

Faculty Senate Resolution #11-89

Approved by the Faculty Senate: November 1, 2011

Returned by the Chancellor to Committee for additional review: December 5, 2011

Proposed Revisions to the *ECU Faculty Manual*, Appendix Y. Grievance Policies and Procedures

Revise and retain in the Faculty Manual.

These proposed revisions would replace all of the current text in [Appendix Y](#).

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Appendix Y. Grievance Policies and Procedures of East Carolina University

Appendix Y is established to provide a peer review of faculty grievances. This appendix establishes structures and procedures for addressing faculty grievances through a formal procedure that, depending on the grievance classification, includes access to mediation or direct review, and the potential for a committee hearing of the grievance or a required committee hearing. The following grievance procedures are confined to the faculty and administrative structure of East Carolina University. There are no appeals through Appendix Y beyond the Board of Trustees.

I. Faculty Grievances

There are two classifications of grievances that may be brought to the attention of the Faculty Grievance Committee. 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).

A general grievance is guided by the procedures noted in Section III of this document. A grievance of the non-conferral of early permanent tenure is guided by the procedures found in Section IV of this document.

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 different grievance procedures ensures there is a review process for the faculty member whether the non-conferral of permanent tenure was based on an early request or at the normal contract period.

To provide these approximately equal rights, it is necessary, at times, to reference Section 604 of The Code of The University of North Carolina. However, appeals to the Board of Governors are not allowed by the procedures in Appendix Y. In addition, the bases for the grievance provided in Section IV for a grievance of non-conferral of early tenure do not apply to General Grievances.

No grievance that involves matters related to a formal proceeding for the suspension, imposition of serious sanction, discharge, or termination of a faculty member's employment, or that is within the jurisdiction of another standing faculty committee falls within the scope of this appendix.

A grievant¹ is any faculty member who seeks the remedies afforded by the provisions of this appendix. A respondent² is the person identified by a grievant as the person whose action is the object of the grievance and may include the person(s) who requested the action that is the object of the grievance.

II. The Faculty Grievance Committee

A. Membership

The Faculty Grievance Committee shall be composed of eight members and two alternates, each of whom is a full-time voting faculty member without administrative appointment. All committee members must have tenure or a probationary appointment. All professional ranks except instructor shall be represented on the committee. The chair of the faculty or, as his or her delegate, the vice-chair of the faculty or the chair of the Faculty Governance Committee shall serve as an ex-officio

member of the committee. Members shall be elected in accordance with the procedures for election of 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 five elected members or alternates. Except where otherwise stated in this appendix, the committee shall conduct its business in accordance with the most recent edition of Robert's Rules of Order, Newly Revised. A member of the committee shall recuse himself or herself from participating in a grievance if he or she has a reason to believe that such participation will create a conflict of interest. Any party to a grievance may request that a member of the committee recuse himself or herself from the hearing for conflict of interest. Such a request shall be in writing, stating the reason(s) for the request and provided to the committee chair not later than five calendar days after notification of the hearing date. If the member declines, the committee shall determine by a majority vote, the member in question not participating, whether the member shall be recused.

B. Authorization and Powers

Depending on the classification of the grievance, the Committee shall be authorized to provide access to mediation services or Chancellor Review; provide a hearing; and, based on such hearing, to issue reports and recommendations in an effort to resolve the grievances of faculty members.

Documentation necessary to put forth or defend a grievance requires that each party to the grievance have available to him or her information that may be controlled or in the possession of another party to the grievance or the administration. Upon request by a party to the grievance, the other party to the grievance or the administration shall provide the requesting party with information bearing on the grievance that is not otherwise privileged³. The requested information shall be distributed to all parties to the grievance. The committee chair shall be informed of any request for information among the parties to the grievance.

The committee may seek such information or documentation not provided by the grievant or respondent but considered necessary by the committee to provide a fair and complete peer hearing of the grievance. Should the committee seek such information or documentation, it shall ask the party most likely to have custody of the documentation or in the best position to obtain it. Such information will be shared by the committee with all parties to the grievance. The committee may have access to relevant confidential records only if the person whose privacy is at stake provides written consent to the disclosure of the records to the committee and all parties to the grievance; provided, however, the committee and the parties may have access to records in the absence of such consent if confidential information contained in the record can be effectively redacted by the custodian of the record(s).

