action. The officer may, in the officer's discretion, also schedule a meeting with the faculty member to discuss the action. The notice shall state that the officer will forward to the institution president a recommendation to dismiss unless the faculty member, within twenty calendar days of receipt of the notice, requests a hearing before the Standing Committee on Faculty Rights. If the faculty member does not make a timely request for a hearing, the president, upon receipt of a recommendation to dismiss, shall make a decision and provide written notice and reasons for the action to the faculty member within ten business days of receipt of the recommendation.
Implementation at the University of North Dakota:

The University may dismiss a faculty member at any time for "adequate cause." The University's notice of intent to dismiss must specify the grounds upon which the request is made and must be made to the faculty member and the Vice President for Academic Affairs and Provost. A Grievant may request a hearing before SCFR within 20 business days of receiving notice of the University's intent to dismiss for adequate cause. If the Grievant does not make a timely request for a hearing, the Provost will forward the information to the President, who upon receipt of a recommendation to dismiss, shall make a decision and provide written notice and reasons for the action to the faculty member within 10 business days of receipt of the recommendation.

b. A faculty member may, within twenty calendar days of receipt of notice of intent to forward to the institution president a recommendation to dismiss, request a formal hearing before the Standing Committee on Faculty Rights, pursuant to section 605.4.

Implementation at the University of North Dakota:

A faculty member may, within 20 business days of receipt of notice of intent to forward to the University's Provost a recommendation to dismiss, request a formal hearing before the Standing Committee on Faculty Rights, pursuant to section 605.4.

c. Pending a final decision on dismissal for adequate cause, the faculty member may be suspended by the institution's president or assigned to other duties in lieu of suspension, if it is reasonably determined that it is in the best interests of the faculty member or the institution to do so. The faculty member's salary and fringe benefits shall continue during a period of suspension. Salary and benefits shall be terminated upon a final decision by the institution president to dismiss the faculty member following conclusion of proceedings at the institution.

Implementation at the University of North Dakota:

Pending a final decision on dismissal for adequate cause, the faculty member may be suspended by the Provost or assigned to other duties in lieu of suspension, if it is reasonably determined that it is in the best interests of the faculty member or the University to do so. The faculty member's salary and fringe benefits shall continue during a period of suspension. Salary and benefits shall be terminated upon a final decision by the President to dismiss the faculty member following conclusion of proceedings at the institution.

9. If the administration determines that the conduct of a faculty member, although not constituting ground for termination or dismissal, provides reasonable cause for imposition of a sanction, the administration shall inform the faculty member in writing of the sanction and the reasons for the sanction. A sanction means demotion, suspension (but not including suspension pending a dismissal or
termination decision), salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure. A sanction does not include implementation of an improvement plan or performance action plan or negative comments in a performance review, letter of reprimand or other document placed in a personnel file; rights to respond to a performance review or to a letter of reprimand or other document placed in a personnel file are set forth in N.D.C.C. § 54-06-21 and institution grievance procedures adopted under SBHE Policy 612. If the sanction is imposed following a hearing by the Standing Committee on Faculty Rights and based on the hearing record, there is no further review. If the sanction is imposed without a hearing, the faculty member may request review upon filing with the institution's president and chair or senior member of the Standing Committee on Faculty Rights a request for review and specifications of reasons within twenty calendar days of receipt of notice of imposition of a sanction. The institution shall have twenty calendar days following receipt of the request for review to file a response. The Standing Committee on Faculty Rights shall review the matter according to procedures established at the institution for that purpose and issue a written report within twenty calendar days of receipt of the institution's response and may make a recommendation to resolve the dispute, stating its reasons. The institution shall make its final decision upon reconsideration and provide written notice of that decision to the faculty member within ten days of receipt of the report and recommendation of the Standing Committee on Faculty Rights. Upon filing of a request for review pursuant to this subsection, imposition of the sanction shall be suspended pending a final decision of the institution's president following conclusion of those proceedings.

