

EAST CAROLINA UNIVERSITY  
FACULTY MANUAL

PART XII

Faculty Appellate Provisions

## PART XII – FACULTY APPELLATE PROVISIONS

*Revised 04-21*

### SECTION II

#### Faculty Grievance Procedures and Appeals of Non-Conferral of Early Tenure

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#### SECTION II.I, Policies and Procedures for General Faculty Grievances and for Appeals of Non-conferral of Early Tenure

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Part XII, Section II.I provides for peer review of general faculty grievances and appeals of non-conferral of early tenure through a formal procedure that, depending on the grievance, includes access to mediation or direct review, and the potential for an appellate panel hearing of the grievance. Grievance procedures in Part XII, Section II.I are confined to the faculty and administrative structure of East Carolina University. There are no appeals through Part XII-Section II.I beyond the Board of Trustees.

##### I. Faculty Grievances

There are two classifications of grievances covered by this section. The first is referred to as a “General Grievance” and the second is a “Grievance Resulting From The Non-conferral of Early Permanent Tenure When The Non-conferral Decision Is Not Concurrent With A Reappointment Decision” (hereafter, non-conferral of early tenure).

The two grievance classifications and differences in the grievance procedures reflect the Board of Governors requirement that an internal grievance process be provided for non-conferral of early permanent tenure that is not concurrent with a reappointment decision. This requirement and the authority to establish different grievance procedures are set forth in [Section 607 of The Code of The University of North Carolina](#) and further elaborated in [The UNC Policy Manual 101.3.2](#). The establishment of separate grievance procedures provides two assurances. First, it ensures there is a review process for the faculty member when the non-conferral of permanent tenure was based on an early request, for which appeals to the Board of Governors are not allowed. Appeals of non-conferral of tenure at end of the established probationary period are governed by the provisions in Part XII, Section I.II. Second, the bases for the grievance provided in Part XII, subsection II.I.IV for a grievance of non-conferral of early tenure do not apply to General Grievances covered in this section.

No grievance that involves matters related to a formal proceeding for the imposition of serious sanction, discharge, or termination of a faculty member's employment, or that is within the jurisdiction of another appellate panel, falls within the charge of these general Faculty Grievance provisions (See Part XII, Sections I.II covering review of non-reappointment or non-conferral of tenure at the completion of a probationary term; I.III covering due process before discharge or the imposition of serious sanctions; and I.IV covering appeals of termination of faculty employment based upon institutional considerations).

## II. Grievance Panel

The Grievance Panel (or "the panel") shall be composed of five regular members and one alternate, chosen from the Appellate Committee in accordance with Part XII, Section I.I.

Upon receipt of the grievant's Petition for Redress (Step Two), the appellate chair responsible for Grievance Panel hearings (Part XII, Section I.I) will inquire of panel members about the existence of potential conflicts of interest (which include, but are not limited to, any grounds for recusal listed in this paragraph) and will automatically recuse from participation in the appeal any member from the grievant's or respondent's relevant department, unit, college, or school, or any member with whom either the grievant or respondent(s) has had an amorous relationship, or is related by blood, law, or marriage (as defined in UNC Policy Manual 300.4.2 and 300.4.2.1[G]). Committee members shall recuse themselves from participating in a grievance if they have a reason to believe that such participation represents or will create a conflict of interest.

The appellate chair's responsibility is to provide the grievant and respondent(s) a process for a possible resolution of the grievance. The appellate chair will provide only procedural information to the parties of the grievance, and shall not function as an advocate for either party. Procedural information includes the membership of the Appellate Committee, its charge, the options open to the parties to the grievance, and similar information.

Upon receipt of a request for a hearing (Step Four), the appellate chair shall determine the availability of the Appellate Committee members in lottery rank order to form a Grievance Panel consisting of five members plus one alternate who will replace any member unable to attend the entire hearing. When choosing panelists in rank order, the appellate chair will ensure that representatives from the respective ranks of both the grievant and respondent are included on the panel. Any party to a grievance may request that any member of the panel be recused from the hearing for conflict of interest. Such a request shall be in writing, stating the reason(s) for the request and be provided to the appellate chair not later than 5 calendar days after notification in Step Four of a hearing date. If

the panel member declines recusal, the established panel, including the alternate, shall determine obligatory recusal by a majority vote (the member in question not participating). The recused panel member will be replaced by the current alternate member, and the appellate chair will appoint a new alternate following the same procedure as above.

### III. General Grievances

General grievances shall be limited to matters directly related to a faculty member's employment status and institutional relationships within East Carolina University. Grievances shall be limited to remediable injuries attributable to the violation of a right or privilege based on federal or state law, university policies or regulations, or commonly shared understandings within the academic community about the rights, privileges, and responsibilities of university employment or conduct that deprived the faculty member of an advantage that they otherwise would have received.

To promote and allow for adequate efforts at informal conflict resolution, the deadline for initiating a grievance is the end of the following Spring semester for an incident alleged to have occurred during the Fall semester (August 16<sup>th</sup> to December 31<sup>st</sup>) and the end of the Fall semester for an incident alleged to have occurred during the Spring semester or during the summer months between the Spring and the Fall semesters (January 1<sup>st</sup> to August 15<sup>th</sup>). This deadline may be extended by a majority vote of the Appellate Steering Committee if, in the committee's opinion, there are extenuating circumstances despite due diligence.

The Appellate Steering Committee and Grievance Panel shall hold the grievant responsible for progressing through the grievance steps in a timely manner. If time delays are encountered because of the respondent(s), the grievant shall bring this to the attention of the appellate or panel chair as appropriate to the stage of the grievance at the time.

The grievant may terminate the grievance at any time during the process by notifying the appellate chair in writing. The appellate chair will issue a written memorandum to all parties regarding the termination of the grievance. Any such notice of termination is final and the grievance is closed.