The committee chair shall inform the respondent, when the respondent has administrative responsibilities for grievant's Personnel File, that information gathered to respond to grievant's charges shall not be placed in grievant's accumulated Personnel File. Any information collected as part of this grievance shall be placed in a physically separate part of the file, specifically established for this purpose. At the conclusion of the grievance process, this separate file shall be forwarded to the Faculty Senate Office where it will become a part of the grievance file maintained by that office.

The committee and the committee chair shall not function as an advocate for either party to the grievance. The committee chair shall provide only procedural information to the parties of the grievance⁴. The committee's responsibility is to provide the grievant and respondent a process for a possible resolution of the grievance.

III. General Grievances

General grievances within the scope of this appendix 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 he or she otherwise would have received.

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 16th to December 31st) 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 1st to August 15th). This deadline may be extended by a majority vote of the Grievance Committee⁵.

The committee holds the grievant responsible for progressing through the grievance steps in a timely manner. Excessive delays in the completion of Steps One through Three may result in the committee's decision to terminate the grievance process, with no further review available under this Appendix. On its own motion or the motion of either party, the Committee may establish specific deadlines for completion of steps or other actions, with the grievance subject to dismissal or a finding of responsibility, as appropriate, if the parties fail to meet such deadlines. If time delays are encountered because of the respondent, the grievant shall bring this to the attention of the committee chair.

The grievant may terminate the grievance at any time during the process by notifying the chair in writing. The 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 (Meet with Respondent)

Prior to bringing a grievance to the attention of the committee chair, the grievant shall meet with the respondent and shall attempt to resolve the proposed grievance⁶. It is required that as part of this meeting the grievant provide the respondent with a written copy of the proposed grievance and discuss it with him/her at this meeting. The grievant and respondent must meet to have a face-to-face discussion about the substance of the grievance; in cases where the respondent refuses to meet with the grievant, the grievant shall inform the committee chair and the next highest level administrator in his or her unit, in writing, and copy the respondent. If, in the opinion of the grievant, this attempt to resolve the grievance fails, the grievant shall so inform the respondent in writing. The grievant shall also inform the respondent of his or her intentions to pursue the grievance through Appendix Y in this memorandum.

The grievant shall forward to the chair of the committee a copy of the proposed grievance and a written memorandum indicating his or her intention to seek redress. Upon notification by the grievant, the committee chair shall have under the grievant's name a grievance file opened in the Faculty Senate Office⁷.

B. Step Two (Petition for Redress)

Based on the grievant's memorandum to the respondent required in Step One, the committee chair shall inform all parties to the grievance that Step One has been completed and the grievant may move to Step Two. Step Two allows each party to select his or her own counselor who will serve as

an advisor throughout the grievance process^{8,9}. Counselors shall not participate in the hearing nor can they be called as witnesses (Step 5).

The chair will notify the grievant and respondent of the names of all committee members and alternates.

The parties to the grievance shall inform the committee chair of the name of their respective counselor, if any, within 15 calendar days from the date of receipt of the Step Two memorandum

The grievant's counselor will advise and assist him or her in developing the Petition for Redress for the alleged grievance. The Petition for Redress shall set forth the identity of the respondent, the nature of the grievance, and the redress sought. Individual issues must be developed and presented separately in the Petition for Redress. The Petition for Redress shall include all information necessary to support each of the grievant's charges. The grievant, through the committee chair, may request information bearing on the grievance (See II, B).

The grievant shall provide a memorandum to the committee chair indicating his or her intention to continue with the grievance. The grievant shall also provide a copy of the Petition for Redress to the chair and the respondent. Proof of delivery of the Petition for Redress to the respondent must be provided to the chair within 10 calendar days of delivery to the chair.

The counselor for the respondent shall provide advice as to the grievance process and help the respondent develop a response to grievant's Petition for Redress.

C. Step Three (Mediation or Chancellor Review)

When the committee chair receives the memorandum and Petition for Redress required in Step Two, he or she shall ascertain if the grievant has taken Steps One and Two, above. If the grievant has not followed these steps, the committee chair shall inform the grievant that he or she must take these steps prior to any further action being taken by the committee.

