

ARTICLE X. ACADEMIC FREEDOM AND TENURE,  
FACULTY EMPLOYMENT AND EVALUATION

1. Statement of Principles

Davidson College is fully committed to the principles of academic freedom as formulated in the 1940 Statement of Principles on Academic Freedom and Tenure by the Association of American Colleges and the American Association of University Professors. In order to protect academic freedom and tenure and the requirements of academic due process, the following sections of this Article X shall govern the terms and conditions of the employment of members of the Faculty of the College.

2. General Authority and Responsibility

The Trustees of Davidson College retain the power of final approval of all initial appointments, renewals of appointments, promotions in rank, compensation and conferrals of tenure for faculty members. While tenure may be withheld on any grounds other than those specifically stated to be impermissible under section 11 of this Article X, its conferral by the Trustees requires evidence of demonstrated professional competence, service to the academic community, and commitment to the welfare of the College. The President of the College or the President's delegates, acting in accordance with the provisions of this Article are responsible for making recommendations to the Trustees in respect of all such matters.

The faculty participates in the process in the manner provided in succeeding sections of this Article X. To discharge the function therein assigned, the Faculty shall elect from its membership, in such manner as may be provided in its Bylaws, a Committee on Professional Affairs and a Faculty Tenure Committee and a Faculty Hearings Committee. The Faculty Hearings Committee shall be composed of five tenured members of the Faculty and shall elect its own chair. No Faculty members may simultaneously serve as a member of more than one of these committees.

[Revised: See Trustee Minutes February 24, 1989]

3. Statement of Terms of Appointment

(a) The terms and conditions of every appointment to the Faculty will be stated in writing, and a copy of the appointment document will be supplied to the faculty member. Any subsequent renewals or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be stated in writing and a copy will be given to the faculty member.

(b) With the exception of special appointments clearly limited to a brief association with the College, and reappointments of retired faculty members on special conditions, all full time appointments to the rank of instructor or higher are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

(c) Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of the terms of appointment and of all matters relative to such person's eligibility for the acquisition of tenure.

4. Special Appointments for Fixed Terms

All appointments which are not probationary or with continuous tenure shall be special in nature and for fixed terms of limited duration. No obligation exists on the part of the College to evaluate such a special appointee with a view to continued employment past the end of the fixed term, nor to give any notice in respect of such an intention. The appointment terminates automatically upon expiration of the fixed term.

## 5. Probationary Appointments

(a) Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full time service prior to the acquisition of continuous tenure will not exceed seven years, including all previous full time service with the rank of instructor or higher in other institutions of higher learning except that the probationary period may extend to as much as four years even if the total of all such previous full time service in the profession thereby exceeds seven years by providing for such extension in writing at the time of initial appointment. Scholarly leave of absence for one year or less will count as part of the probationary period as if it were previous full time service with the rank of instructor or higher at another institution, unless the individual and the College agree in writing to an exception to this provision at the time the leave is granted.

(b) The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material which the faculty member believes will be helpful to an adequate consideration of the faculty member's circumstances.

(c) Regardless of the stated term or other provisions of any probationary appointments, written notice that the appointment is not to be renewed will be given to the faculty member in advance of the expiration of the faculty member's appointment as follows; 1) not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; 2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least six months in advance of its termination; 3) at least twelve months before the expiration of an appointment after two or more years of service at the College. The College will normally notify faculty members of the terms and conditions of their renewals by March 15, but in no case will such information be given later than April 15.

(d) When a decision not to renew an appointment has been reached, the faculty member involved will be informed of that decision in writing by the President or the President's delegate. The faculty member may request a reconsideration by the President.

## 6. Termination of Appointment by the Faculty Member

A faculty member may terminate his or her appointment effective at the end of an academic year, provided that the faculty member gives notice in writing at the earliest possible opportunity, but not later than May 15. The faculty member may request a waiver of this requirement of notice in case of hardship or in a situation where the faculty member would otherwise be denied substantial professional advancement or other opportunity.

## 7. Termination of Appointment by the College

(a) Termination of an appointment with continuous tenure, or of a special or probationary appointment before the specified term, may be effected by the College only for adequate cause.

(b) If termination takes the form of a dismissal, it will be pursuant to the procedure specified in Section 8 of this Article X.