#### A. Step One: Conflict Resolution.

Prior to initiating a grievance with the Appellate Committee, a faculty member shall make a concerted effort to resolve the issue through informal conflict resolution. Faculty are encouraged to take advantage of University resources for conflict resolution and informal mediation (<https://ombuds.ecu.edu/>) in trying to settle complaints without entering into formal grievance procedures. This can provide a less antagonistic venue, in the presence of a neutral third party trained to facilitate discussions, which can reduce tensions and lead to an equitable agreement.

Before filing a complaint with the Appellate Committee, an objecting faculty member (the potential grievant) at a minimum shall meet with the potential respondent(s) and attempt to resolve the conflict at issue. At or before this meeting the objecting faculty member shall provide the potential respondent(s) with a written statement setting forth the nature of the problem and the redress sought. If there are multiple claims, each should be presented clearly. This statement should include all information necessary to support each of the objecting faculty member's claims, giving the respondent an opportunity to identify, understand, and address each concern. Both parties will have an opportunity to submit information and documents in support of their claims and responses before a hearing, should the issue proceed to a grievance (see Step Four below).

The objecting faculty member and respondent should meet in face-to-face discussion(s) about the substance of the problem and are encouraged to use University resources for informal conflict resolution to aid in resolving differences. In cases where the respondent refuses to meet, the objecting faculty member shall, by a memorandum with a copy to the respondent, inform the appellate chair and the next higher-level administrator in their program. Before proceeding to a formal grievance (Step Two), the objecting faculty member shall provide the respondent with the Petition for Redress that the grievant intends to submit in Step Two.

During attempts to resolve conflicts, each party may select a counselor who may also serve as an advisor throughout a conflict resolution and/or grievance process, but who shall not participate nor be called as a witness in a hearing (see Step Five). A list of potential faculty [counselors](#) is maintained by the [Faculty Senate Office](#); however, the parties to the conflict may choose any eligible ECU current or retired faculty members as counselors, or may choose to have no counselor. It is recommended that counselors be tenured professors with extensive experience in faculty governance, as evidenced by service on university governance/appellate committees, and not be associated with the conflict in any way. Association with the conflict includes individuals who may reasonably be called as a witness by either party, should the complaint proceed into the formal grievance process.

For impartial adjudication of a conflict, either party may require availability of information that is controlled or in the possession of the other party or the administration. Upon specific request by a party to the conflict, the other party or the administration shall provide the requesting party with information bearing on the conflict that is not otherwise confidential as a matter of law (“privileged”).

In cases where a formal Petition for Redress has been filed (see Step Two below), either party to the grievance may request that the Appellate Steering Committee or Grievance Panel (once a grievance has proceeded to Step Four) evaluate the basis for a claim of privileged information, and the potential value of that information to resolving the grievance. If the privileged information is deemed to bear substantively on the grievance, the steering committee/panel is required to seek resolution of the issue of privilege through the relevant vice chancellor, or through the chancellor if the vice chancellor is party to the grievance. If the information has a material bearing on the grievance but cannot be obtained for legal reasons, the steering committee/panel shall decide whether continuing the grievance would be unfair to the grievant and/or respondent. If deemed unfair to continue, the grievance process will be terminated with the reason(s) stated clearly in a memorandum to all parties to the grievance, thereby ending the administrative appeal process at East Carolina University. All requested information that is received shall be distributed to the appellate chair/panel chair and to all parties to the grievance.

#### B. Step Two (Petition for Redress)

A Petition for Redress by the grievant should be addressed to the Appellate Committee chair, and have appended a copy of the grievant’s written statement from a Step One meeting with the respondent. It shall be submitted with a statement that the grievant completed Step One above, and that with this petition the grievant intends to pursue a formal grievance.

Ten copies of the Petition for Redress, which should not exceed 20 pages, must be delivered to the Faculty Senate Office. The appropriate appellate chair will ascertain if the grievant has completed Step One. If the grievant has not followed Step One, the chair will inform the grievant that Step One is not completed and must be completed prior to any further action being taken by the Appellate Committee.

Based on information contained in the grievant's Petition for Redress, the Appellate Steering Committee shall determine whether the grievance is within the charge of Part XII, Section II.I. The committee may decide that none, some, or all of the issues in the Petition for Redress are appropriate for a general grievance. Issues not within the charge of Part XII, Section II.I will receive no further attention and the committee's decision concerning grievance issues shall be communicated by memorandum to the grievant and respondent. The ECU administrative appeal process is ended for those issues rejected by the committee, unless they fall within the scope of a different appellate process. Except after mediation, the Petition for Redress shall not be modified.

All material collected as part of the grievance shall be put in the grievance file maintained in the Faculty Senate Office under the grievant's name. This grievance file becomes a part of the grievant's Personnel File and, where appropriate, the respondent's Personnel File. A note will be placed in the grievant's and, where appropriate, respondent's Personnel File(s) to indicate the location of the additional records.

### C. Step Three (Mediation and/or Chancellor Review)

After the committee has determined which, if any, issues raised in the grievant's Petition for Redress are within the charge of Part XII, Section II.I, the grievant may request:

- 1) Mediation (see C.1) followed by the Chancellor Review (see C.2) or a hearing (see Step Four) on any unresolved issues.
- 2) The Chancellor Review without mediation (see C.2).
- 3) A hearing without mediation (see Step Four).
- 4) Termination of the grievance (see Step Four).

