

Section II

Change #16**SECTION II****2 Board of Visitors**

3

4 This section describes the legal basis for the operation of the University, which is contained in the By-Laws of the
5 Board of Visitors, the governing body of the University by the provisions thereof and referenced therein. This
6 section is authorized by the Board of Visitors and changes in this section are effected only with the approval of the
7 Board.

8

9 1.By-Laws, Board of Visitors, Christopher Newport University

10

11 a. Article I. Corporate Name and Governing Body

12 Christopher Newport University is a public corporation created by an Act approved by the General
13 Assembly of Virginia on March fifth, nineteen hundred seventy-six, to amend the Code of Virginia by
14 adding Title 23, Chapter 5.3, sections 23-49.23 through 23-49.33. The method of appointment of
15 members of the Board of Visitors of Christopher Newport University, their eligibility for service, and
16 their powers and duties are set forth therein.

17

18 b.Article II. Composition, Appointment, Removal

19 1) The Board of Visitors shall consist of fourteen members appointed by the Governor, subject to
20 confirmation by the General Assembly of Virginia, for terms of four years. Members may be
21 reappointed for one additional four-year term. No more than two of such members may be
22 nonresidents of Virginia. Visitors shall continue to serve until their successors have been appointed
23 and have qualified.

24

25 2) A vacancy on the Board is filled by appointment by the Governor for the unexpired term. A person
26 filling an unexpired term may be reappointed by the Governor, subject to confirmation by the
27 General Assembly, for two additional four-year terms.

28

29 3) Removal of Visitors shall be made pursuant to statute.

30

31 c. Article III. Powers and Duties

32 The Board shall control and expend the funds of the University and any appropriation hereafter provided;
33 control all real estate and personal property of the University; make all needful rules and regulations
34 concerning the University, appoint the president who shall be its chief executive officer, and all **members of the faculty**
teachers:

35 fix their salaries; provide for the employment of other personnel as required; and generally direct the
36 affairs of the University.

37

38 d. Article IV. Meetings

39 Meetings of the Board of Visitors are of three kinds: the Annual meeting, regular meetings and special
40 meetings. There will be four meetings held per year.

41

42 1) Section 1. The Annual Meeting - The annual meeting of the Board is the first meeting in the new
43 academic year. Board officers are elected at the annual meeting.

44

45 2) Section 2. Regular Meetings - The Board shall meet in addition to the Annual meeting, in
46 September, December, March, and at other such times as it may designate. The days, times and
47 places of the meetings shall be fixed by the Board.

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Handbook 2007–2008 Edition Section II

Board of Visitors

8

Section II

3) Section 3. Special Meetings - Special meetings of the Board may be called 1 by the Rector or any 2 three members of the Board. Notice of such meetings shall be given by the Secretary to every 3 member and shall include the date, time, and place of the meeting. No matter may be considered 4 which was not specified in the call except by a two-thirds vote of the members of the Board present 5 at the meeting.

6
7 4) Section 4. Due notice, in writing, of the Annual Meeting, all regular meetings, and any changes in 8 the dates, times, or places of regular meetings shall be given by the Secretary of the Board. Such 9 notice shall be sent at least seven days prior to the meeting. Notice of all Special Meetings shall be 10 sent at least five days prior to the meeting and shall specify the item or items of business to be 11 considered.

12
13 5) Section 5. An agenda shall be prepared by the Secretary, under the supervision of the President. 14 Such agenda shall be distributed to the Visitors at least seven days prior to the meeting for which it is 15 prepared. Matters which arise between the distribution of the Agenda and the convening of the 16 Board shall be presented to the Board as a Supplementary Agenda, which is to be prepared by the 17 Secretary under the supervision of the President. The written notice of a Special Meeting specifying 18 the item to be considered at the Special Meeting shall take the place of the Agenda at the special 19 meeting.

20
21 6) Section 6. A quorum for the conduct of business shall consist of seven members of the Board (as 22 required by statute) except in those instances where other statutory provisions require a larger 23 number for the transaction of particular items of business.

24
25 7) Section 7. Attendance at any meeting or a waiver of notice signed by a member shall be the 26 equivalent to the giving of proper notice of the meeting.

27
28 8) Section 8. Minutes of all meetings of the Board shall be maintained by the Secretary and shall be 29 available to the members of the Board, the President, and such others as required by law.

30
31 9) Section 9. Faculty or student committee representatives and others may be invited by the Rector to 32 attend any meeting of the Board for the purpose of presenting matters to the Board. All meetings of 33 the Board of Visitors shall be open to the public.

34
35 10) Section 10. All meetings of the Board shall be conducted in accordance with the principles of 36 procedure prescribed in *Robert's Rules of Order*, Newly Revised.

37
38 e. Article V. Officers

39 1) Section 1. The Board of Visitors shall at the Annual Meeting in even numbered years elect from its 40 membership a Rector, a Vice-Rector and a Secretary. Said officers shall serve for a two-year term. 41 The elections shall be by secret ballot, unless waived unanimously by consent. The Secretary shall 42 serve as the presiding officer until an election is accomplished or the Board appoints another 43 presiding officer. Election of officers shall be by a majority vote of the members present.

44
45 2) Section 2. Powers and Duties of the Rector - The Rector shall be the presiding officer of the Board 46 at all of its meetings and as such shall have the power, unless otherwise directed by the Board, to fix 47 the order of business, appoint all standing and special committees (except the Executive Committee), 48 and require the proper preservation of a record of the Board's proceedings by the Secretary. Upon 49 the request of the Board, the Rector shall act as its spokesperson or representative.

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Handbook 2007–2008 Edition Section II
Board of Visitors

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The Rector shall perform such additional duties as may be imposed on the office 1 by statute or by the 2 direction of the Board. Whenever the Office of the President becomes vacant or a vacancy is 3 impending, the Rector shall appoint a Special Committee on the Nomination of a President from

Section II

4 among the membership of the Board to seek and recommend to the Board a person to fill the
5 vacancy. This special committee shall be chaired by the Rector, and the committee shall consist of
6 no fewer than five members.

7

8 3) Section 3. Vacancies - A vacancy in the office of Rector shall be filled by the Board for the
9 unexpired term, following the procedure set forth in Article V, Section 1. If the cause of the
10 vacancy is the expiration of the Rector's term as a member of the Board, the vacancy shall be filled
11 at the first regular meeting following such expiration. If the vacancy occurs from any other cause,
12 the vacancy shall be filled at the first regular meeting after such vacancy occurs or at a special
13 meeting called for that purpose, at which meeting a quorum shall consist of nine Visitors.

14

15 4) Section 4. Powers and Duties of the Vice-Rector - In the absence of the Rector at any meeting or in
16 the event of the Rector's disability or of a vacancy in office, all the powers and duties of the office
17 of Rector shall devolve upon and be executed by the Vice-Rector. The Vice-Rector shall perform
18 such other duties as may be imposed on the Vice-Rector by direction of the Board. In the absence of
19 the Rector, the Vice Rector shall preside at all meetings.

20

21 5) Section 5. Powers and Duties of the Secretary - The Secretary of the Board shall be responsible for
22 the notices to every member of all meetings of the Board, for recording, maintaining and distributing
23 minutes of all meetings of the Board, and for such correspondence and communications as the
24 business of the Board may require. In the absence of the Rector and Vice-Rector, the Secretary shall
25 preside.

26

27 6) Section 6. In the absence of the Rector, Vice-Rector and Secretary, the Board shall appoint a pro
28 tempore officer to preside.

29

30 7) Section 7. Vacancies in the offices of Vice-Rector or Secretary shall be filled by the Board at the
31 next regularly scheduled meeting or at a Special Meeting, called for such purpose, for the unexpired
32 term.

33

34 f. Article VI. The Executive Committee

35 1) Section 1. The members of the Executive Committee shall be the Rector, who shall serve as Chair,
36 Vice-Rector, Secretary, and two members-at-large, all of whom shall be elected as required by
37 Article V, Section 1 above, and chairs of the Standing Committees, who shall be appointed by the
38 Rector. Any member of the Board of Visitors who wishes to do so may attend an Executive
39 Committee meeting with full voting privileges.