Implementation at the University of North Dakota:

If the administration determines that the conduct of a faculty member, although not constituting ground for termination or dismissal, provides reasonable cause for imposition of a sanction, the administration shall inform the faculty member in writing of the sanction and the reasons for the sanction. A sanction means demotion, suspension (but not including suspension pending a dismissal or termination decision), salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure. A sanction does not include implementation of an improvement plan or performance action plan or negative comments in a performance review, letter of reprimand or other document placed in a personnel file; rights to respond to a performance review or to a letter of reprimand or other document placed in a personnel file are set forth in N.D.C.C. § 54-06-21 and institution grievance procedures adopted under SBHE Policy 612. If the sanction is imposed following a hearing by SCFR and based on the hearing record, there is no further review by SCFR. If the sanction is imposed without a hearing, the Grievant may request review upon filing with the University's Provost and SCFR Chair a request for review and specifications of reasons for the review within 20 business days of receipt of notice of imposition of a sanction. The University shall have 20 business days following receipt of the request for review to file a response. SCFR shall review the matter according to procedures established at the institution for that purpose and issue a written report within 20 business days of receipt of the University's response and may make a recommendation to resolve the dispute, stating its reasons. The University shall make its final decision upon reconsideration and provide written notice of that decision to the Grievant within 10 business days of
receipt of the report and recommendation of SCFR. Upon filing of a request for review pursuant to this subsection, imposition of the sanction shall be suspended pending a final decision of the President following conclusion of those proceedings.

State Board of Higher Education Policy Manual, 11-16-01, Section 605.3

8.1.4 Hearings and Appeals

1. A faculty member may request a hearing with the Standing Committee on Faculty Rights by filing a written notice, accompanied by a specification of the reasons or the grounds upon which the request is based, with the Committee chair or senior member of the Committee and the institution's president. The institution shall have ten business days from receipt by its president of the notice and specifications to file a response with the Committee Chair or senior member of the Committee and the faculty member.

Implementation at the University of North Dakota:

The faculty member (Grievant) must request either a hearing or stipulate to a decision on the basis of written statements i.e. paper review. This request must be accompanied by a detailed specification of the reasons or grounds on which the grievance is based. The grievance must be given to the Chair of the Standing Committee on Faculty Rights (SCFR) and the President of the University of North Dakota. The Grievant must deliver to the Chair of SCFR, a minimum of eight copies of the grievance. Five copies will be distributed to SCFR members, one for the external hearing officer, one copy will be given to each person against whom the grievance is brought, and one copy of the grievance will be kept for the final report. Within 20 (twenty) business days, the institution will provide eight copies of its response to the SCFR Chair. In its response, the Institution will also specify whether or not it agrees to stipulate to a paper review. Both the Grievant and the Institution must agree to a paper review. The SCFR Chair will be responsible for disseminating all copies to the parties and the SCFR members.

2. The Committee shall appoint, at the expense of the institution according to institution procedures, a hearing officer with authority to conduct pre-hearing meetings, supervise exchange or collection of information, advise the Committee or preside over the hearing. The faculty member, the institution and their representatives shall comply with all reasonable directives and requests of the hearing officer appointed by the Committee. The institution shall provide necessary clerical support for the Committee and, upon request, for the hearing officer.

Implementation at the University of North Dakota:

The hearing officer may be internal or external to SCFR or the faculty at UND. The Grievant will identify whether he or she has a representative and, if so, indicate whether the release of information should be to that representative or the Grievant. A hearing officer will not be appointed if
the Grievant and the Institution have stipulated to a decision made on the basis of a paper review.

3. The Committee or the hearing officer shall hold a pre-hearing meeting or meetings in order to (a) simplify the issues, (b) effect stipulations of facts, (c) provide for the exchange of documentary or other information, or (d) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious. The faculty member, the institution and their representatives shall participate in pre-hearing meetings upon request and comply with the directives of the Committee or the hearing officer. Discovery shall be informal and formal depositions or interrogatories for the purposes of discovery are not permitted, except with agreement of the parties.

**Implementation at the University of North Dakota:**

When pre-hearing meeting(s) is held, attendees and purpose must be defined: 1) attendees: SCFR (or just the SCFR Chair or a committee member(s) or another person if designated by the entire SCFR), and the parties and their representatives. 2) purpose: simplify the issues, make stipulations, exchange documentary or other information, and other objectives to make the hearing fair, effective, and expeditious. The SCFR should:

a. require the parties to exchange eight (8) copies of witness lists and specify subject matter of testimony and any exhibits allowing both parties to supplement their documentation within fifteen calendar days after the original exchange, if necessary;

b. have the parties mark exhibits before the hearing—UND 1, 2, . . . , Grievant's Name A, B, . . . ;

c. have faculty member state, in writing, if she/he wishes an open or (to protect privacy) a closed hearing—the selection of a closed hearing will result in a closed deliberation. If the hearing has been designated as open, it must be noticed to the public;

d. set the date(s) of the hearing; and

e. try to resolve any other preliminary matters that may arise.