#### 1. Mediation

The appellate chair shall offer the parties to the grievance the opportunity to seek a resolution through mediation ([The UNC Policy Manual 101.3.2.III](#)). Mediation is limited solely to the grievant and the respondent. Each party will be asked to respond within 15 calendar days after the date of notification by the appellate chair as to their acceptance of mediation. Once all parties to the grievance have accepted mediation, the grievant shall not pursue the grievances at administrative levels higher than that of the respondent. To do so is inconsistent with the mediation process and will result in the termination of the grievance procedures, ending administrative review of the grievance. Rejection of mediation shall have no bearing on decisions or recommendations related to the grievance. Unless the grievant pursues a Chancellor Review, if any party to the grievance rejects mediation and the grievant requests a hearing, the appellate chair will notify the parties that a Grievance Panel will be formed and will set a grievance hearing date (Step Four).

If the grievant and the respondent accept mediation, the Faculty Senate Office administrator and chair of the faculty will be responsible for securing a mediator. To avoid real or apparent conflicts of interest, all mediation will be conducted by a third party mediator with no formal association with East Carolina University nor prior association with either party to the grievance, and who is certified by the North Carolina Administrative Office of the Courts.

The parties to the grievance will inform the appellate chair within 5 calendar days of receiving the name as to whether the mediator is acceptable or unacceptable. An alternate mediator will be located if necessary. After the second attempt, unless the grievant pursues a Chancellor Review, if no acceptable mediator can be located, the appellate chair will so notify the parties to the

grievance and inform them that, should the grievant request a hearing, a panel will be formed and grievance hearing date set (Step Four).

If an acceptable mediator is identified, the parties to the grievance will be informed of the selection. The Petition for Redress and the committee's memorandum will be provided to the mediator by the appellate chair. The mediator will communicate to the appellate chair the beginning date of the process. The mediator will inform the appellate chair on a monthly basis that mediation is continuing with measurable progress. The mediation process shall not exceed 42 calendar days without formal approval of the appellate chair or 60 days without the formal approval of the full Appellate Steering Committee.

Mediation will continue until such time that:

- a. An agreement among the parties is reached (subject to time limits).
- b. A party or the mediator writes to the committee chair that further mediation is unlikely to be successful.
- c. A party to the grievance writes to the committee chair a desire to terminate mediation because of resistance to or undue delays in scheduling mediation meetings, or because the mediator is no longer deemed acceptable.

Events b. through c. above will cause the appellate chair to notify the parties to the grievance that the mediation process is being terminated and, unless the grievant requests Chancellor Review, inform the grievant to move to Step Four if desired. Decisions by the grievant, respondent, or mediator to terminate mediation shall have no bearing on decisions or recommendations related to the grievance. All information from the mediation process is confidential and inadmissible in the grievance hearing.

If an agreement is reached, the grievance will be considered closed and a copy of the agreement, signed by all parties to the grievance, will be placed in the grievance file maintained in the Faculty Senate Office. It is expected that most agreements will require only the authority of the respondent for a unit commitment but some may require the authority of the chancellor. If the chancellor rejects the agreement, the parties may continue mediation or the grievant may request either a Chancellor Review or a hearing.

If the mediation process produces a partial settlement, those issues shall be removed from the committee's memorandum to the grievant and respondent as determined in Step Two. A signed copy of the partial agreement shall be placed in the grievance file. The grievant may request a Chancellor Review or a hearing for remaining issues (Step Four).

## 2. Chancellor Review

Within 20 calendar days from the request for a Chancellor Review, the grievant shall provide to the chancellor, the respondent, and the appellate chair copies of the Petition for Redress along with the committee's memorandum and any information that supports the grievant's contentions. Within 10 calendar days, with copies to the grievant and appellate chair, the respondent may submit to the chancellor a written response to the Petition for Redress and any other documents provided by the grievant. The chancellor shall provide a response to the grievant, with copies to the appellate chair and the respondent, within 20 calendar days of the chancellor's receipt of all materials. The chancellor may extend any of these deadlines if they deem it to be in the best interest of the university.

The chancellor's decision is final and may not be appealed. A copy of all information submitted to the chancellor and the chancellor's decision shall be placed in the grievance file and the grievance closed.

D. Step Four (Request for a Hearing)

If the grievance is not resolved, by memorandum to the committee chair with a copy to the respondent, the grievant shall request a hearing, or state that the grievance will not be pursued. If mediation has occurred, the Appellate Steering Committee will again review the grievant's Petition for Redress in light of any changes that may have resulted from mediation. The steering committee will establish a Grievance Panel if it determines that all or some of the issues unresolved by mediation allege an injury that would entitle the faculty member to relief under Part XII, Section II.I. In this case, the steering committee shall provide an updated memorandum to the grievant and respondent(s) explaining remaining issue(s) to address in a hearing. Should the steering committee determine that remaining issues are no longer within the purview of a Faculty Grievance Panel, this decision will exhaust the administrative appeals process, and shall be communicated by a method that produces adequate evidence of delivery to all parties to the grievance.

Once a Grievance Panel is established, the elected panel chair will notify the grievant and respondent, setting a time, date, and place for a hearing on the Petition for Redress. The date of the hearing shall be within 42 calendar days of this notification, except when the request for a hearing is received during summer months, official university breaks and holidays, and when, despite reasonable efforts, the Grievance Panel cannot be assembled ([The UNC Policy Manual 101.3.3](#)). Scheduling an appeal panel during the summer months is complicated by the absence of many faculty and different schedules of those available. If the panel cannot schedule a hearing during the summer, a fall hearing date will be scheduled as soon as possible after the fall organizational meeting of the Appellate Committee.

If either the grievant or the respondent petitions the panel in writing for a postponement of the hearing for health reasons, or due to a serious personal emergency, the panel chair shall postpone the meeting for a period of time appropriate to the circumstances. If either the grievant or respondent petitions the panel for a postponement of the hearing for reasons other than health or serious personal emergency, the panel chair shall determine whether it is the general agreement of the committee to postpone the hearing for good cause until the next possible scheduled date.