(c) Where termination of an appointment with continuous tenure, or of a nontenured appointment before the end of the specified term, is based upon bona fide financial exigency or discontinuance of a program or department of instruction. Section 8 will not apply, but faculty members shall be entitled to have the issues reviewed by the Faculty Hearings Committee, with ultimate review of all controverted issues by the Trustees. In every case of financial exigency or discontinuance of a program or department of instruction, the faculty member concerned will be given notice or severance salary not less than as prescribed in Section 10 of this Article X. Before terminating an appointment because of the discontinuance of a program or department of instruction, the College will exert its best efforts to place affected faculty members in other suitable positions. If an appointment is terminated before the end of the period of appointment, because of financial exigency, or because of the discontinuance of a program or department of instruction, the released faculty member's place will not be filled by a replacement within a period of four years, unless the released faculty member has been offered reappointment and a reasonable time within which to accept or decline it.

(d) Termination of an appointment with continuous tenure, or of a nontenured or special appointment before the end of the period of appointment, may be made for reasons of mental or physical incapacity but only upon the basis of clear and convincing evidence of the incapacity. The decision to terminate will be reached only after there has been appropriate consultation and the faculty member or the faculty member's representative has been informed of the basis of the proposed action, and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Hearings Committee before a final decision is made by the Trustees on the recommendation of the President of the College.

## 8. Dismissal and Suspension Procedures

(a) Adequate cause for a dismissal will be related, directly and substantially, to the fitness of the faculty member in the faculty member's professional capacity as a teacher-scholar. Incompetence, neglect of duty, and misconduct involving moral turpitude are examples of adequate cause. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

(b) Except for dismissal of a faculty member for violation of the Policy and Procedures on Ethical Research and Scholarship, which shall be handled according to procedures provided therein, dismissal of a faculty member with a continuous tenure appointment, or with a special or probationary appointment before the end of the specific term, will be preceded by: 1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; 2) informal inquiry by the Professional Affairs Committee which may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the President; 3) a statement of charges, framed with reasonable particularity by the President or the President's delegates.

[Revised: See Trustee Minutes October 9, 1992]

(c) A dismissal, as defined in Section 8 (a), will be preceded by a statement of reasons, and the individual concerned will have the right to be heard initially by the Faculty Hearings Committee. Members deeming themselves disqualified for bias or interest shall remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause. Vacancies on the Faculty Hearings Committee resulting from illness, disqualification, challenge, or other reason while a contested matter is before it shall be filled by the Faculty Executive Committee to provide a full complement of five.

(1) Pending a final decision by the Faculty Hearings Committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by his or her continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through these hearing procedures, the Administration will consult with the Professional Affairs Committee concerning the property, the length, and the other conditions of the suspension. A suspension which is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of any suspension other than one constituting a dismissal.

(2) The Faculty Hearings Committee may, with the consent of parties concerned, hold joint pre-hearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulation of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.

(3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the Faculty Hearings Committee will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(4) The Faculty Hearings Committee, in consultation with the President and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

(5) During the proceedings the faculty member will be permitted to have an academic advisor and counsel of his or her own choice.

(6) At the request of either party or the Faculty Hearings Committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer, provided the observer agrees in advance to respect the confidentiality of the proceedings.

(7) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

(8) The burden of proof that adequate cause exists rests with the College and shall be satisfied only by clear and convincing evidence in the record considered as a whole.

(9) The Faculty Hearings Committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(10) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The Administration will cooperate with the Faculty Hearings Committee in securing witnesses and making available documentary and other evidence.

(11) The faculty member and the Administration will have the right to confront and cross-examine all witnesses. Where the witness cannot or will not appear, but the Faculty Hearings Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.

(12) In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from the College or other institutions of higher education.

(13) The Faculty Hearings Committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(14) The findings of fact and the decision will be based solely on the hearing record.

(15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the Trustees. The President and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

(16) If the Faculty Hearings Committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the President. If the President rejects the report, the President will state the President's reasons for doing so, in writing, to the Faculty Hearings Committee and to the faculty member, and provide an opportunity for response before transmitting the case to the Trustees. If the Faculty Hearings Committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend to the President with supporting reasons.

9. Action by the Trustees

If dismissal is recommended, the President will, on request of the faculty member, transmit to the Trustees the record of the case. The Trustees' review will be based on the committee hearing, and will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the Faculty Hearings Committee will either be sustained or the proceeding returned to the Committee with specific objections. The Committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The Trustees will make a final decision only after the study of the Committee's reconsideration.