4. The Committee or the hearing officer shall serve written notice of hearing on the faculty member and the president or their representatives at least twenty calendar days prior to the hearing.

**Implementation at the University of North Dakota:**

The Committee will serve the written notice.

5. The faculty member and the institution may stipulate to a decision on the basis of the written statements, in which case the Committee shall make its decision on that basis.
Implementation at the University of North Dakota:

At the time of the pre-hearing, the Committee will request of all parties as to whether they would stipulate to a decision by SCFR based only on their written statements and accompanying documentation.

6. During the proceedings the institution and the faculty member are entitled to have an administrative or academic advisor and counsel of their own choice and at their own expense. Proceedings concerning the appointment or removal of a faculty member may, pursuant to N.D.C.C. section 15-10-17, be closed, unless the faculty member requests that the proceedings be open in which case the proceedings shall be open. Proceedings not concerning the appointment or removal of a faculty member, including proceedings concerning discipline not involving dismissal, shall be open.

Implementation at the University of North Dakota:

At the pre-hearing, the Grievant will be required to state, in writing, if she/he wishes an open or (to protect privacy) a closed hearing—the designation of a closed hearing will result in a closed deliberation.

7. A verbatim transcript of the hearing or hearings shall be made at the institution's expense, and shall be accessible to both parties. A party shall be provided a copy of the record, or part of the record, upon request, at the institution's expense.

Implementation at the University of North Dakota:

a. A verbatim transcript of the hearing is required. There will be no transcript of deliberations although an audio recording will be made.

b. The Grievant may request the entire transcript or a portion thereof; it will be provided only after the Committee issues its report to the President. The transcript will be made available through the Office of General Counsel at no charge to the Grievant. The copy provided to the Grievant will be a condensed version with four pages to each printed page. Although portions of the hearing may be taped for the convenience of the Committee, that tape is not available to the parties.

8. The findings of fact, conclusions and the decision shall be based solely on the evidence received by the Committee. In cases brought under section 605.3(4), the faculty member has the burden of persuasion to prove, by a preponderance of the evidence, that the action violated the faculty member's rights; in cases pursuant to section 605.3(8) or (9), the burden of proof that grounds for the institution's action exist shall rest with the institution and be satisfied only by clear and convincing evidence in the record considered as a whole.

Implementation at the University of North Dakota:
The findings of fact, conclusions and the decision shall be based on the evidence received by the committee. That will include documents provided to the committee by all parties. In addition, the evidence will include testimony taken along with associated exhibits entered into the record.

9. The Committee may admit any evidence which is of probative value in determining the issues or if the interests of justice will best be served by admitting the evidence. Every reasonable effort shall be made to obtain the most reliable evidence available. The Committee shall grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

Implementation at the University of North Dakota:

This is a faculty hearing or review process, not a court of law, thus the Committee may accept any evidence and determine its value and credibility. Whether valid surprise has occurred shall be determined by the Committee. Furthermore, the necessity and duration of any adjournment will be made by the Committee.

10. The faculty member shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The institution shall cooperate with the Committee in securing witnesses and making available documentary and other evidence. The faculty member and the institution shall have the right to confront and cross-examine all witnesses. Testimony may be taken by deposition, including deposition by telephone, or witnesses may testify by telephone, facsimile, video or other electronic means upon agreement of the parties or, absent an agreement, upon request of a party and determination by the Committee or hearing officer that such use does not substantially prejudice the rights of any party. Affidavits may be received into evidence upon stipulation of the parties.

Implementation at the University of North Dakota:

The Committee expects the full and unqualified cooperation of all parties and, when hearing are held, witnesses. Failure to comply may result in the Committee seeking appropriate administrative action.

11. The Committee's findings of fact, conclusions and recommendations, with supporting reasons, shall be reported, in writing, to the institution's president and the faculty member or the faculty member's representative. If the institution's action was a notice of dismissal and if the Committee concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may so recommend with supporting reasons. The president shall make a decision and provide written notice of the decision, including findings of fact and reasons or conclusions based on the hearing record, to the Committee and the faculty member within twenty calendar days of receiving the report. The faculty member or Committee may, within ten calendar days of the decision, submit a written response to the decision, to which the president may reply.