If the committee chair determines that Steps One and Two have been completed, he or she shall call a meeting of the committee. The committee shall make a final determination that Steps One and Two have been completed. Based on information contained in grievant's Petition for Redress, the committee shall determine whether the grievance is within the scope of Appendix Y. The committee may decide that none, some, or all of the issues in the Petition for Redress are within the scope of Appendix Y. Issues not within the scope of Appendix Y will receive no further attention. The committee's decision concerning grievance issues within the scope of Appendix Y shall be communicated by memorandum to the grievant and respondent. The ECU administrative appeal process is ended for those issues rejected by the committee. Except as noted here and below, the Petition for Redress shall not be modified.

Mediation

After the committee determines which, if any, issues raised in grievant's Petition for Redress are within the scope of Appendix Y, the committee shall so inform the parties to the grievance in writing and offer them the opportunity to seek a resolution through mediation. Each party to the grievance shall be asked to respond within 15 calendar days after the date of notification by the committee chair as to his or her acceptance of mediation. If any party to the grievance rejects mediation, the chair of the committee will so notify the parties to the grievance and inform them that the committee will meet to set a grievance hearing date (Step Four). Mediation is limited solely to the grievant and the

named respondent. The rejection of mediation shall have no bearing on decisions or recommendations related to the grievance.

The Faculty Senate office administrator will secure a mediator. The parties to the grievance will inform the 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, if no acceptable mediator can be located, the chair of the committee will so notify the parties to the grievance and inform them that the committee will meet to set a grievance hearing date (Step Four).

If an acceptable mediator is identified, the parties to the grievance and the mediation provider will be informed of the selection. The Petition for Redress and the committee's memorandum will be provided to the mediator by the committee chair. The mediator will communicate to the committee chair the beginning date of the process. The mediator shall inform the committee chair on a monthly basis that mediation is continuing with measurable progress. The mediation process shall not exceed 45 calendar days without formal approval of the committee chair or 60 days without the formal approval of the committee. Mediation will involve only parties to the grievance.

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 communicates to the committee chair that further mediation is unlikely to be successful.
- c. A party to the grievance communicates to the chair of the committee that he or she has experienced resistance or delaying tactics in scheduling mediation meetings or that the mediator is no longer acceptable.

Events b. through c., above, will cause the chair of the committee to notify the parties to the grievance that the mediation process is being terminated and inform the grievant to move to Step Four if desired. Decisions by the grievant, respondent(s), or mediator to terminate mediation shall have no bearing on decisions or recommendations related to the grievance. Information from the mediation process is confidential. All information from the mediation process is 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 Chancellor's 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 (See Step Three). A signed copy of the partial agreement shall be placed in the grievance file. The grievant may request a hearing for those remaining issues (Step Four).

Chancellor Review

In response to the committee's offer for mediation, a grievant who, for any reason, believes that mediation or a hearing would not fairly address issues raised by the grievant, may so inform the committee chair. If the Chancellor is the respondent, the Chancellor's Review is not an option. The committee chair shall inform the grievant that he or she may pursue a Chancellor Review, which

consists of a review by the Chancellor of grievant's Petition for Redress and the committee's memorandum. If the grievant chooses Chancellor Review, he or she may not request mediation or a hearing.

The grievant shall provide copies of the Petition for Redress and the committee's memorandum along with any information the grievant believes supports his or her contentions to the Chancellor and the committee chair. The Chancellor may request (with a copy to the Faculty Grievance Committee Chair) that the respondent provide within 10 calendar days 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 within 20 calendar days of the Chancellor's receipt of all materials. A copy of his or her decision shall be provided to the respondent and the committee chair.

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

D. Step Four¹³ (Request for a Hearing)

The grievant shall request, by memorandum to the committee chair with copies to the respondent, a hearing by informing the chair of the Grievance Committee that the grievant has followed the first three grievance steps, that his or her grievance is not resolved, and that he or she requests a hearing by the Grievance Committee.

The committee will review the grievant's Petition for Redress, the committee's memorandum to the grievant, and any changes to this memorandum that may have resulted from mediation. The committee may accept all, some, or none of the unresolved issues for a hearing. If the committee decides not to hear certain issues or decides that a hearing will not be granted because the grievant fails to allege an injury that would entitle the faculty member to relief under Section I. of Appendix Y or because the grievance (or a portion thereof) is not within the purview of the Faculty Grievance Committee, this decision will exhaust the administrative appeals process. The committee's decision shall be communicated by certified mail, return receipt requested to all parties to the grievance.