40

41 2) Section 2. The *ex officio* and appointed members of the Executive Committee shall be designated at
42 the Annual Meeting and may be designated at each Annual Meeting.

43

44 3) Section 3. The Executive committee shall meet upon the call of the Rector. It shall transact the
45 business of the Board in its recess. All actions taken by the Executive Committee during the recess
46 of the Board shall be reported to the Board at the next regular meeting by the Chair.

47

48 4) Section 4. A simple majority of the Rector, Vice Rector, Secretary, two members-at-large and chair
49 of the standing committees shall constitute a quorum.

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Handbook 2007–2008 Edition Section II

Board of Visitors

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5) Section 5. The Executive Committee may make rules and set the agenda 1 for the conduct of its
2 meetings and the notice given thereof.

3

4 6) Section 6. Vacancies on the Executive Committee shall be filled at the next regularly scheduled
5 meeting of the Board and by the same method as set forth in Article VI, Section 1.

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Section II

7 g. Article VII. Standing Committees

8 1) The Standing Committees of the Board of Visitors shall be the Committee on Finance and Audit; the
9 Committee on Academic Affairs; the Committee on Student Life; and the Committee on
10 Development.

11

12 2) The Rector shall appoint the chair and members of the committees. Each committee shall have a
13 minimum of four members who shall serve for a period of two years. Three members shall
14 constitute a quorum.

15

16 3) The duties of the committees shall be as follows:

17

18 a) The Committee on Finance and Audit

19

20 Finance. It shall be the duty of this committee to consider and make recommendations to the
21 Board concerning fiscal policy and the financial and economic operations of the university. It
22 shall be the duty of this committee to consider and make recommendations to the Board on
23 matters relating to the buildings and grounds of the university. It shall be the duty of this
24 committee to ascertain the existence of an effective accounting and internal control system. The
25 Committee shall, through regular reporting to the Board, aid it in meeting its fiduciary
26 responsibilities to the Commonwealth of Virginia.

27

28 Audit. It shall be the duty of this committee to oversee the entire audit function, both
29 independent and internal. It is of primary importance that this committee provides good
30 communication between the auditors and the Board of Visitors. The committee shall examine
31 and approve the annual financial statement of the University to the Board of Visitors that the
32 President. submits by November 1 of each year and to conduct other such audits as deemed
33 necessary for the good order of the University's finances. The committee shall meet at least
34 once each year and as needed at other times.

35

36 b) The Committee on Academic Affairs. It shall be the duty of this committee to consider and
37 make recommendations to the Board on matters of faculty appointments and the academic
38 organization of the university.

39

40 c) The Committee on Student Life. It shall be the duty of this committee to consider and make
41 recommendations to the Board on policies affecting the students of the university.

42

43 d) The Committee on Development. It shall be the duty of this committee to consider and make
44 recommendations concerning the ways and means of fostering the relationship between the
45 university and its alumni and the general development and fund-raising efforts of the university.
46 The committee shall oversee the management by the University of its investment policy.

47

Handbook 2007–2008 Edition Section II

Board of Visitors

11

h. Article 1 VIII. Ad Hoc Committees

2 1) The Rector may from time to time appoint ad hoc committees of the Board as the Rector deems necessary
3 for the good conduct of Board and University affairs. Each such committee shall have a minimum of four
4 members, including a chair appointed by the Rector. Three members shall constitute a quorum.

5

6 2) The duties of all ad hoc committees shall be specified by the Rector at the time of their appointment.

7

8 i. Article IX

9 1) The President of the University shall be the chief executive and academic officer of the University.
10 The President shall be appointed by the Board and shall serve at its pleasure.

11

12 2) Duties of the President — The President shall

Section II

13

14 a) attend all meetings of the Board and shall have notice of and the privilege of attending all
15 meetings of its committees;

16

17 b) have responsibility for the operation of the University in conformity with the purposes and
18 policies determined by the Board;

19

20 c) act as adviser to the Board and shall have responsibility for recommending to it for consideration
21 those policies and programs which in the President's opinion will best promote the interests of
22 the University;

23

24 d) recommend to the Board long-range educational goals and programs and the new degrees which
25 may be best suited to attain those goals and programs;

26

27 e) recommend to the Board the election, compensation, promotion, and leaves of absence of the
28 faculty except as otherwise provided;

29

30 f) have primary responsibility for the establishment and maintenance of proper relationships with
31 the graduates of the University;

32

33 g) at all times maintain cordial relationships with the students, guarding and protecting their best
34 interests;

35

36 h) submit to the Board at the June meeting each year an annual budget for the operation of the
37 University for the following fiscal year, and shall prepare and submit to the Governor, after
38 approval by the Board, a biennial budget request as required by law or regulation;

39

40 i) promote the development of the endowment funds of the University and be authorized to accept
41 any gift or grant subject to the approval of the Governor as required, making a report thereon to
42 the Board of such gifts or grants;

43

44 j) present by November 1 of each year the annual financial statements of the University to the
45 Board of Visitors, the Secretary of Education, and, under oath, to the Auditor of Public
46 Accounts as required by Section 2.1-160 of the Code of Virginia (1950), as amended; [report of
47 the President to the Board at its January meeting] and to give the Board an update of University
48 matters at each meeting of the Board.

49

50 k) perform such other duties as may be required by the Board.

Handbook 2007-2008 Edition Section II

Board of Visitors

12

1 j. Article X. Hearings

2 The Board at its discretion shall hear such appeals, as are provided for in the University regulations.

3

4 k. Article XI. Amendment of By-Laws

5 The By-Laws may be amended at a regular meeting of the Christopher Newport University Board of
6 Visitors provided that the amendment has been submitted in writing at the previous meeting and shall
7 receive not less than eight affirmative votes.

8

9 l. Article XII. Construction of By-Laws

10 These By-Laws and any amendments shall be construed consistently with the provisions of the laws of
11 the Commonwealth of Virginia.

12

13 m. Article XIII. Date of Implementation

14 The effective date of the provisions of these By-Laws shall be **December 6, 1994 February 28, 2008**, and as of that date
15 shall supersede all prior actions of the Board which are inconsistent with them.

Section II

16

17 2. Policies of the Board of Visitors of Christopher Newport University

18

19 a. General Policies

20 1) The Board authorizes the establishment of a *University Handbook*, which shall be a collection of

21 documents which fall into three categories.

22

23 The first category is Board Bylaws and Policies. The contents of the documents in this category

24 are contractual in nature and authorized by the Board.

25

26 The second category is University Regulations. The contents of the documents in this category are

27 subordinate to, and derived from the Board Bylaws and Policies, and are authorized by the

28 President under delegated authority from the Board, with right of review. They are contractual in
29 nature.

30

31 The third category is University Information, the contents of which documents are authorized by

32 the Vice Presidents under the delegated authority from the President, and are not contractual in

33 nature, and may be changed at any time.

34

35 A *University Handbook* Committee, appointed by the President, reviews all proposed changes to36 the University Regulations and Information categories of the *Handbook*, and makes its

37 recommendations to the President.

38

39 The maintenance of the *Handbook* is the responsibility of the President or the President's delegate.

40

41 Should the occasion arise for an official interpretation of the contents of the *Handbook*, that

42 interpretation is vested in the President, subject to review of the Board. The Board reserves the

43 right from time to time to clarify and/or change, consistent with applicable law, the contractual

44 conditions and contents of the documents contained in the *Handbook*.

45

46 2) Consistency

47 All by-laws, handbooks, policies, regulations, and procedures of the faculty, students,

48 administration, alumni, and other organizations of the University must be consistent with, or

49 subordinate to the By-laws and Policies of the Board of Visitors (hereinafter referred to as the

50 "Board").

Handbook 2007–2008 Edition Section II

Board of Visitors

13

1 3) Construction

2 These policies shall be construed consistently with the laws of the Commonwealth of Virginia; and

3 nothing contained herein shall affect or diminish the rights and powers thereby vested in the

4 Board.

5

6 4) Independence

7 Although certain policies and procedures contained in the documents in the *Handbook* and in other

8 places may be similar to those of the American Council on Education, the American Association

9 of State Colleges and Universities, the Southern Association of Academics and Schools, the

10 American Association of University Professors, and other organizations, the Board hereby

11 declares that its policies and procedures are independent of those or any other organizations: it

12 shall not be bound by interpretations of its policies by any organizations. Moreover, the

13 University does not consider membership in any organizations as binding to follow

14 recommendations, policies, procedures, interpretations, guidelines, or any other statements by any

15 organizations of which it is a member.

