

**East Carolina University Faculty Senate**  
**DUE PROCESS APPELLATE COMMITTEE CHARGE**  
**ECU FACULTY MANUAL**  
**TENURE AND PROMOTION POLICIES AND PROCEDURES**  
**OF EAST CAROLINA UNIVERSITY**  
*July 2012*

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VI. Due Process Before Discharge or the Imposition of Serious Sanctions

A. Sanctions

A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary sanctions. During the period of such guarantees, the faculty member may be discharged from employment, suspended, or demoted in rank or serious sanctions may be imposed only for reasons of:

1. incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given the opportunity to remedy such performance and fails to do so within a reasonable time;
2. neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or
3. misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal or other illegal, inappropriate or unethical conduct. To justify serious disciplinary actions, such misconduct should be either: (i) sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or (ii) sufficiently serious to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

These sanctions may be imposed only in accordance with the procedures prescribed in this section. For purposes of the *Faculty Manual*, a faculty

member serving a stated term shall be regarded as having tenure until the end of the term. These procedures shall not apply to non-reappointment (Section V) or termination of employment (Section VII).

B. Notice

Written notice of intent to discharge the faculty from employment or to impose serious sanction, together with a written specification of the reasons (these sanctions hereinafter in Section VI are referred to as “the sanction”) shall be sent by the vice chancellor with supervisory to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. The statement shall include notice of the faculty member's right, upon request, to a hearing by the Due Process Committee (Section VI.E.). (Faculty Senate Resolution #99-10)

C. Penalty Without Recourse

If, within 14 calendar <sup>1[i]</sup> days after the faculty member receives the notice and written specification of the reasons referred to in Section VI.B. above, the faculty member makes no written request for a hearing, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure.

D. Hearing Request

A faculty member shall timely submit a request for a hearing to the vice chancellor with supervisory authority in writing by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. Upon receipt of such a request the vice chancellor with supervisory authority shall, within 10 calendar days, notify the chair of the Due Process Committee of the need to convene a hearing in accordance with Section VI.F.1

If the faculty member shall submit a timely request for a hearing, the Chancellor shall ensure a process is in place so that the hearing is timely accorded before the Due Process Committee.

E. Due Process Committee

The Due Process Committee (hereinafter “Committee”) shall be composed of five members and five alternates each of whom is a full-time, permanently tenured voting faculty member Appendix D, Section IV. Members shall be elected in accordance with the procedures for election of appellate committees specified in the Bylaws of the East Carolina University Faculty Senate. Members and alternates shall be elected to three-year terms. A quorum for the committee shall be the five members or their alternates. Upon organization, the members of the-Committee shall elect a chair and a secretary. Should any Committee officer be absent at the beginning of a hearing, the Committee shall elect an alternate officer for the purposes of the hearing.

When the Committee is convened to consider any matter associated with a faculty member's request for a hearing, those Committee members who hold an appointment in the faculty member's academic unit, those who might reasonably expect to be called as witnesses, or those who may have any other conflict of interest should disqualify themselves from participation in the activities of the Committee related to this specific request for a hearing. The faculty member and the vice chancellor with supervisory authority are permitted to challenge Committee members for cause. The other members of the Committee will decide on any potential disqualifications if a Committee member is so challenged but wishes to remain. (Faculty Senate Resolution #99-10)

When membership of the Committee falls below the specified five members and five alternates, the Faculty Senate will elect additional faculty members to the committee. Vacancies on the committee will be filled first by moving alternates to member status and by electing new alternates and/or members as needed to fill the committee roster.

Upon notification by the vice chancellor with supervisory authority that a faculty member has requested a hearing, the chair of the Committee shall determine the availability of the elected members and alternates, and shall select from those available one or more alternates, as necessary (see Part XI of the ECU Faculty Manual, UNC Code, Section 603). The ranking of the available alternates for selection shall be determined by their years of service to the University. That available alternate who is most highly ranked shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing. (Faculty Senate Resolution #99-10)

The Committee may at any time consult with an attorney in the office of the University Attorney who is not presently nor previously substantively involved in the matter giving rise to the hearing, nor will advise the University administrator(s) following the Committee action(s). (See *Part VIII, Responsibilities of Administrative Officers.*)

#### F. Procedures for the Hearing

##### 1. Time and Date of Hearing

The Committee shall set the time, date, and place for the hearing. The Committee shall accord the faculty member 30 calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The Committee may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member. The Committee shall notify the affected faculty member, the vice chancellor with supervisory authority, and the chair of the faculty of the time, date, and place of the hearing.