If the committee determines that a hearing should be granted, the committee chair shall so notify the grievant and respondent and shall set a time, date, and place for a hearing on the Petition for Redress.¹⁴ The date of the hearing shall be within 45 calendar days of this notification¹⁵. A court reporter must be used to record and transcribe any hearing.

The notice of hearing will also request that both parties submit to the committee all information and documents they intend to introduce at the hearing to support or defend their respective positions¹⁶. The grievant's information shall include a copy of the Petition for Redress, a copy of the committee's memorandum describing the grievance, a brief statement as to the results of the mediation effort,¹⁷ a list of witnesses with a brief statement with regard to the relevance of each witness, and all information to be used in support of the grievant's charges. The respondent's information shall include a list of witnesses, with a brief statement with regard to the relevance of each witness, and all information to be used to defend against the grievant's charges. The committee may also request information (see II. B) or the inclusion of witnesses from either party 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 to support or defend against the grievant's charges.

Thirteen copies¹⁸ of all information and documents shall be submitted to the Faculty Senate Office no less than fourteen calendar days prior to the hearing date. One copy of the grievant's information will

be provided to the respondent and one copy of the respondent's (s') information will be provided to the grievant. The grievance committee 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 his or her case. This agenda will be distributed to committee members, the grievant and respondent no less than five calendar days prior to the hearing date.

Information submitted to the committee shall have a table of contents and be numbered using Arabic numbers with numbers assigned to all pages that exhibit information¹⁹. If the back of a page contains information, it also must be numbered. This number shall be preceded by a G for information submitted by the grievant and an R for information submitted by the respondent. If more than one grievant or more than one respondent is involved, their designation will be communicated by the committee chair. If grievant's Petition for Redress includes more than one grievance, each grievance shall be identified by a Roman Numeral with associated evidence numbered as above in chronological order.

E. Step Five (The Hearing)

The committee shall limit its investigations to the issues presented in the Petition for Redress and confirmed by the committee's memorandum to the grievant. During the hearing, the committee may explore issues raised by any party to the grievance that are concretely based on issues raised in the Petition for Redress and its confirming memorandum. The committee'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 Appendix Y, II.B and III.D, the power of the committee shall be solely to hear the testimony of the grievant, the respondent, and witnesses.

The committee chair shall preside and is responsible for maintaining order and prompt progression of the grievance process, including but not limited to the hearing. When circumstances despite due diligence make it necessary to resolve an issue not addressed in this regulation, the 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 committee chair shall begin the hearing by briefly reviewing the committee's authorization and powers. The chair then shall state the conditions necessary for a hearing, the committee's belief that the issues about to be heard satisfy these conditions, and the procedures to be followed during the hearing.

The chair shall then enter into the hearing record information submitted in Step Four by the grievant and the respondent. The submitted information shall include all information necessary to support or defend the grievance. However, with approval of the committee, the grievant, respondent, or a witness may submit information during the hearing. All such information must be numbered and it becomes a part of the formal record of the hearing.

Only the grievant, the respondent, members of the committee, 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 his or her claim and requested redress are consistent with Appendix Y, I.

The grievant is responsible for presentation of his or her case, including the testimony of witnesses. Committee members may question the grievant, the respondent or witness(es) at any time during the hearing. After each of grievant's witnesses has completed his or her testimony and has responded to

questions from the respondent, the witness will be excused from the hearing unless recalled by the hearing committee. At the end of the grievant's presentation of his or her case, the respondent(s) may question the grievant.

The respondent's presentation will follow the procedures noted above for presentation of the grievant's case. Committee members may question the grievant, the respondent(s), or witnesses during the hearing. When neither the grievant, the respondent, nor the committee has further questions, the grievant is given the opportunity to make a final statement, and then the respondent(s) is given the opportunity to make a final statement.

F. Step Six (Committee Report)

The committee's report shall be based only on facts, documentation, and arguments presented at the hearing. Committee recommendations are to be based on, but are not limited to, the grievant's requested redress.

Copies of the committee's report will be sent to the grievant and respondent by a method that demonstrates proof of delivery. A copy of the committee'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 committee and all parties to the grievance until the grievance is closed (See below).

If the committee finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the committee 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 committee of his/her decision. The decision of the Chancellor is final.