16

17 5) Emergency Provisions

18 The Board by vote of two-thirds majority of a quorum at any regular or specially called meeting

Section II

19 may declare a "State of Emergency" and thereafter take whatever actions by a simple majority it
20 deems necessary toward resolution of the emergency state.

21

22 6) Financial Exigency

23 The Board by vote of two-thirds majority of a quorum at any regular or specially called meeting
24 may declare a "State of Financial Exigency." The condition of financial exigency is defined as a
25 circumstance in which the University will clearly violate its primary financial policy of liquidity,
26 which is herein stated. It is a circumstance in which recorded or anticipated expenditures are
27 expected to exceed anticipated revenues and fund balances by material amounts, requiring
28 substantive budgetary reductions to achieve a balanced state in the institutional budgets. The state
29 of financial exigency may exist in the institution as a whole or within financial account groups as
30 defined by numbered items in the Commonwealth Appropriations Act.

31

32 Upon declaration of a state of financial exigency, the Board shall direct the President to prepare
33 revised budget plans. Such plans shall be based on general guidelines as may be provided to the
34 President at the discretion of the Board, including program reduction, and other actions as may be
35 necessary to reduce anticipated expenditures. The revised plan shall be subject to the final
36 approval of the Board.

37

38 7) Control of Content

39 The Board reserves the right to withdraw, add to, or change the content of publications,
40 handbooks, or other Christopher Newport University materials.

41

42 b. Academic Policies

43 1) Admission

44 The Board shall determine the general policies for admission of students to the University.

45

46 2) Curriculum

47 Courses of study shall be developed under the direction of the President, consistent with the mission
48 of the University and applicable laws of the Commonwealth.

49

Handbook 2007–2008 Edition Section II

Board of Visitors

14

1 3) Instruction

2 Subject to the legal obligations of the University and to the approval of the Board, and except as otherwise
3 provided, actual instruction shall be discharged by the faculty of the University under the direction of the
4 President.

5

6 4) Academic Credit

7 The University shall operate on the semester credit unit system.

8

9 5) Academic Freedom

10 The Board recognizes "academic freedom" as:

11

12 a) the right to full freedom in the classroom in presenting and discussing subjects within one's own
13 recognized area of academic expertise germane to the course. The Board does not construe
14 academic freedom in the classroom as constituting license on the part of the **faculty members teacher** to deviate
15 from legitimately established definitions of course content or conduct;

16

17 b) the right to full freedom in scholarly research and publication within the time and resource limits
18 imposed by teaching as a faculty member's primary obligation to the University;

19

20 c) the right of a **faculty member teacher**, when speaking or writing as a private citizen, to be free from institutional
21 censorship or discipline; provided, the **faculty member teacher**, consistent with one's obligation as a member of
22 a learned profession and employee of the University, should endeavor to be accurate, to exercise

Section II

23 appropriate restraint, to show respect for the opinions of others, and to make every reasonable
 24 effort to indicate that the **faculty member teacher** is not an institutional spokesperson.

25

26 6) Degrees

27 Degrees authorized by the Board will be conferred upon students who have completed satisfactorily
 28 the prescribed courses of study for such degrees as approved by the President.

29

30 7) Graduation

31 The University shall conduct at least one formal graduation exercise in each calendar year.

32

33 8) Awards

34 The Board of Visitors may confer the following:

35

36 a) Honorary Degrees

37 (1) Doctor of Science, for scholarship in science

38 (2) Doctor of Letters, for scholarship other than in science or the humanities

39 (3) Doctor of Humane Letters, for scholarship in the humanities

40 (4) Doctor of Laws, (generally) for distinguished service to the Commonwealth and to learning

41

42 b) Other Awards

43 (1) Distinguished Service Award

44 (2) Mace Award

45 (3) Plaque of Recognition

46

47 9) Accreditation

48 The University shall maintain its accreditation by the Southern Association of Colleges and Schools.

49

Handbook 2007–2008 Edition Section II

Board of Visitors

15

1 c. Personnel Policies

2 1) Affirmative Action and Equal Opportunity

3 Christopher Newport University is an Affirmative Action and Equal Opportunity Employer.

4

5 2) Appointments

6 a) The Board exclusively is empowered to make all full-time faculty appointments,

7 administrative/professional or instructional, upon recommendation by the President. All

8 Instructional Faculty appointments shall be for the term as specified in the appointment contract.

9

10 b) **The Board authorizes the President to make appointments of classified personnel; student**

11 assistants; wage and hourly personnel; adjunct and part-time faculty; and any emergency

12 appointments (faculty or otherwise) for a specified time period only, not to exceed one academic

13 semester. In accordance with Resolution 1, dated December 14, 1993, the Board of Visitors delegates to the President of

the University the authority to act on its behalf, in any instance in which he deems such action appropriate, as the final

authority on the appointment of full-time, salaried members of the teaching/research and/or administrative/professional

faculty of the University, regardless of type of appointment status. The President shall report the substance of all actions

taken under the authority of this resolution to the Board of Visitors at the first regular meeting of the Board following any

exercise of the authority hereby delegated.

14

15 3) Completeness of Contracts

16 a) Individual contracts constitute the complete agreements of employment between Christopher

17 Newport University and its employees. No covenants or promises other than those expressly set

18 forth in such contracts are made by the University.

19

20 b) Incorporation by reference into such contracts of documents and materials beyond those referred

21 to in the contract is explicitly disclaimed.

Section II

22

23 4) Leaves

24 It is the policy of the Board to grant to its personnel leaves of absence which benefit the University.

25 Leaves may be given with or without pay and with or without fringe benefits.

26

27 5) Academic Rank

28 The Board authorizes the following academic ranks, in hierarchical order:

29 a) Distinguished Professor

30 b) Professor

31 c) Associate Professor

32 d) Assistant Professor

33 e) Instructor

34

35 6) Teaching Loads

36 ~~Since The workload of full-time Instructional faculty requires teaching, an ongoing program of are expected to play an active role in committee work, full-time~~37 professional development, student advising, and ~~other forms of~~ service to the Department, College, the38 University, and ~~professional and civic the~~ communities. The full-time teaching load for probationary faculty may consist of twelve (12) lecture hours39 ~~or its the equivalent per week in either the Fall or Spring term, and nine (9) lecture hours or the equivalent per week in the remaining semester, for a total of twenty-one (21) lecture hours per academic year. For tenured and restricted faculty, the full-time teaching load may consist of twelve (12) lecture hours or the equivalent per week, for a total of twenty-four (24) lecture hours per academic year. The full-time teaching load for tenured faculty shall adjust to match that of probationary faculty in Fall 2010. Teaching loads are adjusted, however, when circumstances warrant.~~

41 7) Uniform Faculty Evaluation

42 There shall be uniform plans for the evaluation of Instructional and Administrative faculty.

43

44 8) Promotion of Faculty

45 All faculty promotions are elevations in academic rank only and are made by the Board, upon non46 binding recommendation of the President.

47

48 9) Tenure

49 The Board recognizes the concept of tenure as the right of a faculty member having been conferred
50 such status by the Board to be offered each academic year, employment for the succeeding academic
Handbook 2007–2008 Edition Section II

Board of Visitors

16

year at an academic year salary and academic rank no less than the stipulated 1 academic year salary
2 and academic rank of the preceding academic year, subject to the contractual terms and conditions of
3 employment which exist from period to period. Only the Board confers tenure and all rights incident
4 thereto end with termination of employment. Only faculty whose appointment is with rank in an
5 academic department are eligible for tenure. Tenure cannot be earned de facto, regardless of years
6 in service. Administrative faculty cannot be tenured in their administrative positions. A tenure
7 appointment may be terminated as provided in **Section II.2.c.12)** of this *Handbook*.

8

9 10) Hearings

10 a) Mandatory

11 The Board shall provide a hearing for any full-time faculty member who has been dismissed for
12 cause, if requested in writing by the employee within 30 days of notification of the dismissal.