The notice of hearing will request that both parties submit to the panel the names of their counselors, and all information and documents they intend to introduce at the hearing to support or defend their respective positions. Such information and documents may include written materials, sound or video recordings, photographs, or other forms of information or documentation approved by the panel. The grievant's submission shall include a list of witnesses with a brief statement of the relevance of each witness, and all information to be used in support of the grievant's claim(s). The respondent's submission shall include a list of witnesses with a brief statement of the relevance of each witness, and all information to be used to defend against the grievant's claim(s). The panel may also call other witnesses that it deems relevant to the grievance. A mediator shall not be called as a witness in the hearing of a grievance and no part of the mediation effort (e.g., conversations, offers, proposals, etc.) shall be introduced as evidence.

Ten copies of all information and documents shall be submitted to the Faculty Senate Office no less than 14 calendar days prior to the hearing date. The department or unit of each party to a

grievance is responsible for providing reasonable access to photocopy services for hearing documents during the grievance process. These services shall be at no cost to the grievant or respondent; provided, however, a party to the grievance or a unit bearing such costs may petition the panel to limit incurrence of copying costs by a grievant and/or respondent at the point those expenses appear to be extraordinary and grossly excessive, in which case the panel may direct alternative or adjusted means of making the information to be copied available for use in the hearing process. The submitted information and documents shall have a table of contents with numbers (Arabic) assigned to all pages that exhibit information. If the back of a page contains information, it also must be numbered. Numbers shall be preceded by a "G" for the grievant's submission or an "R" for the respondent's submission. If more than one grievant or more than one respondent is involved, their designation will be communicated by the panel chair.

Once the copies as described above are received from both parties, the Grievance Panel chair will provide one copy of the grievant's submission to the respondent, and one copy of the respondent's submission to the grievant. The panel chair will create an agenda prior to the meeting to ensure that the hearing will be completed within one business day. The agenda will state limits on the amount of time that each party will be allocated for presentation of their cases. This agenda, with names of the panel members and procedures for submission of new documents and handling of the witnesses, will be distributed to the Grievance Panel, the grievant and the respondent no less than 5 calendar days prior to the hearing date.

#### E. Step Five (The Hearing)

The Grievance Panel shall limit its investigations to the issues presented in the Petition for Redress and confirmed by the Appellate Steering Committee's memorandum to the grievant. During the hearing, the panel may explore issues raised by any party to the grievance that are concretely based on issues raised in the Petition for Redress. The panel's responsibility is limited to issuing recommendations based on the information presented as part of Step Four and at the hearing. Except as noted in Part XII, Section II.I.III.D, the authority of the Grievance Panel shall be solely to hear the testimony of the grievant, the respondent, and witnesses.

The panel chair shall preside and be responsible for maintaining order and prompt progression of the hearing process. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. When, despite due diligence, circumstances make it necessary to resolve an issue not addressed in these provisions, the panel chair shall have the authority to make a reasonable adjustment or exception that maintains the integrity of the process to the extent possible and consistent with applicable law and policy.

The Grievance Panel chair shall begin the hearing by briefly reviewing the panel's authorization and powers, and the procedures to be followed during the hearing. The chair shall then enter into the hearing record correspondence generated prior to the hearing as the Appellate Committee's Exhibit C, and information submitted in Step Four by the grievant and the respondent as Exhibits G and R.

The submitted information shall include all information necessary to support or defend the grievance; however, with approval of the Grievance Panel, the grievant, respondent, or a witness may submit additional information during the hearing. All such information must be numbered, with copies to be presented to the opposing party and members of the panel, and shall become part of the formal record of the hearing.

Only the grievant, the respondent, members of the Grievance Panel, and the court reporter shall be present for the duration of the hearing. Witnesses, as noted below, will be present only when giving testimony. It shall be the responsibility of the parties to present their respective cases. The burden is on the grievant to establish, by a preponderance of the evidence, that the grievant's claims and requested redress are consistent with Faculty Manual Part XII, Section II.I. Preponderance is defined as the greater weight of evidence and its probable truth or accuracy, and not the amount of evidence presented.

The grievant is responsible for presentation of the grievant's case, including the testimony of witnesses. Panel members may question the grievant, the respondent or witness(es) at any time during the hearing. After each of the grievant's witnesses has completed their testimony, and has responded to questions from the respondent and to the grievant's further questions (limited to the subject of the respondent's questions), the witness will be excused from the hearing unless recalled by the Grievance Panel. At the end of the grievant's presentation, the respondent may question the grievant.

The respondent's presentation will follow the procedures noted above for presentation of the grievant's case. When the panel and grievant have no further questions, the grievant is given the opportunity to make a 10-minute final statement, and then a total of 10 minutes is available to the respondent(s) for a final statement.

#### F. Step Six (Grievance Panel Report)

The Grievance Panel's report shall be based only on facts, documentation, arguments presented at the hearing, and applicable law and University policies. Panel recommendations are to be based on, but are not limited to, the grievant's requested redress.

Copies of the panel's report will be available to the grievant and respondent for their retrieval from the Faculty Senate Office. A copy of the panel's report, a copy of the written record of the hearing proceedings, and a copy of all evidence submitted will be placed in the grievance file, and will be open to the Grievance Panel and all parties to the grievance until the grievance is closed.

If the panel finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the panel shall submit its report to the grievant, respondent, chair of the faculty, and chancellor. In addition, the chancellor shall receive a transcript of the hearing proceedings and the evidence in the grievance file. The chancellor shall provide a decision in writing to the grievant, respondent, chair of the faculty, and the Grievance Panel within 20 calendar days of receipt of materials from the panel. The decision of the chancellor is final.

If the panel finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, but, in the opinion of the panel, these recommendations are not within the authority of the respondent to implement, the panel shall submit its report to the grievant, respondent, and chair of the faculty. By memorandum, the panel chair shall inform the chancellor that, in the opinion of the panel, its recommendations are not within the respondent's authority to implement and request the chancellor make the appropriate adjustments.

