**§ 6212. Tenure.** 1. The following words and phrases, for the purposes of this section, shall have the following meanings:

a. "Educational unit" shall mean a college, school, preparatory school, high school, or model school.

b. "Instructional staff" shall mean the persons employed by the board of trustees in the educational units governed and administered by it in the grades or positions of president, dean, director, professor, associate professor, assistant professor, instructor, fellow, lecturer, senior registrar, registrar, assistant registrar, associate registrar, college laboratory technicians; in the high school and model school: principal, first assistant, supervisor, instructor, assistant teacher, critic teacher, teacher; or in any grade or position which the board of trustees in its discretion may add thereto.

c. "Tenure" shall mean the right of a person to hold his position during good behavior and efficient and competent service, and not to be removed therefrom except for cause in the manner hereinafter provided.

2. All members of the permanent instructional staff of the educational units governed and administered by the board of trustees shall have tenure.

3. The permanent instructional staff shall consist of all persons employed by the city university on an annual salary basis at the educational units governed and administered by the board of trustees as follows: (a) in the grades of professor, associate professor, assistant professor, or in any grade or position which the board in its discretion may add thereto, who, after serving on an annual salary in any of the grades or positions enumerated or provided for in this paragraph for seven full years continuously, have been appointed or shall be appointed for an eighth full year, except as provided in subdivisions four and five of this section; and (b) in the grades of college laboratory technician, senior registrar, registrar, assistant registrar, associate registrar, assistant librarian and in the elementary and high schools: instructor, assistant teacher, critic teacher, or teacher, or in any

grade or position which the board in its discretion may add thereto, who, after serving on an annual salary in any of the grades or positions enumerated or provided for in this paragraph for five full years continuously, have been appointed or shall be appointed for a sixth full year, except as provided in subdivision four of this section; the membership of such persons on the permanent instructional staff as provided for in paragraph (a) of this subdivision shall become effective on the first day of September following their reappointment for the eighth full year, and the membership of such persons on the permanent instructional staff as provided for in this paragraph shall become effective on the first day of September following their reappointment for the sixth full year. Where the service of a member of the instructional staff, in one of the titles listed or provided for herein, is interrupted by reason of absence on a maternity or child care leave duly granted by the board of trustees, the period of creditable service immediately preceding such absence shall be counted in computing the full years of service required by this subdivision.

4. Nothing herein contained shall be construed as conferring or permitting tenure, or service credit toward the achievement of tenure, in the grades or positions of president, director, assistant director, dean, assistant dean, head of instructional department, chairman of instructional department, fellow, laboratory teaching assistant, principal, supervisor, or first assistant. Appointment to such grade or position, or removal therefrom, however, shall not deprive the person so appointed or removed of tenure in the highest position on the instructional staff held with tenure prior to his appointment to such office or conjointly with such office, nor shall the appointment to, holding of, or removal from such grade or position deprive any person of service credit toward the achievement of tenure under the provisions of this section.

5. Persons appointed to the rank of professor, associate professor or assistant professor may under the provisions of the board of trustee's by-laws be placed on the permanent instructional staff by the board of trustees in its discretion after not less than one nor more than seven years of continuous full time service on an annual salary except that

persons of proven record who have achieved tenure at another recognized institution of higher learning and whose appointment is to the rank of professor may be granted tenure immediately on appointment. Persons promoted to the rank of professor shall be granted tenure after not more than four years of continuous full time service on an annual salary in positions on the instructional staff.

6. For the purpose of appointments and promotions in the instructional staff which may be made after April twentieth, nineteen hundred forty, the board of trustees shall determine to what extent examinations are practicable to ascertain merit and fitness for each of the positions within the educational units covered and administered by it and, in so far as examinations are deemed practicable, shall determine to what extent it is practicable that such examinations be competitive. Any examination held in accordance with the provisions of this subdivision shall be set and administered through any agency which the board of trustees may from time to time create or designate.