The Committee will ordinarily endeavor to complete the hearing within 90 calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the Committee cannot be assembled.<sup>1[i]</sup>

## 2. Conduct of Hearing

The hearing shall be on the written specification of reasons for the intended discharge or imposition of a serious sanction. The chair of the Committee, or an elected member of the Committee if the chair is unavailable, is responsible for conducting the hearing and for maintaining order during the hearing. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to the Committee's members and alternates, the faculty member requesting the hearing, counsel for the faculty member, the vice chancellor with supervisory authority, or his/her designee, and/or counsel for the vice chancellor. Other persons (witnesses) providing information to the Committee shall not be present throughout the hearing, but shall be available at a convenient location to appear before the Committee as appropriate. For any hearing from which an appeal may be taken, a professional court reporter must be used to record and transcribe the hearing. (Faculty Senate Resolution #03-37). The hearing shall be closed to the public unless both the faculty member and the Committee agree that it may be open.

The hearing shall begin with an opening statement by the hearing chair limited to explaining the purpose of the hearing and the procedures to be followed during the hearing. Following the opening remarks by the hearing chair, the vice chancellor with supervisory authority, his/her designee, or his/her counsel shall present the university's contentions and any supporting witnesses and documentary evidence. The faculty member or the faculty member's counsel may then reply and present any supporting witnesses and documentary evidence. During these presentations, the vice chancellor with supervisory authority, his/her designee, or his/her counsel, and the faculty member or his/her counsel, shall have the right to confront and cross-examine adverse witnesses, and to make argument. Committee members may question witnesses for purposes of clarification. At the conclusion of the hearing, the faculty member and then the vice chancellor with supervisory authority, or his/her designee, will be given the opportunity to provide summary statements. (Faculty Senate Resolution #99-10).

## G. Procedures After the Hearing

After the hearing, the Committee shall meet in executive session and begin its deliberations or shall adjourn for no more than two calendar

days, at which time it shall reconvene in executive session. In reaching its decisions the Committee shall consider only the testimony and other materials entered or presented as evidence during the hearing and such written or oral arguments as the committee, in its discretion, may allow. The University has the burden of proof. In evaluating evidence, the Committee shall use the standard of “clear and convincing” evidence in determining whether the institution has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action.

Within 14 calendar days of finishing its deliberations or after the full transcript is received, whichever is later, the Committee shall provide the faculty member<sup>1[i]</sup> and the chancellor with a copy of its report, including materials entered as evidence, and a copy of the court reporter's transcript of the hearing. In its report the Committee shall state whether or not it recommends that the intended sanction be imposed (Faculty Senate Resolution #03-37).

In reaching a decision, the chancellor shall consider only the written transcript of the hearing and the report of the Committee. Within 30 calendar days of receiving the report, the chancellor's decision shall be conveyed in writing to the Committee and the affected faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3.

#### H. Appeal

If the chancellor concurs in a recommendation of the Committee that is favorable to the faculty member, the decision shall be final. If the chancellor rejects a finding, conclusion, or recommendation of the Committee, the chancellor shall state the reasons for doing so in a written decision. If the chancellor either declines to accept a Committee recommendation that is favorable to the faculty member or concurs in the Committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the chancellor's decision to the Board of Trustees.

This appeal shall be transmitted through the chancellor and shall be addressed to the chair of the Board. Notice of appeal shall be filed within 14 calendar days after the faculty member receives the chancellor's decision. The appeal to the Board of Trustees shall be decided by the full Board of Trustees; however, the Board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members.

The Board of Trustees, or its committee shall consider the appeal on the written transcript of the hearing held by the Due Process Committee, but it

may, in its discretion, hear such other evidence as it deems necessary, with the opportunity for rebuttal. The Board of Trustees' decision shall be made as soon as reasonably possible after the chancellor has received the faculty member's request for an appeal to the Trustees.

This decision shall be final except that the faculty member may, within 14 calendar days after receiving the trustees' decision, file a written notice of appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, to the Board of Governors by alleging that one or more specified provisions of the *Code of The University of North Carolina* have been violated. Any such appeal to the Board of Governors shall be transmitted through the President.

I. Suspension During a Period of Intent to Discharge

When a faculty member has been notified of the institution's intention to discharge the faculty member, the chancellor may reassign the individual to other duties or suspend the faculty member at any time until a final decision concerning discharge has been reached by the procedures prescribed herein. Suspension shall be exceptional and shall be with full pay and benefits.

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Approved

Faculty Senate Resolution #09-51

July 12, 2010

Erskine Bowles, President of UNC System