If the committee finds that some or all the grievant's contentions are supported and makes one recommendation or more in favor of the grievant, the committee shall submit its report to the grievant, respondent, and Chair of the Faculty. Within 20 calendar days of the recommendations, the respondent shall communicate in writing to the committee chair his or her response to the committee recommendations. If the respondent's adjustments are not consistent with the recommendations of the committee but are satisfactory to the grievant, the grievance will be closed.

If the respondent's adjustments are consistent with the committee's recommendation but are not satisfactory to the grievant, the grievant may appeal to the Chancellor. By memorandum, the grievant shall inform the Chancellor of his or her appeal and include a detailed explanation of the reason for the appeal. A copy of the appeal memorandum shall be sent to the chair of the committee and the faculty chair. The chair of the committee shall forward the committee report along with all supporting documentation to the Chancellor.

If the respondent's adjustments are not consistent with the committee's recommendation and are not satisfactory to the grievant, the committee report along with all supporting documentation shall be forwarded to the Chancellor with the committee's request that the recommended adjustment be made.

If the grievant appeals or the committee requests the Chancellor to make the recommended adjustment, "the Chancellor shall base his or her decision on the recommendations of the faculty committee and the record from the faculty grievance committee hearing. The Chancellor may, in his or her discretion, consult with the faculty grievance committee before making a decision." (The University of North Carolina, Board of Governors Policies, Section 101.3.2.IV.g) The Chancellor's decision shall be communicated in writing within 20 calendar days to the grievant, respondent, Chair

of the Faculty, and Faculty Grievance Committee. The Chancellor's decision shall contain a notice of appeal rights, if any, and, if the decision is appealable, it shall contain the information in Section III.G. Step Seven (Appeal to the Board of Trustees), below and shall be signed, in descending order, by all individuals who contributed to the report.

If the Chancellor's decision does not support the recommendations of the committee, 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), below. 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 committee's report based on its interpretation of Appendix Y, I. or the *Faculty Manual*, the Chancellor shall withhold the Chancellor's decision, and inform the committee, all parties to the grievance, and the faculty chair of those areas of disagreement within the required 20 days. The committee will then request the Faculty Governance Committee to begin the normal interpretation process as set forth in the procedures of the Faculty Governance Committee. It is expected that the Faculty Governance Committee will expedite this request. Upon completion of the interpretation process, the Faculty Grievance Committee will make any necessary recommendations. The report will be distributed in accordance with Appendix Y. III.F., with the grievant's rights to appeal intact.

G. Step Seven (Appeal to Board of Trustees)

I. Decisions which may be appealed.

- A. If the committee did not advise that an adjustment in favor of the grievant was appropriate, then the decision of the Chancellor is final and may not be appealed.
- B. If neither the relevant administrative official nor the Chancellor makes an adjustment that is advised by the committee in favor of the grievant, then the grievant may appeal to the Board of Trustees. The decision of the Board of Trustees is final.

II. 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*.

III. Timeline for Appeals

- A. A grievant who seeks to appeal the Chancellor's disposition of his grievance must file written notice of appeal with the Board of Trustees, by submitting such notice to the Chancellor, with adequate evidence of delivery, within 10 calendar days after the grievant's receipt of the Chancellor's decision. The notice shall contain a brief statement of the basis for the appeal. If the Board agrees to consider the appeal, it will do so 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 in its discretion may extend the time for compliance or it may dismiss the appeal.
- B. If the Chancellor's decision is appealable, the Chancellor's notice of the disposition of a grievant's case must inform the grievant: (1) of the time limit within which the grievant

may file a petition for review by the Board of Trustees, (2) that a written notice of appeal containing a brief statement of the basis for appeal is required within the ten calendar day period and, (3) 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.

IV. Standard of Review: In order to prevail before the Board of Trustees, the faculty member must demonstrate that the Chancellor's decision was clearly erroneous, 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 The 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 the Faculty Grievance Committee (hereinafter, the committee) by submitting a Petition for Redress to the committee.

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 grievance are allowed. However, before the expiration of a deadline the faculty member may request an extension, provided that the request is made in writing and presented to the committee. Within 10 calendar days of receiving a request for an extension, the committee will make its decision and communicate⁸ the decision to the grievant. The committee will endeavor to complete the review within the time limits specified except under unusual circumstances such as when the time period includes official university breaks and holidays and when, despite reasonable efforts, the Committee cannot be assembled.