13

14 b) Discretionary

15 The Board may hear appeals, of full-time faculty on decisions of the President on matters of
16 initial employment, promotions, tenure, or terminations other than dismissal, at its discretion.

17

18 11) Retirement

Section II

19 The age 70 mandatory retirement provisions have been removed from the Virginia Supplemental
 20 Retirement Act for state employees and teachers, as well as for employees serving under contracts of
 21 unlimited tenure at institutions of higher education.

22

23 12) Termination of Tenure Appointments

24 Employment of a tenured faculty member may be terminated at any time as a consequence of:

25 a) Retirement

26 b) Resignation

27 c) Failure of the faculty member to execute and return a new employment contract within the time
 28 period specified by the University, such failure to be deemed a voluntary resignation

29 d) Physical or mental incapacity

30 e) Financial exigency as declared by the Board of Visitors

31 f) Noncontinuance of positions compensated by wages

32 g) Elimination or reduction of a program, department, or college/school

33 h) Declaration of an emergency, as made by specified Board resolution

34 i) Dismissal for one or more of the following causes:

35 (1) Incompetence in one or more areas of assigned job responsibilities

36 (2) Continuing neglect of duty in one or more areas of assigned job responsibilities

37 (3) Academic misconduct in one or more areas of teaching, research, public service, or
 38 administration

39 (4) Physical or mental incapacity in one or more areas of assigned job responsibilities

40 (5) Fraud or falsification of official documents, credentials, or experience

41 (6) Violation of Board policies

42 (7) Violation of the terms of the employment contract

43 (8) Violation of the rights and freedom of students, Board members, or employees of the
 44 University

45 (9) Conviction of a felony after initial employment

46

47 13) Termination of Nontenure Appointments

48 All appointments for faculty not on tenure shall be for the period specified in the employment
 49 contract and shall terminate automatically at their expiration date. A new appointment may be
 50 made for nontenured faculty in writing by the University at its discretion. The University is not
Handbook 2007–2008 Edition Section II

Board of Visitors

17

obligated to show cause when no new appointment is made. Nontenured 1 faculty shall be given
 2 reasonable notice of the University's intention not to offer a new appointment.

3

4 Employment of nontenured faculty also may be terminated at any time as a consequence of one or
 5 more of the circumstances under which the employment of a tenured faculty may be terminated
 6 (Section II.2.c.12)).

7

8 14) Termination of Employees Other Than Faculty

9 Employment of persons other than faculty shall be terminated in accordance with the provisions of
 10 the Virginia Personnel Act and applicable directives of the Department of Personnel and Training of
 11 the Commonwealth.

12

13 15) Sexual Harassment

14 a) Rationale

15 The Board of Visitors has a substantial and compelling responsibility to prohibit conduct by
 16 members of the University community which adversely affects the learning process, the unique
 17 academic working environment, or the University's academic image and reputation. Sexual
 18 harassment by any member of the campus community subverts the educational mission of the
 19 University and endangers the educational experiences, the careers, and the mental, physical,
 20 and/or financial well-being of faculty, students, and staff. The Board of Visitors expects the
 21 highest standards of personal behavior from its faculty, staff and students.

Section II

22

23 b) Prohibited Acts

24 The Board of Visitors defines sexual harassment as being any unwelcome sexual advance,
25 unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual
26 nature that meets one or more of the following three conditions:

27

28 (1) Such conduct requires submission/acceptance explicitly or implicitly as a term or condition
29 of an individual's employment or educational pursuit.

30

31 (2) Agreement to submit/accept or the rejection of such conduct by an individual is used as the
32 basis for employment or academic decisions affecting such individual.

33

34 (3) Such conduct has the purpose or effect of substantially and unreasonably interfering with
35 any individual's performance or of creating an intimidating, hostile or offensive working or
36 learning environment for any individual.

37

38 Sexual harassment by any member of the University community is a violation of both law
39 and University policy and will not be tolerated.

40

41 c) Sanctions

42 Violations of this policy by faculty, staff, or students shall be sanctioned under the appropriate
43 disciplinary procedures for faculty, staff, or students. In cases involving sanctions for the
44 conduct of faculty, sanctions include dismissal pursuant to section II.2.c.12) or II.2.c.13), as
45 appropriate, of the *University Handbook*, including:

46 (1) academic misconduct in one or more areas of teaching, research, public service, or
47 administration; b) violation of Board policies; c) violation of the terms of the employment
48 contract; or d) violation of the rights and freedom of students, Board members, or
49 employees of the University. In cases involving sanctions for the conduct of students, the
50 *Code of Student Rights, Responsibilities, and Conduct* shall apply. In cases involving
Handbook 2007–2008 Edition Section II

Board of Visitors

18

sanctions for the conduct of classified employees, the applicable 1 standards of conduct
2 established by the Department of Personnel and Training, promulgated pursuant to the
3 Virginia Personnel Act, shall apply.

4

5 d) Complaints

6 Complaints of sexual harassment shall be directed to the **Director of Equal Opportunity appropriate vice president or to the**
7 **Provost for investigation. This officer shall consult with the University's AA/EEO Officer, as**
8 **appropriate, during the investigation process.**

9

10 e) False or Malicious Charges

11 This policy shall not be used to bring false or malicious charges against fellow students, faculty
12 members, or employees. Disciplinary action under University personnel policies or the *Code of*
13 *Student Rights, Responsibilities, and Conduct*, as appropriate, shall apply.

14

15 16) Faculty-Student Relationships

16 a) Rationale

17 The Board of Visitors has a substantial and compelling responsibility to prohibit conduct by
18 members of the University community which adversely affects the learning process, the
19 unique academic working environment, or the University's academic image and reputation.
20 The University's educational mission requires that the relationship between the faculty of the
21 University and the students of the University be professional in nature. To this end, the Board
22 deems it necessary and appropriate that *every* instructional faculty member and *every*
23 administrative/professional faculty member have a *professional* relationship to and
24 responsibility toward *every* student of the University. The Board deems such professional

Section II

25 relationships to be incompatible with intimate relationships. The Board deems such intimate
26 instructional faculty-student and administrative/professional faculty-student relationships to
27 have the potential to subvert the educational mission of the University; to have the potential to
28 affect adversely the educational experiences of students; to have the potential to affect
29 adversely the effectiveness of both instructional and administrative/professional faculty in the
30 discharge of their professional responsibilities; and to have the potential to affect adversely the
31 mental, physical and/or financial well-being of faculty, staff, and students — including in all
32 instances instructional and administrative/professional faculty, staff, and students who may not
33 be direct parties to the relationship itself.

34

35 b) Prohibited Acts

36 No instructional or administrative/professional faculty member shall have an amorous
37 relationship (consensual or otherwise) with a student. However, nothing in this policy shall be
38 construed as prohibiting the spouse of an instructional or administrative/professional faculty
39 member from enrolling as a student. Moreover, nothing in this policy shall be construed as
40 prohibiting the spouse of a student from accepting employment as an instructional or
41 administrative/professional faculty member.

42

43 c) Sanctions

44 Violations of this policy by instructional or administrative/professional faculty members shall
45 be considered cause for dismissal. In dismissing instructional faculty, the University will
46 follow the Due Process procedures set forth in the *University Handbook*. However, the
47 University may place the instructional faculty member on administrative leave with pay
48 pending the completion of the dismissal process.

49

50

Handbook 2007–2008 Edition Section II

Board of Visitors

19

1 d) Complaints

2 Complaints involving violations of this policy shall be directed to the Director of Equal
3 Opportunity for investigation.

4

5 e) False Charges

6 A student who knowingly brings false charges under this policy against an instructional or
7 administrative/professional faculty member shall be considered in violation of the Honor Code
8 and, upon conviction of the offense, shall be expelled. An instructional or
9 administrative/professional faculty member who knowingly brings false charges under this
10 policy against another instructional or administrative/professional faculty member shall be
11 considered guilty of violating the “rights and freedoms of students, Board Members, or
12 employees of the University.” Under these by-laws, violation of the “rights and freedoms of
13 students, Board Members, or employees of the University” constitutes cause for termination
14 of employment. A classified employee who knowingly brings false charges under this policy
15 against an instructional or administrative/professional faculty member shall be considered to
16 have lied to their employer and shall be subjected to appropriate discipline under the
17 Commonwealth of Virginia State Classified Employee system.