Implementation at the University of North Dakota:
A copy of the Committee's findings of fact, conclusions and recommendations with supporting reasons, will be given to all parties. If the Grievant has indicated that the release of information should go to the Grievant's representative, the Committee's findings of fact, conclusions and recommendations with supporting reasons, will be sent to the representative.

12. The decision of the president is final.

State Board of Higher Education Policy Manual, 11-16-01, Section 605.4
Approved 2006, Updated 3/29/08

8.1.5 Mediation

1. "Mediation" means a process in which a mediator facilitates communication between parties to assist the parties in reaching voluntary decisions related to their dispute.

Implementation at the University of North Dakota:

Board of Higher Education policy recommends mediation as an option of all parties for faculty complaints under SBHE Policy 605.3, except for dismissals for adequate cause, for which mediation is not permitted and as mandatory under SBHE Policy 612. Mediation is also not allowed when the individual is dismissed for reasons of financial exigency.

2. This policy applies to faculty as defined in section 605.1 of these policies. It does not apply to employees governed by the NDUS Human Resource Policy Manual or to administrators or coaches, in their administrative or coaching capacity. Mediation is available upon agreement of the parties under section 605.3, except subsection 8, of these policies. Mediation is not available in proceedings initiated under subsection H of section 605.3. For other proceedings governed by section 605.3, a faculty member or the administration may request mediation and mediation shall proceed upon agreement of the parties. As used in this policy, "administration" means any person who has acted on behalf of the institution under section 605.3. For grievances governed under section 612 of these policies, participation in mediation by all parties is mandatory, which means that parties are required to participate in at least one mediation session.

Implementation at the University of North Dakota:

Requesting mediation under Board SBHE Policy 605.3. Requests for mediation under SBHE Policy 605.3 must be made in writing to the Chair of the University Senate. Requests must fully identify the requester and all other persons involved in the matter or action, and describe the matter or action for which mediation is requested. A copy of the written request must be provided to each person identified in the request. When the Chair of the University Senate is involved in the matter or action for which mediation is requested, the request should be made to the Vice Chair of
the University Senate. When the Chair believes she or he has a disqualifying conflict of interest in the subject matter of a particular mediation request, the Chair of the University Senate shall forward such request to the Vice Chair. In any case in which the request is made or passed to the Vice Chair, the Vice Chair shall perform the responsibilities of the Chair assigned in this policy for the duration of that matter.

Mediation of a grievance under SBHE Policy 612. Faculty grievances filed under SBHE Policy 612 are subject to mandatory mediation, which means all parties must participate in at least one mediation session. Faculty grievances must be made in writing to the Chair of the University Senate. Grievances must fully identify the grievant and all other persons involved in the matter or action, and describe the matter or action grieved. A copy of the written request must be provided to each person identified in the request. As described above when the Chair has a conflict of interest, the Vice Chair shall serve as Chair for the purpose of the grievance.

3. The following mediation procedures and time lines apply to section 605.3 of these policies:

   a. A faculty member or the administration may request mediation in accordance with institutional policy.

   Implementation at the University of North Dakota:

   See SBHE Policy 605.3(1)(b).

   b. Within 15 calendar days of receipt of the written request, the mediator shall meet with identified parties to explain the mediation process.

   Implementation at the University of North Dakota:

   The parties shall attend the first mediation session and cooperate with the mediator in accord with the documented agreement to mediate and in accord with the mediator's requests. The first mediation session begins a twenty-calendar day "mediation period" (or a mutually agreed upon mediation period) during which the parties shall cooperate with the mediator in a good faith attempt to resolve the dispute.

   c. If identified parties agree to mediate, the mediator shall schedule a first mediation session within 10 calendar days of reaching an agreement to mediate. Upon agreement to mediate, other internal proceedings and the time lines provided for those other proceedings shall be stayed pending conclusion of mediation.