If the Grievance Panel finds that some or all the grievant's contentions are supported and within the authority of the respondent, and the panel makes one or more recommendations in favor of the grievant, the panel shall submit its report to the grievant, respondent, and chair of the faculty. The respondents shall be provided the panel's report and recommendations along with a copy of the

transcript of the hearing proceedings, the evidence in the grievance file, and documents and communications filed by the parties and decision-makers in the proceeding (collectively, the "Record of the Appeal," which may grow as additional petitions, memoranda and material procedural communications are filed by the parties and decision-makers in the process). Within 20 calendar days of receipt of these materials, the respondent shall communicate, in writing, a response to the panel's recommendations to the panel chair, grievant and the chair of the faculty. Within 15 calendar days of receipt of the respondent's response, the grievant will inform the panel chair if the adjustments are satisfactory or not satisfactory. If the adjustments are satisfactory or if the grievant fails to provide timely notice to the panel that the adjustments are not satisfactory, the grievance will be closed.

If the respondent's adjustments are not satisfactory to the grievant, the grievant may appeal to the chancellor. The grievant shall deliver to the Grievance Panel chair a memorandum addressed to the chancellor explaining in detail the reasons for the appeal. The panel chair shall forward a copy of this memorandum to the respondent and chair of the faculty and shall forward the grievant's appeal memorandum to the chancellor along with the Grievance Panel report and the full Record of the Appeal described above.

If the grievant appeals to the chancellor, or if the Grievance Panel requests the chancellor to make a recommended adjustment, the chancellor's decision shall be based on the recommendations of the hearing panel and the Record of the Appeal from the faculty Grievance Panel hearing. The chancellor has the discretion to consult with the panel and/or Appellate Steering Committee before making a decision ([The UNC Policy Manual 101.3.2.IV.g](#)). The chancellor will communicate a written decision within 20 calendar days of receipt of appeal materials, with copies to the grievant, respondent, chair of the faculty, and the Grievance Panel chair. The chancellor's decision shall contain a notice of further appeal rights, if any, and, if the decision is appealable, it shall contain the information in subsection III.G., Step Seven (Appeal to the Board of Trustees) below, and shall be signed by all individuals who contributed to the report.

If the chancellor's decision does not support the recommendations of the Grievance Panel, the grievant may appeal to the Board of Trustees of ECU in accordance with the procedures in Section III.G. Step Seven (Appeal to the Board of Trustees). The decision of the Board of Trustees is final and may not be appealed to the Board of Governors.

#### Dissenting Chancellor's Report

Should the chancellor disagree with the Grievance Panel's interpretation that the grievance is within the scope of redress covered by provisions of Part XII, Section II.I of the *Faculty Manual*, the chancellor shall withhold the decision, and inform the panel, all parties to the grievance, and the chair of the faculty of those areas of disagreement within the required 20 calendar days. The panel chair will then request that the chair of the faculty begin the normal interpretation process as set forth in the *Faculty Manual*. It is expected that the chair of the faculty will expedite this request. Upon completion of the interpretation process, the panel will make any necessary recommendations. The report will be distributed in accordance with Part XII, Section II.I.III.F., with the grievant's rights to appeal intact.

#### G. Step Seven (Appeal to Board of Trustees)

1. Explanation of decisions that may be appealed.
  - a. If the Grievance Panel did not advise an adjustment in favor of the grievant, then the decision of the chancellor is final and may not be appealed.

- b. If the panel found in favor of the grievant, and neither the relevant administrative official nor the chancellor made an adjustment advised by the panel, then the grievant may appeal to the Board of Trustees. The decision of the Board of Trustees is final.

2. The Board of Trustees may delegate to a designated committee the authority to make procedural decisions and to make final decisions on behalf of the Board concerning appeals of faculty grievances submitted pursuant to [Section 607 of The Code of The University of North Carolina](#).

### 3. Timeline for Appeals

- a. A grievant who seeks to appeal the chancellor's disposition of the grievance must file written notice of appeal with the Board of Trustees by submitting such notice to the chancellor, with adequate evidence of delivery ([The UNC Policy 101.3.3](#)), within 10 calendar days after receipt of the chancellor's decision. The notice shall contain a brief statement of the basis for the appeal. Unless the Board determines an appeal is not within its jurisdiction or fails to meet the procedural requirements for consideration by the Board, the Board will consider the appeal on a schedule established by the chancellor, subject to any instructions received from the Board chair or from a committee of the Board that has jurisdiction of the subject matter of the grievance. The Board will issue its decision as expeditiously as is practical. If the grievant fails to comply with the schedule established for perfecting and processing the appeal, the Board at its discretion may extend the time for compliance or may dismiss the appeal.
- b. If the chancellor's decision is eligible for appeal, the chancellor's notice of the disposition of a grievant's case must inform the grievant: (1) that a written notice of appeal to the Board of Trustees containing a brief statement of the basis for appeal is required within the 10 calendar day period and, (2) that, after notice of appeal is received in a timely manner, a detailed schedule for the submission of relevant documents will be established. All such notices of decision are to be conveyed to the grievant by a method that produces adequate evidence of delivery ([The UNC Policy 101.3.3](#)).

4. Standard of Review: In order to prevail before the Board of Trustees, the faculty member must demonstrate that the chancellor's decision was erroneous based on a preponderance of the evidence, that it violated applicable federal or state law or university policies or regulations, or that the process used in deciding the grievance was materially flawed.

## IV. Grievance Resulting From Non-conferral Of Early Permanent Tenure When The Non-conferral Decision Is Not Concurrent With A Reappointment Decision.

### A. Initiation of Hearing Process

No later than 25 calendar days of receiving written notice from the vice chancellor of non-conferral of early tenure, a faculty member (hereinafter, the grievant) may initiate the process leading to a hearing before a Faculty Grievance Panel (hereinafter, the panel) by submitting a Petition for Redress to the appellate chair.