18

19 d. Financial Policies

20 1) The primary principle which shall govern financial management of the University is liquidity, which
21 is that the Board shall authorize only expenditures of those funds which the University has received.
22 Budgeted expenditures will be developed on reasonable expectations of revenues; however,
23 irrevocable commitments to expend, or actual expenditures will not occur until the University is in
24 receipt of revenues, gifts, transfers, and appropriations adequate to support such commitment or
25 expenditure.

26

27 2) Reporting Principles

Section II

28 Revenues shall be collected, expenditures made, and transactions recorded and reported in
 29 accordance with established principles, regulations, and law. A listing of applicable statements of
 30 standards and governing directives shall be presented by the President to the Board and annually
 31 reviewed by the Board.

32

33 3) Tuition and Fees

34 The Board shall establish mandatory tuition and fee schedules. Non-mandatory fees and user rates
 35 shall be established by the President or the President's designee. The underlying principle governing
 36 establishment of fees, tuition, and user rates is that sufficient funds be raised to support planned
 37 operations and capital development with due consideration to requirements of law, market
 38 conditions, and fund balances which may otherwise be available from appropriations and gifts.

39

40 4) Tuition Waiver

41 The Board shall establish appropriate tuition waiver plans.

42

43 5) Internal Audit

44 There shall be an Office of Internal Audit which shall report to the Board.

45

46 6) Compensation Plan

47 The Board shall annually approve a plan of compensation for faculty.

48

49 7) Budget

50 The Board shall annually approve a budget.

51

Handbook 2007–2008 Edition Section II

Board of Visitors

20

e. Policy 1 Concerning Student Conduct

2 The University shall establish and maintain standards of student conduct in order to preserve the rights
 3 and enforce the responsibilities of students as members of the University community.

4

5 f. Operational Policy

6 The President of the University shall be the chief executive and academic officer of the University. The
 7 President shall have responsibility for the operation of the University in conformity with the purpose and
 8 policies determined by the Board.

9

10 g. Policy Concerning Indemnification

11 The following policy of indemnification includes all prior occurrences brought to action or which may be
 12 brought to action.

13

14 Christopher Newport University shall, to the extent permitted by law, indemnify each of its Board
 15 members, officers or employees (including persons who serve at its request as trustees, directors,
 16 officers, employees, or agents of other organizations in which it has an interest) against all liabilities and
 17 expenses, including amounts paid in satisfaction of judgments, in compromise or settlement, as fines and
 18 penalties, and for attorneys' fees, reasonably incurred in connection with the defense or disposition of
 19 any action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and
 20 whether derivative or nonderivative, in which such person may be involved or with which such person
 21 may be threatened, while in office or thereafter, by reason of being a Board member, officer, or
 22 employee of the University, except with respect to any matter as to which such person shall have been
 23 adjudicated in any such action, suit, or proceeding not to have acted in good faith in the reasonable belief
 24 that the action was in or not opposed to the best interests of the University; provided, however, that as
 25 to any matter disposed of by a payment in compromise or settlement made by such Board member,
 26 officer, or employee, pursuant to a consent decree or otherwise, no indemnification shall be provided
 27 unless such compromise or settlement shall be approved as in the best interests of the University, after
 28 notice that it involves indemnification, (a) by a majority vote of a quorum of disinterested Board
 29 members of the University or (b) if such a quorum is not obtainable, by a majority of the disinterested

Section II

30 Board members, provided that, in the case of a Board member, there has been obtained a written opinion
31 of the Attorney General of Virginia, or the Attorney General's designee, other than the University's legal
32 counsel, to the effect that such Board member appears to have acted in good faith in the reasonable belief
33 that the Board member's action was in or not opposed to the best interests of the University or (c) if there
34 be no disinterested Board members, by a majority vote of a quorum of Board members of the University
35 provided that, in the case of a Board member, there has been obtained a written opinion of the Attorney
36 General of Virginia, or the Attorney General's designee, other than the University's legal counsel, to the
37 effect that such Board member appears to have acted in good faith in the reasonable belief that the Board
38 member's action was in or not opposed to the best interests of the University.

39
40 Indemnification shall include payment by the University of expenses, including attorney's fees, incurred
41 in defending an action, suit or proceeding in advance of the final disposition of such action, suit or
42 proceeding, upon receipt of an undertaking by or on behalf of the Board member, officer, or employee
43 indemnified to repay the amount so paid, even though such person shall be adjudicated to be not entitled
44 to indemnification.

45

Handbook 2007–2008 Edition Section II

Board of Visitors

21

h. Policy on Ownership 1 of Intellectual Property

2 1) Introduction

3 a) The results of scholarly activities may take many forms, including research papers, books,
4 inventions, computer software, musical scores, articles for magazines and journals, and new
5 technologies. Many of these intellectual properties have value for the owner(s) and should be
6 protected under the appropriate patent or copyright laws.

7

8 b) This policy is designed to:

9 (1) protect the equities of the authors and the inventors, as well as the University,

10

11 (2) define the responsibilities, rights and privileges of those involved, and

12

13 (3) establish basic guidelines to be included in the administration of this policy.

14

15 2) Definitions

16 Most of the following definitions explain words or phrases that are used in particular ways in these
17 guidelines. Two terms, "assigned duty" and "significant use of general funds," are defined because
18 state law requires that they be defined. Throughout these guidelines, where it is appropriate, the
19 singular form of a noun also includes the plural: "creator" also means "creators" if there are more
20 than one, etc.

21

22 a) Assigned duty (Required by legislation for determining when transfers of intellectual property
23 must be approved by the Governor.)

24

25 "Assigned duty" is narrower than "scope of employment," and is an undertaking of a task or
26 project as a result of a specific request or direction. A general obligation to do research, even if
27 it results in a specific end product such as a vaccine, a published article, or a computer program,
28 or to produce scholarly publications, is not a specific request or direction and hence is not an
29 assigned duty. In contrast, an obligation to develop a particular vaccine or write a particular
30 article or produce a particular computer program is a specific request or direction and is
31 therefore an assigned duty.

32

33 b) Claims an interest

34 The University "claims an interest" in intellectual property when it asserts a right in the property
35 under its intellectual property policy. The University may choose not to "claim an interest" in
36 some forms of intellectual property that it does not want to own, even though it might legally be
37 able to assert ownership.

Section II

38

39 c) Council or State Council

40 The State Council of Higher Education for Virginia.

41

42 d) Creator

43 Either an inventor in the context of patentable inventions, or an author in the context of

44 copyrightable works of authorship.

45

46 e) Employees

47 Full and part-time faculty; classified employees; administrative staff; and students who are paid

48 for specific work by the University. Students may be employees for some purposes and not for

49 others. If they are paid as student assistants, for example, or given grants to do specific

Handbook 2007–2008 Edition Section II

Board of Visitors

22

research, they will be employees. Students receiving general scholarship 1 or stipend funds would

2 not normally be considered employees.

3

4 f) Intellectual Property

5 Anything developed by anyone covered by the University's intellectual property policy that fits

6 one or more of the following categories:

7

8 (1) a potentially patentable machine, article of manufacture, composition of matter, process, or

9 improvement in any of these; or

10

11 (2) an issued patent; or

12

13 (3) a legal right that inheres in a patent; or

14

15 (4) anything that is copyrightable (in legal terms, this means anything that is an original work

16 of authorship, fixed in a tangible medium of expression).

17

18 g) Reporting Period

19 The period from July 1 of one year through June 30 of the following year.

20

21 h) Royalties Received

22 Any value received during the reporting period, including cash payments as well as the market

23 value of any property or services received, in consideration for a transfer of any intellectual

24 property in which the University claims an interest.

25

26 i) Significant Use of General Funds (Required by legislation for determining when transfers of

27 intellectual property must be approved by the Governor.)

28

29 This phrase, and the phrase "developed wholly or significantly through the use of general

30 funds," mean that general funds provided \$10,000 or more of the identifiable resources used to

31 develop a particular intellectual property. A reasonable cost should be assigned to those

32 resources for which a cost figure is not readily available, such as salary, support staff, and other

33 equipment and resources dedicated to the creator's efforts. Resources such as libraries that are

34 available to employees generally should not be counted in the assessment of the use of general

35 funds.