   Implementation at the University of North Dakota:

   Requesting mediation under Board SBHE Policy 605.3. Requests for mediation under SBHE Policy 605.3 must be made in writing to the Chair of the University Senate. Requests must fully identify the
requester and all other persons involved in the matter or action, and describe the matter or action for which mediation is requested. A copy of the written request must be provided to each person identified in the request. When the Chair of the University Senate is involved in the matter or action for which mediation is requested, the request should be made to the Vice Chair of the University Senate. When the Chair believes she or he has a disqualifying conflict of interest in the subject matter of a particular mediation request, the Chair of the University Senate shall forward such request to the Vice Chair. In any case in which the request is made or passed to the Vice Chair, the Vice Chair shall perform the responsibilities of the Chair assigned in this policy for the duration of that matter.

d. The first mediation session begins a 20 calendar-day period or a mutually agreed upon mediation period during which participants attempt to resolve the dispute. At the conclusion of the mediation period, the mediator shall notify the appropriate institutional representatives in accordance with institutional policy whether or not the issues have been resolved.

4. The following mediation procedures and time lines apply to section 612 of these policies:

a. Participation in mediation is mandatory in connection with grievances under section 612 of these policies. Other internal proceedings and the time lines provided for those other proceedings shall be stayed pending conclusion of mediation.

Implementation at the University of North Dakota:

Under SBHE Policy 612, a faculty member harmed by University action may file a grievance alleging violation of a specific Board Policy, a specific institutional policy, a Board or institutional procedure pertaining to the faculty member's employment, a Board or institutional practice pertaining to the faculty member's employment, or the faculty member's contract of employment. A faculty member may also file a grievance over discretionary actions, such as salary adjustments and performance evaluations, but only to determine whether the discretionary action was made in accordance with relevant Board or Institutional policies, practices, procedures, or criteria and constituted a clear abuse of discretion. A faculty member may not file a grievance under SBHE Policy 612 regarding matters covered by SBHE Policy 605.3 (Non-renewal, Termination or Dismissal of Faculty) or 605.4 (Hearings and Appeals).

Faculty grievances filed under SBHE Policy 612 are subject to mandatory mediation, which means all parties must participate in at least one mediation session. Faculty grievances must be made in writing to the Chair of the University Senate. Grievances must fully identify the grievant and all other persons involved in the matter or action, and describe the matter or action grieved. A copy of the written request must be provided to each person identified in the request. As described in UND implementation 605.3(2), when the Chair has a
conflict of interest, the Vice Chair shall serve as Chair for the purpose of the grievance.

b. Within 15 calendar days of receipt of the written grievance the mediator shall meet with identified parties to explain the mediation process.

Implementation at the University of North Dakota:

Within fifteen calendar days of the mediator's receipt of the written grievance, the mediator meets with the parties to explain the mediation process and to set the time, date, and place of the first mediation session.

c. The mediator shall schedule a first mediation session within ten calendar days of the meeting under subsection 4b.

d. The first mediation session begins a 20 calendar-day period or a mutually agreed upon mediation period during which participants attempt to resolve the dispute. At the conclusion of the mediation period, the mediator shall notify the appropriate institutional representatives in accordance with institutional policy whether or not the issues have been resolved.

Implementation at the University of North Dakota:

The parties shall attend the first mediation session and cooperate with the mediator in accord with the documented agreement to mediate and in accord with the mediator's requests. The first mediation session begins a twenty-calendar-day "mediation period" (or a mutually agreed upon mediation period) during which the parties shall cooperate with the mediator in a good faith attempt to resolve the dispute.

5. Mediators may be selected by agreement of the parties. If the parties do not agree on a mediator, a mediator shall be assigned by the North Dakota University System staff from a pool of trained, volunteer mediators available through the NDUS office. The College of Council Faculties may offer its advice and recommendations concerning selection of the mediation pool.

Implementation at the University of North Dakota:

The Chair of the University Senate shall, with the assistance of the Director of the UND Conflict Resolution Center, and with the assistance of other agencies in the State and region that maintain lists of mediators, keep a list of qualified mediators located in Grand Forks and the immediate region. To be qualified for inclusion on the list, a mediator must be: (1) trained in mediation; (2) current in the theory and practice of mediation as evidenced by recent experience and continuing education/training.
The Chair of the University Senate shall promptly provide the faculty member who filed a grievance or requested mediation with the names of mediators then on the approved list.