Failure to meet the time periods allotted to the grievant constitutes a waiver of the right to a hearing and no further administrative appeals of the non-conferral decision are allowed. Before the expiration of a deadline, however, the faculty member may request an extension, provided the request is made in writing and presented to the appellate chair. The Appellate Steering Committee will make its decision and communicate it to the grievant within 10 calendar days of receiving a

request for an extension, except under unusual circumstances such as during summer months, official university breaks and holidays and when, despite reasonable efforts, the steering committee cannot be assembled in a timely manner.

A hearing will be granted if the Petition for Redress is timely (above), complete (1, below), and claims an infringement of one or more of the allowable bases (2, below).

1. The Petition for Redress must include (i) a description that is as complete as possible of the actions or the failures to act which support each specified contention; (ii) the identification of the respondent(s); (iii) an enumeration and description of the information or documents to be used to support the contention (copies of the described documents are to be made a part of the Request for Redress); (iv) the identification of persons who may be willing to provide information in support of the contention; and (v) a brief description of the information those persons identified in (iv) may provide; and (vi) a copy of the vice chancellor's notice of non-conferral of early permanent tenure.

2. The request for a hearing must be based on one or more of the following reasons.

(a) The decision was based on any ground stated to be impermissible in [Section 604B of The Code of The University of North Carolina](#). Specifically, in no event shall a non-conferral decision be based upon (i) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (ii) discrimination prohibited under policies adopted by the ECU Board of Trustees i.e., discrimination based on the faculty member's age, color, creed, disability, genetic information, national origin, political affiliation, race/ethnicity, religion, sex/gender, sexual orientation, or veteran's status, or (iii) personal malice. [The UNC Policy Manual 101.3.1.II.B](#)).

(b) The decision was attended by a "material procedural irregularity," meaning a departure from prescribed procedures and established university policies that is of such significance as to cast reasonable doubt upon the integrity of the original decision. Whether a procedural irregularity occurred, and whether it is material, shall be determined by reference to those procedures in effect when the initial decision was made and communicated. The Appellate Steering Committee shall ask the chancellor to certify what procedures were then in effect if that question is a matter of dispute. (Faculty Senate Resolution #03-49)

Ten copies of Petition for Redress not exceeding 20 pages shall be addressed to the appellate chair and delivered to the Faculty Senate Office. Upon receipt of the grievant's Petition for Redress the appellate chair shall notify each named respondent that he/she has been named a respondent in a grievance based on the non-conferral of early permanent tenure. Accompanying this letter will be a complete copy of the grievant's Petition for Redress.

#### B. Procedures for the Hearing.

The appellate chair will convene a Grievance Panel if the Petition for Redress is timely, complete, and based on one or more of the criteria noted above. If the Petition for Redress fails to meet any one of these requirements, the Appellate Steering Committee shall not grant a hearing, the grievance will be closed, and this decision will exhaust the administrative appeals process for the grievance. This decision will be communicated to all parties of the dispute by a method that produces adequate evidence of delivery ([The UNC Policy 101.3.3](#)). If the Petition for Redress meets all of the above requirements, but makes claims beyond valid criteria (defined in IV.A.2.a

and b above), the Appellate Steering Committee shall strike those issues from the Petition for Redress and these claims will receive no further attention in the process.

Once established, the Grievance Panel shall set the time, date, and place for the hearing. The date for the hearing shall be within 42 calendar days after receipt of the Petition for Redress by the Faculty Senate Office, except when a Petition for Redress is received during summer months, official university breaks and holidays and despite reasonable efforts the panel cannot be assembled.

The panel chair shall notify the grievant, the respondents, the chair of the faculty, and the chancellor, of the time, date, and place of the hearing. This notification shall call attention to any claims made in the Petition for Redress that have been struck and will not be addressed in the hearing. The notification will include the names of all panel members and alternates who may take part in the hearing.

The grievant and respondent are to submit ten copies of all information and documents to be used in the presentation (by the grievant) or in defense against the grievance (by the respondent). The grievant's and respondent's information must include: a) the identification of a witness(es) who may be willing to provide information relevant to the grievance; and b) a brief description of the information each witness may provide. This information and documentation shall be submitted to the Faculty Senate Office not later than 14 calendar days prior to the hearing date. One copy of the grievant's information will be provided to each respondent and one copy of the respondent's information will be provided to the grievant.

### C. The Hearing

The Grievance Panel shall limit its investigations to the issues presented in the Petition for Redress, and include only those not struck in the Appellate Steering Committee's notification that a hearing would be granted. The panel's responsibility is limited to issuing recommendations based on the Petition for Redress, information and documentation submitted prior to or accepted during the hearing, and information developed during the hearing based on the testimony of the grievant, the respondent, and witnesses.

The panel chair shall begin the hearing by briefly reviewing the panel's authorization and powers, the conditions necessary for a hearing, the panel's belief that the issues about to be heard satisfy these conditions, and the procedures to be followed 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*.

The Grievance Panel chair shall then enter into the hearing record correspondence (particularly any relevant correspondence from the Appellate Committee and/or panel chair) generated prior to the hearing as the Exhibit C, and information submitted (above) by the grievant and the respondent as Exhibits G and R respectively (Exhibit letter designations are prescribed only for labeling purposes). It is expected that the hearing will be limited to this information; however, with approval of a majority of the panel, the grievant, respondent, or a witness may submit additional information during the hearing. All such information must be numbered, with copies to be presented to the opposing party and members of the panel, and it becomes a part of the formal record of the hearing.