36

37 j) State Council

38 See "Council."

39

40 k) Work-Made-for-Hire

41 Intellectual property, either an invention or copyrightable material, which has been produced by

Section II

42 an individual or group acting as an employee of the University with the use of University
43 resources.

44

45 3) Applicability of the Policy

46 The Intellectual Property policy of Christopher Newport University applies to employees; visiting
47 faculty and researchers; and those employees and visitors covered by sponsored program agreements
48 or other contractual arrangements, as well as employed students.

49

Handbook 2007–2008 Edition Section II

Board of Visitors

23

4) Ownership 1 of Intellectual Property

2 Unless otherwise required by agreement, law, or this policy, Christopher Newport University
3 assumes the creator of intellectual property retains the proprietary interest.

4

5 a) Patentable Discoveries and Inventions

6 Any employee of the University who has made a discovery or invention which in the employee's
7 judgment appears to be patentable, or upon which the employee plans to seek to obtain a patent,
8 shall bring such discovery or invention to the attention of the Chair of the Patents

9 Subcommittee. The purpose of this disclosure is to determine whether and to what extent the
10 University has a proprietary interest in the discovery or invention. All such discoveries should
11 be disclosed as promptly as possible. Upon receipt, a disclosure shall be reviewed by the
12 Subcommittee on Patents. Each discovery or invention should be disclosed regardless of
13 whether or not the inventor(s) plan to exploit the discovery or invention for financial gain.
14 Failure to make the required disclosure may result in a forfeiture of any proceeds or profits
15 which the University would otherwise be obligated to pay pursuant to this policy.

16

17 b) Ownership of Discoveries and Inventions

18

19 (1) Outside Ownership

20 Certain research projects sponsored by governmental agencies, industrial organizations, or
21 others may entitle the sponsors to ownership of a discovery or invention made by a faculty
22 or staff member of the University without payment of any royalty. This ownership may
23 occur when the sponsor provides funds for the entire project and in research involving the
24 testing of a product or products developed by the sponsor. The Chair of the Patents
25 Subcommittee is authorized to ratify such agreement on patent matters where it is necessary
26 to do so as a prerequisite to University participation in the project or receipt of a grant or
27 contract. The determination of the Chair may be subject to review by the Subcommittee on
28 Patents.

29

30 (2) Faculty or Staff Ownership

31 A discovery or invention developed by a faculty or staff member shall be the exclusive
32 property of the inventor(s), if: (i) the University has contributed no funds, facilities, or time
33 of the inventor(s) and (ii) the discovery or invention is not along lines related to any
34 University research program then in progress or completed within the past twelve (12)
35 months with which the inventor(s) may have a connection.

36

37 (3) Review and Disposition of New Discoveries and Inventions

38 Where the University has a proprietary interest, the discovery or invention shall be
39 reviewed by the Chair of the Patents Subcommittee. A recommendation may be made to
40 seek patent protection. In the absence of interest on the part of commercial or
41 University-related entities to license and/or develop the invention or new technology, the
42 invention will be reviewed by the Patents Subcommittee prior to releasing any interest to the
43 inventor(s). Upon concurrence of the Subcommittee on Patents the invention may be
44 pursued by the inventor's own patent agent, subject to the remaining provisions of this
45 document. Expenses incurred by the inventor pursuing this option may be recoverable from

Section II

46 subsequent royalty income received by the University. The University shall have the right
47 to review the patent documents prior to submission of an application for patent.

48

49 Such determination shall be made within 90 days from the date of receipt of the disclosure,
50 unless it is mutually agreed by the Subcommittee and the inventor(s) that additional time is
Handbook 2007–2008 Edition Section II

Board of Visitors

24

needed and an alternative deadline is established. The inventor(s) shall 1 have the right to
2 make recommendations pertaining to such determinations.

3

4 If the discovery or invention in which the University has a proprietary interest is submitted
5 to an organization for invention development, and the organization decides not to file or
6 abandons an application for a patent, the invention may be submitted to other organizations
7 for the same purpose. If all potentially interested organizations have been queried, the
8 application is abandoned, or no action is taken within the 60 days after receipt of the notice
9 of declination, the University's rights to the invention shall be assigned to the inventors at
10 the inventor's request. At the time of assignment, the University may elect to continue to
11 maintain its proprietary interest.

12

13 c) Determining Copyright Ownership

14 All materials in which the University may have a proprietary interest under the provisions of this
15 policy shall be promptly reported in writing by University personnel concerned, through their
16 department head, to the Copyright Subcommittee. The purpose of this disclosure is to determine
17 whether, and to what extent, the University has a proprietary interest in the materials. This
18 report shall include a full and complete disclosure of the subject matter of the materials
19 concerned and identity of all persons participating in the development.

20

21 The Copyright Act (P. L. 94-553) provides that, when a copyrightable work is produced by one
22 person who has been employed by another for that purpose, it is the employer and not the actual
23 producer that is the copyright proprietor. In the academic setting, complex issues can arise as to
24 whether the faculty or staff person produced the copyrightable work in the course of the
25 employee's employment. Generally, the courts have placed a heavy burden of proof on the
26 employee to prove the copyright was not a product of the employee's employment.

27

28 (1) Outside Ownership

29 Funds and facilities provided by governmental, commercial, industrial or other private
30 organizations, which however are administered and controlled by the University, shall be
31 considered to be funds and facilities provided by or through the University for the purpose
32 of this policy statement. Agreement between the University and the sponsor pertaining to
33 sharing royalties and title to copyrightable materials shall be addressed in the contract
34 between the University and the sponsor. University personnel who contract with third
35 parties for the development of copyrightable materials can relinquish no greater interests in
36 the materials than they legally possess. Therefore, if substantial University resources are
37 employed in the development of materials subject to copyright, the University retains
38 interests in the materials, regardless of the terms of a contract between the third party and
39 the University employee, unless the University specifically has waived its rights.

40

41 (2) Faculty or Staff Ownership

42 Copyrightable materials developed by University employees shall usually be the property
43 of the employee. The University will exercise ownership under the work-made-for-hire
44 rationale only when the employee was assigned to create the specific product whose
45 ownership is in question. A faculty member's general obligation to produce scholarly
46 works (for example, textbooks and related instructional materials) does not constitute an
47 assigned duty for purposes of determining copyright ownership. If a copyright work,
48 produced as an assigned duty of an employee, is marketed, the employee ordinarily will

Section II

49 not share in any royalties from sales of the work.

50

Handbook 2007–2008 Edition Section II

Board of Visitors

25

1 (3) Audio and Video Recordings

2 When a faculty member has been assigned to teach a specific class, and that class is
3 transmitted electronically to another site, on or off campus, and in the performance of
4 those duties, a recording is made simultaneously with such transmission, the resulting fixed
5 work shall be considered University property. The retention and/or marketing of
6 recordings for subsequent instructional use, on or off campus, will be undertaken only with
7 the consent of the faculty member. Retention of such materials will normally be only for
8 the academic term in which they are created.

9

10 (4) Return to Ownership

11 If, within a period of twelve (12) consecutive months, the University or its assignee fails to
12 make progress toward exploiting copyrighted materials in which the employee has a share,
13 the employee may make a written request to the Subcommittee on Copyrights that the
14 ownership of the materials pass to the employee.

15

16 (5) Review for Obsolescence

17 Materials in which the University has a proprietary interest, but which are the result of the
18 individual initiative of an employee, may be reviewed for obsolescence by the employee
19 after five (5) years. If the employee considers the material to be obsolete, the employee
20 has the right to refer the matter to the University Committee on Intellectual Property, with
21 a recommendation for disposal of the material.

22

23 (6) Student Ownership

24 Ownership of intellectual properties developed by students who are also employees of the
25 University will be determined by the rules which apply to all University employees.
26 Copyrightable works developed in connection with course work assignments may be
27 deemed to belong to the student. However, in cases of significant use of University
28 personnel and facilities in the development of the intellectual property, the University may
29 exercise its right to ownership.