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

- a. 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 which are 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.
- b. The basis for the Petition for Redress must be found in one or more of the following reasons: (i) the decision was based on any ground stated to be impermissible in Section 604B of The Code of The University of North Carolina; (ii) the decision was attended by a material procedural irregularity²⁰; or (iii) ECU's policy that prohibits discrimination based on sexual orientation.

The impermissible reasons noted in Section 604B of *The Code/101.3.1 of the Policy*, are: "(a) 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 (b) the faculty member's race, color,

sex, religion, creed, national origin, age, disability, veteran status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice²¹.”

The grievant's Petition for Redress shall be addressed to the chair of the Grievance Committee and delivered to the Faculty Senate office by a method that provides delivery verification. Upon receipt of the grievant's Petition for Redress the chair of the committee shall notify each named respondent⁸ 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 committee will review the grievant's Petition for Redress to determine if the Petition for Redress is timely, complete, and is based on one or more of the bases noted above. If the Petition for Redress fails to meet any one of these requirements, the 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 (certified mail, return receipt requested for the grievant and respondent(s)). If the Petition for Redress meets all of the above requirements, but makes claims beyond those noted in b.), above, the committee shall strike those issues from the Petition for Redress and these claims will receive no further attention in the process.

The committee shall set the time, date, and place for the hearing. The date for the hearing must be within 42 calendar days after receipt of the Petition for Redress by the Faculty Senate office, except under unusual circumstances such as when a Petition for Redress is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.

The committee shall notify the grievant, the respondents, the chair of the faculty, and the chancellor, of the time, date, and place of the hearing. The committee's 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 shall also include the names of all committee members and alternates who may take part in the hearing.

The grievant and respondent are to submit thirteen copies¹⁸ of all information and documents to be used in the presentation (grievant) or to defend (respondent) the grievance. The respondent's (s') information must also include: a.) the identification of a witness(es) who may be willing to provide information to counter the contention; and b.) a brief description of the information each witness may provide. This information and documents shall be submitted to the Faculty Senate Office not later than fourteen 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 (s') information will be provided to the grievant.

C. The Hearing

A court reporter must be used to record and transcribe the hearing.

The committee shall limit its investigations to the issues presented in the Petition for Redress that were not struck in the committee's notification of the time, date, and place for the hearing. During the hearing, the committee may explore issues raised by any party to the grievance that are concretely based on issues raised in the Petition for Redress. The committee's responsibility is limited to issuing recommendations based on the Petition for Redress, its contained information and documentations,

and information developed during the hearing. Except as noted in Appendix Y, II.B. the power of the committee shall be solely to hear the testimony of the grievant, the respondent, and witnesses.

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

The chair shall then enter into the hearing record information submitted (above) by the grievant and the respondent. It is expected that the hearing will be limited to this information; however, the grievant, respondent, or a witness may submit information deemed relevant by the committee with its approval during the hearing. All such information must be numbered (Rh_, Gh_, or Wh_) and it becomes a part of the formal record of the hearing.

Only the grievant, the respondent, members of the committee, 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 grievant's case will be evaluated on the basis of the preponderance of the evidence.

Committee members may question the grievant, the respondent or witness(es) during the hearing. After each of grievant's witness has completed his or her testimony and has responded to all questions, the witness will be excused from the hearing unless recalled by the hearing committee. At the end of the grievant's presentation of his or her case, the respondent(s) may question the grievant.

The respondent's presentation will follow the procedures noted above for presentation of the grievant's case. Committee members may question the grievant, the respondent(s), or witnesses at any time during the hearing. When neither the grievant, the respondent, nor the committee has further questions, the grievant is given the opportunity to make a final statement, and then the respondent(s) is given the opportunity to make a final statement.

D. Committee Report

The committee's report shall be based only on facts, documentation, arguments presented at the hearing. Committee recommendations are to be based on but are not limited to grievant's requested redress.

A copy of the committee'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 committee and all parties to the grievance until the grievance is closed (See below). Copies of the committee's report sent to the grievant and respondent are to be by certified mail, return receipt requested. Letters from the Chancellor to the grievant or respondent(s) are to be by certified mail, return receipt requested.