Only the grievant, the respondent, members of the Grievance Panel, and the court reporter shall be present for the duration of the hearing. Others who are witnesses, as noted below, will be present only when giving testimony. It shall be the responsibility of the parties to present their respective cases. The grievant's case will be evaluated on the basis of the preponderance of the evidence. This means the greater weight of evidence and its probable truth or accuracy, and not the amount of evidence presented.

The grievant is responsible for presentation of the grievant's case, including the testimony of witnesses. Grievance Panel members may question the grievant, the respondent or witness(es) at any time during the hearing. After each of the grievant's witnesses has completed testimony, and has responded to questions from the respondent, the panel, and to the grievant's further questions (limited to the subject of the respondent's questions), the witness will be excused from the hearing unless recalled by the panel. At the end of the grievant's presentation, the respondent may question the grievant.

The respondent's presentation will follow the procedures noted above for presentation of the grievant's case. Panel members may question the grievant, the respondent, or witnesses during the hearing. When the panel and grievant have no further questions, the grievant is given the opportunity to make a 10-minute final statement, and then a total of 10 minutes is available for the respondent's final statement(s).

#### D. Grievance Panel Report

The Grievance Panel's report shall be based only on facts, documentation, arguments presented at the hearing, and applicable law and University policies. The panel's recommendations are to be based upon, but are not limited to, the grievant's requested redress.

Copies of the Grievance Panel's report will be available to the grievant and respondent for retrieval from the Faculty Senate Office. A copy of the panel's report, a copy of the written record of the hearing proceedings, and a copy of all evidence submitted will be placed in the grievance file. This file will be open to the Grievance Panel and all parties to the grievance until the grievance is closed. The panel may make recommendations that a) do not support the grievant's contentions, b) support the grievant's contentions and are within the respondent's authority to implement, or c) support the grievant's contentions, but are not within the respondent's authority to implement. The Grievance Panel's actions for each of these findings are noted below.

##### a. Panel Recommendations Do Not Support the Grievant's Contentions.

If the Grievance Panel finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the panel shall submit its report to the grievant, respondent, chair of the faculty, and chancellor. Within 20 calendar days the chancellor shall, in writing, inform the grievant, respondent, chair of the faculty, and Grievance Panel of a decision. The decision of the chancellor is final and may not be appealed.

##### b. Panel Recommendations Support the Grievant's Contentions and are Within the Respondent's Authority.

If the Grievance Panel finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, the panel shall submit its report to the grievant, respondent, and chair of the faculty. Within 20 calendar days of the recommendations, the respondent shall, with copies to the grievant and the chair of the faculty, communicate a response to the panel's recommendation in writing to the Grievance Panel chair. Within 15

calendar days of receipt of the respondent's response, the grievant will inform the Grievance Panel chair if the adjustments are satisfactory or not satisfactory. If the respondent's adjustments are not consistent with the recommendations of the Grievance Panel but are satisfactory to the grievant, the grievance will be closed. If the respondent's adjustments are not satisfactory to the grievant, the grievant may appeal to the chancellor. The process for an appeal to the chancellor is described below.

c. Panel Recommendations Support the Grievant's Contentions, but are not Within the Respondent's Authority to Implement.

If the Grievance Panel finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, but, in the opinion of the panel, these recommendations are not within the authority of the respondent to implement, the panel shall submit its report to the grievant, respondent, and chair of the faculty. By memorandum, the Grievance Panel chair shall inform the chancellor that, in the opinion of the panel, its recommendations are not within the respondent's authority to implement and request the chancellor to make the appropriate adjustments.

The Grievance Panel chair shall forward to the chancellor a record of the hearing and copies of all documents submitted during the grievance process.

The chancellor's decision is to be based solely on a thorough review of the information provided by the Grievance Panel. The chancellor has the discretion to consult with the Grievance Panel ([The UNC Policy Manual 101.3.2.IV.g](#)) and individuals with the delegated authority to implement the panel's recommendations. It is expected that the chancellor will give deference to the advice of the faculty panel, but the final campus-based decision lies with the chancellor. Within 30 calendar days of receipt of the panel's request, the chancellor will inform the grievant, respondent, Grievance Panel chair, and chair of the faculty of a decision. If the chancellor does not support the panel's recommendation, the chancellor will inform the grievant that the decision may be appealed to the Board of Trustees. This appeal process is described in Section IV.G. The decision of the Board of Trustees is final and may not be appealed to the Board of Governors.

E. Dissenting Chancellor's Report

Should the chancellor disagree with the Grievance Panel's interpretation that the grievance is within the scope of redress covered by provisions of Part XII, Section II.I of the *ECU Faculty Manual*, UNC Code or Policies, the chancellor shall withhold a decision and inform the Grievance Panel, all parties to the grievance, and the chair of the faculty of those areas of disagreement within 30 calendar days. The Grievance Panel chair will then request the chair of the faculty begin the normal interpretation process as set forth in the *Faculty Manual*. It is expected that the chair of the faculty will expedite this request. Upon completion of the interpretation process, the Grievance Panel will make any necessary recommendations. The report will be distributed in accordance with Part XII, Section II.I.III.F., with the grievant's rights to appeal intact.

F. Appeals to the Chancellor

If the respondent's adjustments are deemed unsatisfactory by the grievant, an appeal to the chancellor is to be made within 20 calendar days of the receipt of the response. The grievant shall deliver to the Grievance panel chair a memorandum to the chancellor explaining in detail the reasons for the appeal. The panel chair shall forward a copy of this memorandum to the respondent and chair of the faculty, and shall forward the grievant's appeal memorandum to the chancellor along with the Grievance Panel report and all supporting documentation.

The chancellor's decision is to be based solely on a thorough review of the information provided by the Grievance Panel and may, at the chancellor's discretion, include consultation with the panel ([The UNC Policy Manual 101.3.2.IV.g](#)). It is expected that the chancellor will give deference to the advice of the faculty panel, but the final campus-based decision lies with the chancellor. Within 30 calendar days of receipt of the grievant's appeal and Grievance Panel's recommendations, the chancellor will provide a decision to the grievant, respondent, panel chair and chair of the faculty. If the chancellor does not support the panel's recommendation, the chancellor will inform the grievant of the provisions for appeal to the Board of Trustees.