30

31 (7) Individuals External to the University

32 Individuals outside the University, who may hold intellectual properties that they wish to
33 exploit, may request inclusion under the University's Intellectual Property Policy. If it is
34 in the University's interest to accept such a request, the University and the individual shall
35 execute a legally binding contract, clearly stating the terms and conditions of the
36 arrangement. The sharing of royalties will be explicitly stated.

37

38 5) Administrative Organization

39 a) Committee on Intellectual Property

40 The Committee on Intellectual Property is responsible for making policy recommendations to the
41 President for dealing with patents, copyrights, and related mechanisms for the
42 protection/exploitation of intellectual properties in which the University may have proprietary
43 interest. The Provost shall serve as Chair of the Committee.

44

45 Two subcommittees shall be organized under the Committee on Intellectual Property. One
46 subcommittee shall be responsible for various matters concerning University-originated
47 inventions and new technology. The other subcommittee shall be responsible for matters
48 relating to copyrightable materials. The full Committee on Intellectual Property shall comprise
49 the subcommittee members and the *ex officio* members listed below. Each subcommittee shall
50 be composed of three faculty members, having experience with patent or copyright matters,

Handbook 2007–2008 Edition Section II

Section II

Board of Visitors

26

depending on the subcommittee appointment. The Subcommittee on Patents shall be chaired by the Chair of the Physics and Computer Science Dept. The Subcommittee on Copyrights shall be chaired by the Dean of the College of Liberal Arts and Sciences. The Assistant to the President shall serve as *ex officio* member of the Committee and shall sit on both Subcommittees.

5

The President shall receive faculty nominations from the Faculty Senate and shall make all appointments. All terms are for three years. Members may be reappointed.

8

The Committee on Intellectual Property is composed of the members of the Subcommittee on Patents and the Subcommittee on Copyrights, the *ex officio* members, and the Chair. The President shall make all appointments. All terms are for three years. Members may be reappointed. The Committee shall have the following authority and responsibility with respect to intellectual property.

14

(1) To develop and recommend University policy to the President dealing with intellectual property.

17

(2) To review discoveries, inventions and copyrightable materials to determine whether or not the University has proprietary interest.

20

(3) To hear and make recommendations to the President on disputed ownership of discoveries, inventions and copyrightable materials.

23

(4) To hear and make recommendations to the President on disputed equities of the University, the inventors or authors and other parties associated with the intellectual property concerned.

27

(5) To make recommendations to the President for the sharing of royalties between the University and the authors or inventor(s) of the intellectual property in which the University has a proprietary interest.

31

(6) To promulgate such guidelines and procedures as may be necessary for the implementation of this policy, subject to review and approval of the President.

34

b) Subcommittee on Patents

The Subcommittee on Patents shall:

37

(1) Review all invention disclosures. Such review, when possible, should occur prior to submission of disclosures to any other party. Exceptions to this practice must be approved by the Subcommittee Chair or Committee Chair and by the Inventor.

41

(2) Review, as appropriate, agreements on patent matters that may be entered into as a prerequisite to University participation in a sponsored project or receipt of a grant or contract.

45

(3) Establish deadlines for the disposition of inventions and discoveries, as provided for in the section Ownership of Discoveries and Inventions (*See h.4)b*).

48

Handbook 2007–2008 Edition Section II

Board of Visitors

27

(4) If a decision is made by the University not to pursue a potential patent or other forms of protection or exploitation, advise the appropriate individuals on the assignment of the University's rights to an invention or discovery.

Section II

4

5 c) Subcommittee On Copyrights

6 The Subcommittee on Copyrights shall:

7

8 (1) Review all disclosures of copyrightable materials. Such review, when possible, should
9 occur prior to submission of such information to any other party. Exceptions to this
10 practice must be approved by the Subcommittee Chair or by the Committee Chair and by
11 the author of the copyrightable materials.

12

13 (2) Review, as appropriate, agreements on copyright matters that may be entered into as a
14 prerequisite to University participation in a sponsored project or receipt of a grant or
15 contract.

16

17 (3) Establish deadlines for the disposition of copyrightable materials as provided for in the
18 Section determining Copyright Ownership ((See h.4)c)).

19

20 (4) If a decision is made by the University not to pursue publication or marketing of these
21 materials, advise the appropriate administrators on the assignment of the University's rights
22 to copyrightable materials.

23

24 6) Procedures for Notification

25 Each Subcommittee shall establish, maintain, and distribute procedures and forms for the reporting
26 of University-originated inventions, new technology, and copyrightable materials. The notification
27 must describe the intellectual property, identify all creators, and identify the source of funding that
28 has supported creation of the intellectual property. When more than one person created the
29 intellectual property, the notification must specify the percentage that each claims in any royalties
30 accruing to them resulting from the property. Notification should be made as promptly as possible.
31 If Christopher Newport University does not claim an interest in an intellectual property about which
32 it is notified, it will so advise the creator in writing.

33

34 7) Protection and Commercialization

35 Christopher Newport University will decide which patent and copyright properties if any, they will
36 commercialize on a case-by-case basis.

37

38 a) Patents

39 Because patent review is highly technical, few institutions can maintain the entire operation
40 in-house. In order to evaluate a possible patent Christopher Newport University will submit each
41 employee's invention to an external agency specializing in patent review and commercialization,
42 such as the Center for Innovative Technology, Research Corporation, University Patents, or
43 similar organizations. Agencies like these can evaluate inventions for patentability and
44 commercial potential, and obtain patents, license them, manage the royalties, and protect the
45 patents from infringement.

46

47 b) Copyrights

48 Copyright protection applies to any work of authorship as soon as it is written or otherwise
49 recorded. When a work is published, it should contain a copyright notice: a small "c" in a circle
50 or the word "copyright" or the abbreviation "copr.", the year of publication, and the name of

Handbook 2007–2008 Edition Section II

Board of Visitors

28

the copyright owner. Registration of copyright is not generally 1 a condition of copyright
2 protection, but is a prerequisite to an infringement suit. Registration does offer the advantages
3 of public record of the copyright claim, *prima facie* evidence of the validity of the copyright,
4 and availability of a broader range of remedies in infringement suits.

5

6 Registration can occur at any time, but requires a small fee (currently \$10 for each work

Section II

7 registered) and administrative time. Thus the decision of whether, and when, to register
 8 copyrights is a cost-benefit decision. As a practice, Christopher Newport University will
 9 seldom register a copyright until a high commercial value is perceived for a work. For
 10 example, a major computer program or a semiconductor chip design would be registered
 11 immediately, though a newsletter might never be registered.

12

13 8) Work-Made-For-Hire

14 a) Patents

15 Except as herein provided, the University shall obtain the entire right, title, and interest in and
 16 to any invention made by any faculty or staff member of the University: (a) while at work for
 17 the University or during working hours, as applicable, or (b) with a substantial contribution
 18 by the University of facilities, equipment, materials, funds, or information, or of time or
 19 services of other University employees during working hours, or (c) which is made in
 20 consequence of the official assigned duties of the inventor. For purposes of this policy, it
 21 shall be deemed that an invention has been "made-for-hire" if the employee is employed or
 22 assigned to: (a) invent, improve, or perfect any art, machine, design, manufacture, or
 23 composition of matter, (b) conduct or perform research, development work, or both, (c)
 24 supervise, direct, coordinate, or review University-financed or conducted research or
 25 development work, or both, or (d) act in a liaison capacity with agencies or individuals
 26 engaged in such research or development. This assignment, however, does not preclude the
 27 sharing of royalties or other payments with the employee in accordance with this policy.

28

29 In any case where the contribution of the University, as measured by the foregoing criteria, is
 30 *de minimis* and is insufficient to justify equitably the requirement of assignment to the
 31 University of the entire right, title, and interest, the University shall reserve an exclusive,
 32 irrevocable, royalty-free license in the invention with power to grant licenses for all
 33 University purposes.

34

35 The University claims no interest in the invention if University facilities, services, funds, or
 36 time have not been used. An example would be inventions resulting from pursuance of a
 37 hobby, not related to the employee's University activities, and conducted off campus.

38

39 b) Copyrights

40 In order to encourage creative efforts by the faculty and staff, the University will exercise its
 41 rights as an employer under the concept of "work-made-for-hire" only when: (1) the
 42 materials subject to copyright represents an assigned duty of a member of the faculty or staff
 43 of the University, and/or (2) substantial use of University facilities and resources is made in
 44 the production of the materials.