The committee 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 committee's actions for each of these findings are noted below.

a.) Do Not Support the Grievant's Contentions

If the committee finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the committee 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 committee of his/her decision. The decision of the Chancellor is final and may not be appealed

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

If the committee finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, the committee shall submit its report to the grievant, respondent, and Chair of the Faculty. Within 20 calendar days of receipt of the recommendations, the respondent(s) shall communicate in writing to the committee chair his or her response to the committee's recommendations. The committee chair will provide the grievant (certified mail, return receipt requested) a copy of the respondent's response to the committee's recommendations. Within 15 calendar days of receipt of the respondent's(s') response, the grievant will inform the committee if the adjustments are satisfactory or not satisfactory. If the adjustments are 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 process for an appeal to the Chancellor is noted below.

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

If the committee finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, but, in the opinion of the committee, these recommendations are not within the authority of the respondent to implement, the committee shall submit its report to the grievant, respondent, and Chair of the Faculty. By memorandum, the committee shall inform the Chancellor that in the opinion of the committee its recommendations are not within the respondent's authority to implement and request him/her to make the appropriate adjustments. The committee 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 committee. The Chancellor may, at his/her discretion, consult with the committee (Policies, Section 101.3.2.IV.g). It is expected that the chancellor will give deference to the advice of the faculty committee, but the final campus-based decision is the chancellor's.

Within 30 calendar days of receipt of the committee's request, the chancellor will inform the grievant, respondent, committee chair, and the Chair of the Faculty of his or her decision. If the chancellor does not support the committee's recommendation, the Chancellor is to inform the grievant that he/she may appeal to the Board of Trustees. This appeal process is described in Section III.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 committee's recommendations (from b.) or c.) above) based on its interpretation of Appendix Y or the Faculty Manual, UNC Code or Policies, the Chancellor shall withhold the Chancellor's decision, and inform the committee, all parties to the grievance, and the faculty chair of those areas of disagreement within the required 30 calendar days. The committee will then request the Faculty Governance Committee to begin the normal interpretation process as set forth in the procedures of the Faculty Governance Committee. It is expected that the Faculty Governance Committee will expedite this request. Upon completion of the interpretation process, the Faculty Grievance Committee will make any necessary recommendations. The report will be distributed in accordance with Appendix Y. III.F., with the grievant's rights to appeal intact.

F. Appeals to the Chancellor

An appeal to the Chancellor is to be made within 20 calendar days of the receipt of the respondent's response. By memorandum, the grievant shall inform the Chancellor of his or her appeal and include a detailed explanation of the reason for the appeal. A copy of the appeal memorandum shall be sent to the chair of the committee and the Faculty Chair. Upon receipt of the grievant's appeal, the chair of the committee shall forward the committee report along with all supporting documentation to the Chancellor.

The chancellor's decision is to be based solely on a thorough review of the information provided by the committee and may, at his/her discretion consult with the committee (Policies, Section 101.3.2.IV.g). It is expected that the chancellor will give deference to the advice of the faculty committee, but the final campus-based decision is the chancellor's.

Within 30 calendar days of receipt of the committee's request, the chancellor will inform the grievant, respondent, committee chair, and the Chair of the Faculty of his or her decision. If the chancellor does not support the committee's recommendation, the Chancellor is to inform the grievant that he/she may appeal to the Board of Trustees. This appeal process is described in Section III.G. The decision of the Board of Trustees is final and may not be appealed to the Board of Governors.

IV. Annual Report:

The Grievance Committee chair shall report on grievances during the second meeting of the Faculty Senate each academic year. Such reports shall protect the confidentiality of the grievance proceedings and parties. The following form and information shall be used.

Number of Grievants in Grievance Process for Academic Year
Time in Step

<i>Step</i>	<i>Less than One Month</i>	<i>One-Two Months</i>	<i>Two-Three Months</i>	<i>More than Three Months</i>
One	___	___	___	___

Number of Grievances Filed (Completed Step One): ___

Fixed Term Faculty ___ Probationary Faculty ___ Tenured Faculty ___

Time in Step Two – Four

<i>Step</i>	<i>Less than One Month</i>	<i>One-Two Months</i>	<i>Two-Three Months</i>	<i>More than Three Months</i>
Two	___	___	___	___
Three	___	___	___	___
Four	___	___	___	___

Step Five Hearing

Scheduled for Hearing ___
Hearings Completed ___
In Report Stages ___
Reports Issued ___

