

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

- VII. Termination of Faculty Employment
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- VII. Termination of Faculty Employment
 - A. Reasons Justifying Termination and Consultation Required
 - 1. Reasons for Terminating Employment

The employment of a faculty member with permanent tenure or of a faculty member holding a fixed-term or probationary appointment may be terminated by East Carolina University because of (1) demonstrable, bona fide institutional financial exigency, or (2) major curtailment or elimination of a teaching, research or public service program.

Financial exigency is defined as a significant decline in the financial resources of the institution that is brought about by decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public service program shall be made by the chancellor, after consulting with the academic administrative officers and faculties as required by Section VII.A.2. below.

This determination is subject to concurrence by the President and then approval of the Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the institution's contractual obligation to a faculty member cannot be met, the employment of the faculty member may be terminated in accordance with Section 605 of The Code of The University of North Carolina and the institutional procedures set out in subsection B below.

- 2. Consultation with Faculty and Administrative Officers

When it appears that the institution will experience an institutional financial exigency or when it is considering a major curtailment in or elimination of a teaching, research, or public service program, the chancellor or the chancellor's delegate shall forthwith prepare a report which identifies specifically the state of financial exigency or the program change. The report must outline the options readily apparent to the chancellor at the time, including any options which would or might involve terminations of faculty employment.

The chancellor's report shall be directed to the Educational Policies and Planning Committee for their written advice and recommendations. In considering this report the Educational Policies and Planning Committee shall have access to information on which the chancellor's report was based. The Committee may interview appropriate persons. The Educational Policies and Planning Committee shall prepare a report in response to the chancellor, to be submitted at a time determined by the chancellor.

Should the chancellor decide, following receipt of the Educational Policies and Planning Committee's report, to consider reducing a unit's faculty for reasons of financial exigency or

major curtailment or elimination of a program, the chancellor shall promptly establish and convene an ad hoc Faculty Advisory Committee to advise the chancellor regarding the contemplated reduction.

Whenever such a Committee is created, it shall consist of two members and two alternates elected by the unit; the unit's administrator as an ex officio member; and four members and four alternates from disciplines complementary to the unit, nominated by the University Committee on Committees and elected by the Faculty Senate. Except for the ex-officio member, membership on an ad hoc committee shall be limited to full-time permanently tenured faculty without administrative appointment. Upon organization, the committee shall elect a chair and a secretary. The ad hoc Faculty Advisory Committee, following procedures according to the most recent edition of *Robert's Rules of Order, Newly Revised*, shall submit a report of its advice and recommendations, at a time determined by the chancellor. In preparing this report, the committee shall have access to information considered in any prior reports, and the committee may interview appropriate persons.

B. Termination Procedures

1. Consideration in Determining Whose Employment is to be Terminated

In determining which faculty member's employment is to be terminated, the primary consideration of the chancellor and the ad hoc advisory committee shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution. Where no conflict with this primary consideration exists, priority for retention shall be given the permanently tenured faculty who are senior in years of service to the University.

2. Timely Notice of Termination

- a. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and such curtailment or elimination of program is not founded upon financial exigency, the faculty member shall be given timely notice as follows: One who has permanent tenure shall be given not less than twelve months notice; and one who does not have permanent tenure shall be given notice in accordance with the requirements specified in Section II.C.
- b. When a faculty member's employment is to be terminated because of financial exigency, the institution will make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in the preceding paragraph.

3. Type of Notice to be Given

- a. Should the chancellor decide to terminate employment following receipt of the report of the Ad hoc Faculty Advisory Committee, the chancellor or the chancellor's delegate shall send the faculty member whose employment is to be terminated a written statement of this fact by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. This notice shall include a statement of the conditions requiring termination of the faculty member's employment; a general description of the procedures followed in making the decision; a disclosure of pertinent financial or other data upon which the decision was based; a statement of the faculty member's right, upon request, to a reconsideration of the decision by a faculty committee if the faculty member alleges that the decision to terminate employment was arbitrary or capricious; and a copy of this procedure on termination of employment.
- b. For a period of two years after the effective date of termination of a faculty member's contract for any of the reasons specified in Section VII.A.1., the institution shall not replace the faculty member without first offering the position to the person whose employment was terminated. The offer shall be sent by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 to the address last furnished to the

chancellor's office, and the faculty member will be given thirty calendar days after attempted delivery of the notice in which to accept or reject the offer. The offer to resume a terminated position shall provide for tenure status, rank, and salary at least equal to those held by the faculty member at the time of termination.

- c. The institution, when requested in writing by a faculty member whose employment has been terminated, shall give reasonable assistance in finding other employment. Such assistance shall include secretarial assistance, access to the telephone (including long distance), University/unit stationary and postage, travel funds to professional meetings, and other assistance as deemed reasonable and appropriate in the profession.
4. Termination if Reconsideration is Not Requested
If, within 10 working days after receipt of notice required by Section VII.B.3 above, the faculty member makes no written request for a reconsideration hearing, employment will be terminated at the date specified in the notice given pursuant to Section VII.B.3, and without recourse to any institutional grievance or appellate procedure.
5. Request for Reconsideration Hearing
Within 10 working days after receiving the notice required by Section VII.B.3, the faculty member may request by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 a reconsideration of the decision to terminate employment, if the faculty member alleges that the decision was arbitrary or capricious. The request shall be submitted to the chancellor and shall specify the grounds upon which it is contended that the decision to terminate employment was arbitrary or capricious and shall include a short, plain statement of facts that the faculty member believes support the contention. Submission of such a request constitutes on the part of the faculty member: (1) a claim that the contention can be supported by representation of factual evidence, and (2) an agreement that the institution may offer in rebuttal of the faculty member's contention any relevant data within its possession. Upon receipt of such a request the chancellor shall, within 10 working days, notify the chair of the Reconsideration Committee of the need to convene a hearing in accordance with Section VII.B.7.
6. The Reconsideration Committee
The Reconsideration Committee shall be composed of five members and five alternates, each of whom is a full time permanently tenured voting faculty member without administrative appointment. 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 Reconsideration 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 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, who participated directly in the decision to terminate the faculty member's employment, 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 chancellor or the chancellor's representative 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.