45

46 In any case where the contribution of the University, as measured by the foregoing criteria, is
 47 *de minimis* and is insufficient to justify equitably the requirement of assignment to the
 48 University of the entire right, title, and interest, the University shall reserve an exclusive,
 49 irrevocable, royalty-free license in the copyrightable work with the power to grant licenses for
 50 all University purposes.

Handbook 2007–2008 Edition Section II

Board of Visitors

29

9) Management and Exploitation of University 1 Intellectual Property

2 If the University possesses a proprietary interest, the President shall determine the manner in
 3 which the intellectual property shall be managed and exploited. With the Board of Visitors'
 4 approval the rights to patentable or copyrightable materials may be assigned to the Christopher
 5 Newport University Foundation. Upon such assignment, the Foundation shall have all rights to
 6 use, promote, manage, market, sell, or in any other way dispose of such material, on such terms
 7 and conditions, or for such consideration, if any, as the Foundation shall determine. However, the
 8 inventor(s) or author(s) shall have the right to make recommendations to the President on such
 9 matters through the appropriate administrative channels.

Section II

10

11 10) Substantial Use of University Facilities

12 What constitutes "substantial use" of University facilities and resources must be answered on the
13 basis of the facts and circumstances of each case. The University will not ordinarily construe the
14 provision of office or laboratory space, access to the library, or the payment of employees' salary
15 as significant use of University facilities and resources.

16

17 As a general guideline, the use of University resources (other than the library, the employee's
18 office or laboratory, and salary) will be considered substantial if the value of those other resources
19 used exceeds \$5,000 in any twelve consecutive month period. Examples of resources subject to
20 the \$5,000 limitation include computer charges, laboratory assistant or technician salaries and
21 wages, laboratory materials, and secretarial salary.

22

23 11) Royalty Provisions

24 Where the University has an equity position in an intellectual property, the inventor(s) or author(s)
25 and the University will share equally in any income received by or on behalf of the University
26 from royalties, front-end payments, or incentives, after any expenses incurred by or on behalf of
27 the University to protect, market, or develop the intellectual property have been repaid to the
28 University. In this context the "University" shall be understood to include all those units
29 (departments, centers, etc.) which have contributed materially towards development of the
30 intellectual property. The University's share of royalties or other income shall be divided
31 commensurate with involvement of the University units during development. In usual practice,
32 division of the University share shall follow recommendations of the Committee to the President
33 and shall typically include an assignment to the employee's primary unit (e.g., departments,
34 centers, etc.) equal to at least 25% of the total income as defined above. The remaining portion of
35 the University share shall be used to maintain an environment supportive of employee activities in
36 development of intellectual properties.

37

38 Payments received by the University or its agents for an intellectual property that is not yet
39 protected by patent or copyright shall also be distributed in accordance with this policy.

40

41 12) Dispute Resolution

42 Should any issues develop as to the ownership of the intellectual property involved, the Committee
43 on Intellectual Property shall make a finding as to ownership and shall report such findings to the
44 President for final resolution. The parties involved shall be entitled to appear before the
45 Committee and to present evidence with respect to the disputed ownership. The Committee's
46 determination shall be made in writing and shall contain a statement of the basis for its decision.
47 The Committee shall also serve as an advisory body to assist University personnel in establishing
48 the equitable and legal distribution of ownership.

49

Handbook 2007–2008 Edition Section II

Board of Visitors

30

The President, on his/her own motion or at the request of any interested 1 party, may review any
2 determination of the Committee. The President may affirm, modify or reject any determination of
3 the Committee.

4

5 13) Right Of Appeal

6 The inventor(s) or author(s) of an intellectual property covered by this policy shall have the right
7 to appeal application of the policy regarding ownership, equity, classification, sharing of royalties,
8 disposition, management, or exploitation of any patent or copyright, or any procedure relating
9 thereto made by the appropriate subcommittee, to the Committee on Intellectual Properties.

10

11 The Committee will formulate recommendations relative to each such appeal, and will forward
12 both the appeal and its recommendations to the President in a timely manner. The President will
13 determine the University's response to each appeal, and will so notify the inventor(s) or author(s)

Section II

14 and the Committee.

15

16 14) Transfers of Intellectual Property

17 Except when the Governor's prior written approval is required, the Board of Visitors may transfer
18 any intellectual property in which the University claims an interest.

19

20 The Governor's prior written approval is required for transfers of title to patents and copyrights
21 that were:

22

23 a) developed wholly or significantly through the use of state general funds, by an employee of
24 the University acting within the scope of the employee's assigned duties; or

25

26 b) developed wholly or significantly through the use of state general funds, and are to be
27 transferred to an entity other than the following:

28

29 (1) the Innovative Technology Authority; or

30 (2) an entity whose purpose is to manage intellectual properties on behalf of nonprofit
31 institutions; or

32 (3) an entity whose purpose is to benefit the transferring institution.

33

34 When prior written approval is required, the President will send a description of the intellectual
35 property and the proposed transaction to the State Council of Higher Education. Within thirty
36 days, the Council will recommend action to the Governor, including any conditions the Council
37 thinks should be attached to the proposed transfer. The Governor also may attach conditions to the
38 transfer.

39

40 Note that approval is not required for the grant of a license to use an intellectual property, but only
41 when actual title is to be transferred. The statute also requires the Council to define the conditions
42 under which a "Significant use of general funds" occurs, and the circumstances constituting an
43 "assigned duty," for the purpose of reporting transfers. These definitions appear in the
44 Definitions section, under "significant use of general funds," and "assigned duty."

45

46 The University need not claim an interest in all intellectual properties in which they might legally
47 be able to assert an interest. The requirements for approval of transfers of intellectual properties,
48 and the following commentary, refer to intellectual properties in which the University does claim
49 an interest.

50

Handbook 2007–2008 Edition Section II

Board of Visitors

31

Most intellectual properties will be developed by employees, but not all 1 of those will be developed
2 within the scope of assigned duties. When employees create intellectual property on their own
3 initiative, or as part of their general obligation of scholarship, the University may transfer title to
4 the property without approval if the transfer is to one of the entities noted as exception in this
5 section.

6

7 On the other hand, when the University specifically directs an employee to develop a particular
8 intellectual property, the development becomes an assigned duty. If the development is done with
9 significant use of state funds, the University must obtain the Governor's approval before
10 transferring the property, whether or not the transferee is one of the entities listed as an exception
11 in this section.

12

13 Note that an employment agreement (contract) allowing certain intellectual properties to be
14 retained by an employee from the moment of their creation is not a "transfer" to the employee,
15 and hence need not be reported. An intellectual property that is owned by the University and later
16 transferred to an employee is a "transfer," however, and should be reported if it meets the

Section II

17 requirement above. The requirement for approval of certain transfers refers to transfers by the
18 University itself, not to later transfers made by anyone other than the institution.

19

20 15) Reporting Requirements

21 The General Assembly has directed the State Council of Higher Education, in cooperation with the
22 Innovative Technology Authority, to collect and report certain information about intellectual
23 property. So that the Council may comply with this requirement, each institution must annually
24 collect and report the information for the preceding fiscal year. The Chair of the Committee on
25 Intellectual Properties is designated as the person responsible for compiling and submitting the
26 report.

27

28 The Council will annually set a date by which reports on intellectual property are to received by
29 the Council. Each annual report should include the following information:

30

31 (a) The name of the University.

32

33 (b) The name of the Chair of the Committee on Intellectual Property.

34

35 (c) The number of intellectual properties in which the University claims an interest under its
36 intellectual property policy. The number should be divided into patentable subject matter and
37 copyrightable subject matter.

38

39 (d) The name of all transferees to whom the institution has transferred any interests, including
40 licenses, in intellectual properties. (The requirement to report the name of any transferee of
41 intellectual property refers to transfers by the University itself, not to later transfers made by
42 anyone other than the University.)

43

44 (e) If the University is not able publicly to identify the transferee of any intellectual property, the
45 University should identify the particulars of the transfer as well as the reasons why such
46 information should not be reported. The Council will determine whether to report the
47 information to the legislature.

48

49 (f) The total royalties received by the University during the reporting period.