Within three business days of receiving the list of approved mediators from the Chair, the faculty member who filed a grievance or requested mediation shall select a mediator and notify the Chair and the other person(s) named in the request for mediation. Within three business days of receiving the faculty member's notice, the other party to the mediation may submit a written objection to the Chair. When the Chair receives the objection, the faculty member shall begin the process again with a new selection. If no mediator has been successfully selected within ten business days of the date the first selection was provided to the Chair, the Chair upon agreement of all parties, may name a mediator from the list or defer the decision to the North Dakota University System office, who will name a mediator. If the parties do not agree to have the chair make the selection of a mediator, the choice will be made by the North Dakota University System Office from the approved list of mediators.

6. Mediators shall facilitate and coordinate the process. Mediators may not issue orders, find fault, impose solutions, or make decisions for the mediation participants.

Implementation at the University of North Dakota:

During the mediation period, the mediator will attempt to assist the parties in the resolution of their dispute by facilitation and coordination. The mediator is neither expected nor authorized to issue orders, find fault, impose solutions, or make decisions for the parties.

At the conclusion of the mediation period, the mediator shall inform all parties, in writing that an agreement was reached.

If the mediation fully resolves the dispute, the action or matter on which mediation was requested shall be considered concluded. The mediator shall then inform the Chair a successful mediation has occurred.

If a mediation requested fails to resolve the dispute fully, the mediator shall inform in writing all parties, including the Chair that an agreement was not reached. The Chair shall then direct the faculty member to any other relevant portion of these policies governing other courses of action for issues covered under SBHE Policy 605.3 or 612.

Neither the Standing Committee on Faculty Rights nor any Special Review Committee shall receive nor use in any way written products produced (except for notification of the results of the mediation) or observations made by a mediator in any mediation. No person interested in any mediated matter which later comes before the Standing Committee on Faculty Rights or any Special Review Committee shall offer or use in any way written products produced (except for notification of the results of the mediation) or observations made by a mediator in a mediation.
7. All time lines in this section are suspended between May 16 and August 15 as to all nine-month faculty unless all parties expressly waive the suspension.

Implementation at the University of North Dakota:

All time lines in this section 605.5 are suspended for nine-month faculty when they are not on contract, unless all parties expressly waive the suspension.

State Board of Higher Education Policy Manual, 11-16-01, Section 605.5

8.2 UND ADMINISTRATIVE GUIDELINES FOR DEVELOPMENT OF TENURE RECOMMENDATIONS

A. Although decisions to recommend tenure involve some of the criteria which apply to decisions involving salary adjustments and promotions, there are additional considerations which apply to tenure recommendations, such as budgetary concerns, balance within the departments, projected enrollments, retrenchment, etc. The award of salary increases and promotions should not necessarily lead a faculty member to expect tenure will be recommended.

B. In making recommendations in regard to tenure, the departments/colleges may establish their own standards as long as they are in conformity with Board tenure policies, the University Constitution, Senate Bylaws, and recognized University-wide interpretations as recorded in the Faculty Handbook.

C. In order for advanced tenure credit to be awarded for any year of University of North Dakota service funded with non-appropriated money, whether full or part-time, the faculty member must have been evaluated during the service in question in accordance with regular department/college evaluation procedures. When prior tenure credit for previous professional experience is also involved, it will be considered at the same time.

D. When a faculty member begins a tenure eligible appointment midyear, he/she is normally considered for tenure with the group who started at the beginning of that appointment year.

E. Early tenure (after four or five years) will be recommended only in exceptional cases.

Implementation at the University of North Dakota:

The probationary period of six years of continuous academic service to the institution may be shortened under those unusual circumstances when the faculty member's qualifications support a grant of early tenure in less time than the ordinary probationary period. In these cases, the faculty member bears the burden of demonstrating that his or her achievements unequivocally meet the stated criteria for tenure as established by the University in I-8.1.1(3)(b). The evaluation for the award of early tenure shall proceed in accordance with the procedures used for ordinary tenure reviews.

A faculty member may be considered for early tenure only once. If a faculty member does not receive a favorable evaluation for the award of early tenure,
his or her established probationary period will continue, at the end of which their ordinarily scheduled evaluation for tenure will occur.

F. Under normal circumstances, an administrative officer initially appointed to the University of North Dakota in a nonacademic administrative position will not be given tenure eligible rank or be recommended for tenure as a result of time spent in the administrative position.