10. Terminal Salary or Notice

If an appointment is terminated by dismissal for cause, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has an appointment with continuous tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the Faculty Hearings Committee or the President the Trustees, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

11. Appeal of Decision Regarding Probationary Reappointment or Tenure

(a) Jurisdiction. Authority to consider an appeal of a decision denying tenure to a faculty member or of a decision not to reappoint a faculty member upon the completion of the term of his or her probationary appointment shall be vested in the Faculty Hearings Committee (the "FHC"). The FHC shall have the authority to consider appeals of such decisions from a faculty member (the "Appellant") only upon the allegation by the Appellant that one or more of the following was a significant factor affecting the review process and was prejudicial to the Appellant:

(1) a violation of the then-existing procedure for the making of the tenure or reappointment decision;

(2) serious distortion of the Appellant's record, such serious distortion having been introduced into the review process by the President, the Vice-President for Academic Affairs ("VPAA"), the Chair of the Appellant's Department or, in the case of a tenure decision, by any member of the Appellant's departmental tenure committee or the Faculty Tenure Committee;

(3) a breach of academic freedom; or

(4) a violation of the College's stated nondiscrimination policy.

(b) Filing of Appeal. An appeal must be filed within thirty (30) days after the decision affecting the Appellant is communicated to the Appellant. An appeal is deemed to be

filed when the Appellant delivers to the Chair of the FHC (with a copy to the President) a brief written statement indicating the basis of appeal.

(c) Organizational Procedures of the FHC Prior to Hearings. Upon the call of the Chair of the FHC, the FHC shall take the following actions:

(1) Members of the FHC who are members of the Appellant's department, and any other members deeming themselves disqualified for bias or interest, shall remove themselves from the case by so notifying the Chair of the FHC. (If the Chair is thereby disqualified, he or she shall appoint a convener from among the remaining members.)

(2) The Chair (or convener) shall promptly notify the Appellant and the Administration of any disqualifications of the FHC members.

(3) Members of the FHC may also be removed from the appeal at the request of the Appellant or the Administration; each party will have a maximum of two challenges without stated cause. The Chair (or convener) of the FHC shall set an appropriate schedule for the exercise of such challenges.

(4) In accordance with Faculty Bylaws (IV.D.2.e.iii), the Chair (or convener) will notify the Secretary of the Faculty Executive Committee of any resultant vacancies, which will be filled by action of the Faculty Executive Committee.

(5) The FHC as now constituted shall meet for the purposes of electing a Chair, if necessary, and a Secretary; it shall notify the Appellant and the Administration of its current membership; and shall set an appropriate deadline for the Appellant to submit a detailed statement of the facts and contentions supporting the appeal.

(6) If the FHC deems it desirable to have independent legal counsel, the College will provide such counsel at the expense of the College, which shall supply a list of at least two attorneys from which the FHC shall select one.

(d) Ex Parte Communications. There shall be no ex parte communications with the members of the FHC by the Appellant, the Administration or their representatives regarding the subject matter of the appeal at any stage of the proceedings.

(e) Confidentiality. All matters pertaining to the appeal shall remain strictly confidential, except that after its conclusion the FHC, without naming or otherwise identifying the Appellant, shall notify the Faculty that an appeal has been conducted and concluded. All proceedings shall be private.

(f) Action of FHC Upon Filing of Appeal. Based on its review of the appeal filed by the Appellant, the FHC may:

(1) dismiss the appeal for one or more of the following reasons: (A) failure of Appellant to file the appeal within the required time, or (B) failure of Appellant to allege and support in detail the presence of one or more of the grounds justifying an appeal (as described in section a, above); or

(2) allow Appellant to amend the written statement of appeal in order to address deficiencies identified by the FHC; or

(3) proceed to pre-hearing meetings.

(g) Pre-hearing Meetings. Upon the call of the Chair of the FHC, the FHC shall conduct one or more pre-hearing meetings:

(1) The Appellant, a representative of the Administration, an advisor from the Davidson faculty chosen by the Appellant, and counsel for the Appellant for the Administration and for the FHC may attend pre-hearing meetings. The Appellant and the Administration will be given adequate notice of each pre-hearing meeting.

(2) The following shall be appropriate matters for consideration at pre-hearing meetings;

(A) A pre-hearing meeting may be used to eliminate, simplify or otherwise address issues raised by the appeal.