#### A. Appeal 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 designated committee shall consider the appeal on the written transcript of the hearing held by the Grievance Panel (including evidence admitted in connection with the hearing), but it may, at its discretion, accept and consider 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. The decision of the Board of Trustees is final and shall end the University's appeal process.

## SECTION II.II, Grievance Procedures Related to Complaints of Unlawful or Prohibited Harassment, Discrimination or Improper Relationships Brought Against East Carolina University Faculty Members or Administrators Holding Faculty Status

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- I. Preamble
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#### I. Preamble

- A. Federal and state laws and/or university policies prohibits unlawful discrimination based on the following protected classes: race/ethnicity, color, genetic information, national origin, religion, sex (including pregnancy and pregnancy related conditions), sexual orientation, gender identity, age, disability, political affiliation, and veteran status (including relationship or association with a protected veteran; or Active Duty or National Guard service). East Carolina University establishes formal procedures to assure individuals who believe that they are the victims of unlawful or prohibited harassment, discrimination, or improper relationships that their grievances will be dealt with fairly and effectively.

The *East Carolina University Faculty Manual* (Part XII) is subject to university policies governing nondiscrimination, sexual and gender-based harassment and other forms of interpersonal violence at East Carolina University, which are available through the University's Office for Equity and Diversity (OED) (<https://oed.ecu.edu/>).

- B. Unlawful or prohibited harassment, discrimination, or improper relationships violate East Carolina University's policies and will not be tolerated. Members of the University community are encouraged to express freely, responsibly, and in an orderly way their opinions and feelings about any problem or complaint of unlawful or prohibited harassment, discrimination or improper relationships prohibited under the policies of East Carolina University. The University will take every reasonable step to resolve grievances promptly and confidentially.
- C. Any act by a University employee or student of retaliation, interference, restraint, penalty, discrimination, coercion, reprisal, intimidation, threats, or harassment against an employee or student for using the applicable policies responsibly interferes with free expression and openness and violates University policy. Accordingly, members of the University community are prohibited from acts of reprisal and/or retaliation against those who file complaints, are involved as witnesses, or otherwise try to use University policies responsibly.
- D. When complaints of harassment, discrimination, or improper relationships have been substantiated, the appropriate vice chancellor or the chancellor may take such disciplinary action as they deem appropriate, including discharge from employment, suspension, or reduction in rank in a manner that is consistent with the policies and procedures stated in the *ECU Faculty Manual*.

## II. Grievance Procedures

- A. Faculty subject to administrative sanction(s) for violations of University policies on harassment, discrimination or improper relationships have the right to due process through appropriate appeals procedures, based on the type of sanction imposed. Faculty not subject to administrative sanction(s) based on an investigation, but who believe the process has contributed to a hostile work environment, or that they otherwise have been harmed by the investigation, have the right to redress of specific findings or actions as allowed under provisions for general grievances covered in Part XII, Section II.I of this *Faculty Manual (Policies and Procedures for General Faculty Grievances and for Appeals of Non-conferral of Early Tenure)*. These rights apply to both the faculty complainants and faculty respondents in the original complaint brought on harassment, discrimination or improper relationship.
- B. When disciplinary actions, if any, do not include a serious sanction, a faculty member may appeal minor sanctions, reprimands, or seek other redress through provisions governing general grievances contained in Part XII, Section II.I (this section) of the *Faculty Manual*.
- C. Disciplinary actions that include a serious sanction may be appealed following provisions in Part XII, Section I.III of this *Faculty Manual (Due Process Before Discharge or the Imposition of Serious Sanctions)*. Alleging that one or more specified provisions of *The UNC Code* have been violated in the imposition of a serious sanction, a faculty member may further appeal a Board of Trustees decision to the Board of Governors. Note that [The UNC Code, Section 603](#) warns that if, within 14 calendar days after receiving the notice of a serious sanction, the faculty member makes no written request for appeal, the faculty member may be discharged or serious sanction imposed without recourse to any institutional grievance or appellate procedure.
- D. Appeals of specific findings, either positive or negative, of an investigation of complaints of unlawful or prohibited discrimination, harassment or improper relationship may be available under specific university policies. Current information on university policies governing these areas is available at the Office for Equity and Diversity (<https://oed.ecu.edu/>).

## SECTION II.III, Effective Date

- A. Except as otherwise provided below, these provisions shall become operative immediately after they are approved by the President of the University of North Carolina, and are enabled by approved revisions of the Bylaws of the East Carolina University Faculty Senate.
- B. Provisions governing establishment of appellate hearing panels will become operative only after the establishment and initial fall organizational meeting of an Appellate Committee, as specified in the revised Bylaws of the East Carolina University Faculty Senate. The Appellate Committee shall be elected at the first April organizational meeting of the ECU Faculty Senate following the date of final approval of both the revised Part XII of the Faculty Manual, and the Bylaws of the Faculty Senate.
- C. These provisions as amended shall apply to those appeals initiated after the effective dates indicated in parts A and B above. Appeals for which procedures for a hearing have been initiated before these provisions become operative will continue under the previous Faculty Manual provisions governing the type of appeal involved.
- D. If secure electronic platforms for handling grievances become available, requirements for delivery, distribution and resolution of grievance materials may be modified accordingly through recommendation by the Faculty Senate and approval by the chancellor.

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Faculty Senate Resolution #12-17, February 2012, Chancellor

Faculty Senate Resolution #14-32, April 2014, Chancellor

Faculty Senate Resolution #19-69, April 2021

Faculty Senate Resolution #19-70, April 2021