7. Neither tenure as conferred through the operation of this section nor the period requisite for the achievement of tenure shall be affected by transfer within the educational units governed and administered by the board of trustees, or by promotion, or by change of title, except that a person upon whom tenure is conferred through the operation of this section and who may be transferred to any position within the educational units governed and administered by the board of trustees, or who may be promoted, or whose title may be changed, shall have tenure in his new position, provided such position is not one of those enumerated in subdivision four of this section. Nothing herein contained shall be construed to prevent the board of trustees from assigning any person having tenure to any appropriate position on the staff, but no such assignment shall carry with it a reduction in rank or a reduction in salary other than the elimination of any additional emolument provided for administrative positions. Any person in a position on the instructional staff just prior to the effective date of this article shall not be affected with respect to his tenure or the time credit earned towards such tenure, or the period requisite for the achievement of tenure under the law as it existed just prior to the effective date

of this article.

8. A position held by a person upon whom tenure is conferred through the operation of this section may be abolished or discontinued by the board of trustees for reasons which are not discriminatory against a particular person or persons. In the event that a position in a department is to be abolished or discontinued, such position shall be that of the person last appointed to such department, save that, for special educational reasons which are not discriminatory against a particular person or persons, the board of trustees may continue the services of a person or persons whose position or positions would otherwise be abolished or discontinued, and abolish or discontinue the position or positions of the person or persons next most recently appointed to such department; provided, however, that all persons of any grade in such department upon whom tenure is not conferred by the operation of this section shall be dismissed before the position of any other person in such department is abolished or discontinued. If the board of trustees abolishes or discontinues the position of a person upon whom tenure is conferred through the operation of this section and can find no position in the educational unit in which such person has been serving which can be efficiently and capably filled by such person, then his name shall be placed and shall remain for three years upon a preferred eligible list of candidates for reappointment to fill a vacancy that may thereafter occur in a position which can be efficiently and capably filled by such person or to fill a newly created position which can be efficiently and capably filled by such person. The board of trustees shall, through the adoption of appropriate by-laws, determine the number of such preferred eligible lists, the extent of applicability of each such list, and the order of reappointment therefrom to vacancies in positions under its jurisdiction or to newly created positions under its jurisdiction. No names shall be placed on such preferred eligible lists except as hereinbefore provided for persons upon whom tenure is conferred through the operation of this section. Any person reappointed from a preferred eligible list shall be reappointed at a salary not less than that which he was receiving when his position was abolished or discontinued. Any person whose name is placed on a preferred eligible list as hereinbefore provided shall, for the purpose of maintaining his

status in any retirement system of which he is a member, be deemed to be on leave of absence without pay.

9. Persons having tenure under the provisions of this section may be removed or suspended from the permanent instructional staff for one or more of the following reasons, provided, however, that, except as to a charge of misconduct constituting a crime when committed, no proceedings shall be commenced more than five years after the occurrence of the alleged incompetency or misconduct:

a. incompetent or inefficient service;

b. neglect of duty;

c. physical or mental incapacity;

d. conduct unbecoming a member of the staff. This provision shall not be so interpreted as to constitute interference with academic freedom.

Proceedings for the removal of such a person shall be conducted in accordance with the by-laws of the board of trustees, and shall be initiated by service by the board of trustees upon the person involved of a notice setting forth all the charges pending against him. Such a person so charged shall be entitled to a hearing with right of representation by any person or persons of his choice before any committee which the board of trustees may appoint to investigate such charges, or, in the event that such a committee is not appointed, before the board of trustees. In cases in which such a committee is appointed, such a person shall further be entitled to an appeal on the record with right of representation by any person or persons of his choice before the board of trustees prior to its final determination of the question of his removal. No such person shall be removed except at a regular or special meeting of the board of trustees, by an affirmative vote of the majority of all the members of the board of trustees. For the purposes of any such proceeding, the board by its chairman or the chairman of any such committee shall have power to subpoena witnesses, papers and records, and to administer oaths.

10. If any clause, sentence, paragraph or part of this section, or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment or order shall not invalidate the remainder of this section and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment or order shall have been rendered and to the person or circumstance involved.