(B) The Appellant and the Administration may agree to stipulations of fact.

(C) A schedule may be established for the identification of witnesses for both parties and the exchange of exhibits prior to the hearing.

(D) A pre-hearing meeting may be used for such other purposes that the FHC shall determine will make the hearing fair, effective, and expeditious.

(3) If, after pre-hearing meetings the FHC determines that there are no facts alleged that constitute an allegation that one of the listed grounds for an appeal was a significant factor affecting the review process and was prejudicial to the Appellant, then the FHC shall dismiss the appeal. Otherwise, a date, time and place for a hearing shall be set.

(4) Prior to the hearing, the FHC and counsel for the FHC shall hold a meeting to review with the Appellant and his or her advisor and counsel and with a representative of the Administration and counsel for the College the standards of proof necessary for a successful appeal and the rules of procedure under which the FHC plans to conduct the hearing.

(h) Hearing. A hearing shall be held at the date, time, and place set by the FHC. The hearing shall be presided over by the Chair of the FHC and shall be conducted as follows:

(1) The Appellant shall be responsible for proving the allegation by clear and convincing evidence on the record as a whole.

(2) The Appellant shall be allowed to call witnesses, introduce documents, and make statements relevant to the issues raised by the appeal.

(3) At the conclusion of the Appellant's case, the FHC may dismiss the appeal on the grounds that the Appellant has not established a prima facie case, taking the evidence presented in the light most favorable to the Appellant, that one or more of the grounds for justifying an appeal was a significant factor affecting the review process and was prejudicial to the Appellant. If the FHC does not dismiss the appeal, the

Administration shall be permitted to call witnesses, introduce documents, and make statements relevant to the issues raised by the appeal.

(4) Each party shall be allowed to cross-examine the witnesses of the other party. If a witness cannot or will not appear, the FHC may admit the statement of such witness as set forth in Section 11 (h)(5) below. The FHC shall be permitted to ask questions of witnesses.

(5) The FHC will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues raised by the appeal. Every reasonable effort will be made to obtain the most reliable evidence available.

(6) The FHC will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(7) Counsel for all parties, including the FHC, and the adviser chosen by the Appellant from the Davidson faculty shall be permitted to Participate at all stages of the proceedings under the procedures established by the FHC.

(8) A verbatim record of the hearing will be taken and a typewritten copy will be made available to the Appellant at no cost at the Appellant's request. The Appellant's written statement of appeal, all notices and correspondence prepared or received by the FHC in connection with the appeal, and all documents introduced at the hearing shall be made a part of the record of the appeal. Following the conclusion of all proceedings, the record shall be deposited under seal in the College Archives.

(i) Decision. At the conclusion of the presentation of evidence, the FHC shall deliberate as it requires and make its decision expeditiously.

(1) The FHC shall deliver a copy of its decision to the Appellant and the Administration within one (1) day of making its decision by majority vote.

(2) If the FHC does not uphold the appeal, the appeal shall thereby be dismissed.

(3) If the FHC upholds the appeal, the committee shall specify the ground or grounds in its report to the President of the College. The President shall make a recommendation for the disposition of the appeal to the Executive Committee of the Board of Trustees within two (2) weeks after receiving the FHC's report. A copy of the President's recommendation will be sent to the FHC.

(4) The Executive Committee of the Board of Trustees shall decide upon the disposition of the appeal within two (2) weeks following receipt of the President's recommendation and shall instruct the President of the College to report its decision to the Appellant and the FHC.

[Revised: See Trustee Minutes February 4, 1994 and April 18, 1997]

## 12. Procedures for Evaluation of Faculty Members

The President or the President's delegate, in conjunction with the Faculty or its Committee on Professional Affairs, shall formulate and may thereafter amend procedures for evaluating faculty members for initial appointments, renewals of appointment, promotions, conferrals of tenure, and salary increases, in preparation for the President's recommendation thereon to the Trustees. Such procedures shall be incorporated in a document titled "Code of Faculty Evaluation Procedures" which shall be maintained in current form in the College Registry. In the event the parties authorized to promulgate such procedures are unable to agree upon specific elements therein the matter in disagreement shall be referred by the President to the Trustees for resolution. In such case, opportunity shall be provided by the Trustees for the respective parties to present their positions before action is taken by the Trustees.