When, between elections, membership of the committee falls below the specified five members and five alternates, the chair of the faculty, in consultation with the Committee

on Committees, shall appoint members to the committee. Vacancies on the committee will be filled by first moving alternates to members and by making appointments as alternates.

Upon receipt of a request for 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. 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. 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.*)

7. Procedures for the Hearing

a. Time and Date of Hearing

The Reconsideration Committee shall set the time, date, and place for the hearing. The date for the hearing must be within 30 working days of the time the committee receives the chancellor's notification of the faculty member's written request for a hearing. The committee shall notify the affected faculty member, the chancellor, and the chair of the faculty of the time, date, and place of the hearing. 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.

b. Conduct of Hearing

The Reconsideration Committee's review of the faculty member's appeal shall be limited solely to determining whether the decision to terminate employment was arbitrary or capricious. The chair of the Reconsideration Committee 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 chancellor or the chancellor's delegates (hereinafter, the chancellor), and counsel for the 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. The faculty member and the committee shall be given access, upon request, to documents that were used in making the decision to terminate the faculty member's employment after the decision was made that the position must be terminated. 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 begin with an opening statement by the chair of the committee limited to explaining the purpose of the hearing and the procedures to be followed during the hearing. Following the opening remarks by the committee chair, the faculty member or the faculty member's counsel shall present his or her contentions and any supporting witnesses and documentary evidence. The chancellor or the chancellor's counsel may then reply and present any supporting witnesses and evidence in rebuttal of the faculty member's contentions or in general support of the decision to terminate the faculty member's employment. During these presentations, the faculty member or his or her counsel, and the chancellor or his or her counsel, may cross-examine opposing witnesses. Committee members may question witnesses for purposes of clarification. At the conclusion of the hearing, the faculty member and then the chancellor or the chancellor's counsel will be given the opportunity to provide summary statements.

8. 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 working 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.

Within 10 working days of finishing its deliberations the committee shall provide the faculty member 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. (Faculty Senate Resolution #03-37)

If the Reconsideration Committee determines that the contention of the faculty member has not been established, it shall, by a simple unelaborated statement, so notify the faculty member, the chair of the faculty and the chancellor. The faculty member may appeal the decision to terminate employment to the chancellor within 10 calendar days following receipt of the committee's decision. (Faculty Senate Resolution #99-4)

If the Reconsideration Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify the faculty member, the chair of the faculty, and the chancellor by a written notice that shall also include a recommendation for corrective action by the chancellor.

Within 30 working days after receiving the recommendation, the chancellor shall send written notice to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty, and the chair of the Reconsideration Committee giving his decision and stating what modification, if any, the chancellor will make with respect to the original decision to terminate the faculty member's employment. If the chancellor fails to reverse the original decision, the chancellor shall send written notice of such to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty, and the chair of the Reconsideration Committee. The faculty member may appeal the termination to the Board of Trustees within 10 calendar days following receipt of the chancellor's decision. (Faculty Senate Resolution #99-4)

The exercise of the Board of Trustees' jurisdiction is refined to ensure that primary emphasis remains properly focused on the campus grievance procedures. Requests for appellate review will be screened to determine whether the Board should consider the issues raised in a petitioner's request for review. The following basic standards will guide that screening process:

- a. The Board will grant requests to review contentions that the grievance procedures followed by the campus in a particular case did not comport with University requirements that affect the credibility, reliability, and fairness of such inquiries, thereby arguably depriving the grievant of a valid opportunity to establish his or her contentions.
- b. The Board will grant requests to review University policy issues implicated by a particular grievance, when the question appears to require intervention by the governing board to clarify the definition, interpretation, or application of such policies.
- c. The Board will review questions about the sufficiency of the evidence to sustain the conclusion reached only ifⁱ (a) the case involves a substantial interest of the grievant, and/or (b) the history of the case reveals disagreement, with respect to the sufficiency of the evidence to sustain the grievant's contentions, among the responsible decision

makers, i.e., the reconsideration committee, the chancellor, or the board of Trustees^{1[1]}; if the responsible decision makers are in accord, normally no such appeal will be entertained by the Board of Trustees. Under the foregoing prescriptions, it is necessary for prospective petitioners to evaluate their circumstances carefully, to understand the purposes of permissible appellate review, and to formulate clearly and concisely their statement of the one or more grounds on which they believe the Board should exercise its appellate jurisdiction. Thus, the first step in any appeal to the Board of Trustees will be an evaluation by the Board, through a designated committee, with staff assistance, of the grievant's written statement of grounds for appeal, to determine whether the issues sought to be raised warrant Board attention, as judged by the three basic standards.

If the chancellor concurs in the recommendation of the committee that is favorable to the faculty member, the decision is final and written notification thereof shall be sent to the faculty member, the chair of the faculty, and the chair of the Reconsideration Committee.

Approved

Faculty Senate Resolution #09-51

July 12, 2010

Erskine Bowles, President of UNC System

^{1[1]} A faculty member receiving a notice of non-conferral of early permanent tenure may file a grievance in accordance with Appendix Y. The Board of Trustees will remain responsible for reviewing, on appeal, a grievant's contention that the chancellor's decision (or affirmation of a faculty committee decision) was clearly erroneous.