If a probationary faculty member at UND moves into a full-time non-academic administrative position, he/she will not continue to accrue credit toward tenure while in that administrative position. A faculty member already tenured will retain tenure.

Any recommendation regarding academic rank for a non-academic administrator will be made by the dean, only upon recommendation of the faculty of the college/department*.

G. The tenure eligibility of faculty at UND will be based on two criteria: Source of funding and academic title, i.e., in order for faculty members to be considered tenure eligible, they must (a) be initially (or subsequently) fully funded from State General Fund appropriations assigned to an academic salary budget responsible to the Vice President for Academic Affairs** and (b) carry in an academic department/college a probationary academic title (Instructor, Assistant Professor, Associate Professor, Professor). Failure to satisfy both of these conditions simultaneously eliminates the position from tenure eligibility*.

H. If a probationary or tenured faculty member already employed at UND is appointed to an academic administrative position, rank, or tenure status will not be affected by the appointment. Accrual of additional tenure credit during subsequent administrative service may be granted only when there is regular, formal involvement in the program and the discipline of the department and with concurrence of the department/college concerned.

I. Administrators do not accrue tenure as administrators.

J. If any individual is appointed to an academic administrative position from outside the University, academic rank and/or tenure offered concurrently with or subsequent to such appointment will be determined only after recommendation of the department/college in which the rank is to be given. The criteria for rank and/or tenure for administrator-teachers, especially those relating to scholarly activity and service to students, will be similar to those regularly used in the department/college.

K. A tenure-eligible faculty member cannot be recommended for tenure unless the department/college will have available permanent funding for that person from appropriated funding at the time tenure is to become effective. A department/college cannot shift either a tenured or tenure-eligible faculty member onto non-appropriated money unless there is a recognized plan enabling reassignment of him/her to appropriated funding at the time non-appropriated funds are unavailable or he/she becomes eligible for tenure through years of services to the University.

L. Faculty in temporary positions whose appointments are funded out of State General Fund appropriated monies must be designated in all official contracts and documents as
"Temporary," which designation may precede the title or follow the faculty member's name in parentheses. Under normal circumstances, temporary persons so appointed may be eligible for reappointment up to three years.

M. Faculty who are appointed to positions funded all or in part out of non-appropriated ("soft") funding must be designated in all official contracts and documents by modified academic titles#. Under very exceptional circumstances, appointments may be designated by unmodified academic titles as long as it is clearly indicated that the position is non-probationary and renewable only upon the availability of funds. Potentially, such positions are renewable without time limitations, subject to the recommendation of the department and the University as long as the non-appropriated funding is available*.

N. Time spent in a position in which the faculty member's appointment is primarily related to intercollegiate athletics will not earn tenure credit.

O. Normally, only those persons who have what is deemed the usually required terminal degree, or its equivalent for university teaching in their disciplines, will be appointed to regular tenure-eligible positions. When an exception is made, the faculty member will be expected to complete the appropriate degree or credential before being eligible for appointment with tenure.

P. A tenure-eligible Assistant Professor ordinarily must put forth an application for both promotion to Associate Professor and tenure in his or her sixth year. If the Assistant Professor does not achieve promotion to Associate Professor, then the President will recommend that his or her tenure application also be denied.

In this case, with the Provost's approval, and consistent with fulfillment of the University's institutional obligations, appropriate rigor of promotion, and tenure standards, and fairness to faculty, the Assistant Professor's Dean may

a. Do nothing, in which case the following year will be the Assistant Professor's terminal year.

b. Hire the Assistant Professor in a non-tenure-eligible position, such as instructor.

c. Request from the Provost a one-year extension of the tenure clock, giving the Assistant Professor one additional year to successfully apply for promotion to Associate Professor and tenure. In this case, the Dean and department should communicate clearly, and in writing, what the Assistant Professor must accomplish prior to, and demonstrate in, his or her next application. If the Assistant Professor does not achieve promotion to Associate Professor based on the next application, then his or her tenure application must also be denied, and the Dean may choose between options (a) and (b) above.
* This provision, under special circumstances, may have to be modified by the UND School of Medicine, with the approval of the State Board of Higher Education, in order to fit those situations unique to a state-wide, community-based medical school.

** or to the Dean of the School of Medicine

# "Academic titles" means Instructor, Assistant Professor, Associate Professor, or Full Professor.

_Vice President for Academic Affairs and Provost, 11-14-02_