Reports Issued in Favor of:
Grievant ___

Respondent ____
Both Grievant and Respondent ____

Number Appealed to Chancellor ____
Reports Issued by Chancellor ____
Number at Faculty Governance ____
Reports at Rewrite or Reissued by Faculty Governance Committee ____

Number that went through Mediation ____
Number that went through Chancellor Review ____
Number Terminated by Grievant ____
Number Terminated by Committee ____

V. Application

This appendix supersedes other grievance provisions except those contained in *The Code* and other regulations of the University of North Carolina and in other provisions of the East Carolina University Faculty Manual for grievances filed on or after the date of approval of this appendix by the East Carolina University Board of Trustees.

VI. Grievance Committee By-Laws and Procedures

The Faculty Grievance Committee may draft bylaws and detailed procedures that are consistent with the procedures stated above, subject to approval by the Faculty Senate and the Chancellor.

FOOTNOTES

¹A grievant must be a current faculty member of East Carolina University. A grievance may be initiated by multiple grievants. If a faculty member's employment ends during the grievance process, the grievant may request the Chancellor to allow the grievance to continue. Such a request must be made prior to the end of employment. Copies of such a request must be provided to the grievance committee chair, and the Chancellor is to respond to such a request, with a copy to the committee chair, within 20 calendar days.

²A named respondent must be a current employee of East Carolina University. If the named respondent was a former administrator, the person who presently occupies the administrative position will be named as the substitute respondent and the former administrator as the named respondent. A grievant may name multiple respondents. A faculty member or a departmental or unit committee and/or its chairperson may be named as a respondent. An administrator who concurred with the actions of the respondent may not be named as a respondent.

³The committee may be asked by either party to the grievance to evaluate the basis for such privilege and to evaluate the value of such information to the grievance. If the privileged information bears on the grievance, the committee is required to resolve the issue of privilege. If such information bears on the grievance but cannot be obtained, the committee shall decide whether continuing the grievance/granting a hearing would be unfair to the grievant/respondent. If such a decision is made, the committee shall state its reason(s) and terminate the grievance process; thus, ending the administrative hearing process at East Carolina University.

⁴In this instance, procedural advice is limited to the nature of the committee, its charge, the options open to the party to the grievance, and the current membership of the committee.

⁵The committee may waive the time requirement for the introduction of evidence; the grievant's requested redress; or both if, in the committee's opinion, there are extenuating circumstances despite due diligence.

⁶If a grievant does not complete Step One, any information collected by the committee chair will be destroyed. If the grievant completes Step One, all information collected by the committee chair in the administration of the grievance will, at the conclusion of the grievance, be placed in the grievance file.

⁷The grievance file maintained in the Faculty Senate Office under the grievant's name becomes a part of the Personnel File for both grievant and respondent. A note will be placed in grievant's and respondent's Personnel File Checklist regarding the location of this file.

⁸Unless requested in writing to the committee chair, the parties to the grievance agree that all communications, including e-mail, will be sent to their university addresses.

⁹A list of potential counselors is maintained by the Faculty Senate Office. It is recommended that the counselor be a tenured professor, have extensive experience in faculty governance as evidenced by service on university governance/appellate committees, and not be associated with the grievance in any way. The parties to the grievance may choose eligible ECU current or retired faculty members as their counselors or they may choose to serve as their own counselors.

¹⁰Once all parties to the grievance have accepted mediation, the grievant shall not take his or her grievances to 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 under Appendix Y, ending administrative review of the grievance.

¹¹To avoid the appearance of a conflict-of-interest all mediation will be performed by third-party groups/organizations/individuals who have no ties to East Carolina University. A list of such providers will be developed and maintained by the Faculty Chair. The provider must provide evidence to the Faculty Chair that the provider's mediator(s) are certified by the North Carolina Administrative Office of the Courts.

¹²Procedures for the origination of purchase orders and payment for services of the mediator will be developed and administered by the Chair of the Faculty.

¹³A request for a hearing that continues from another part of the *Faculty Manual* (e.g. Appendix J, Appendix V, etc.) will be evaluated by the committee. If insufficient information is available, the committee will request that the grievant and respondent choose a counselor and the grievant complete a Petition for Redress. Presentation of the Petition for Redress will allow the committee to evaluate the grievance. If the committee agrees that the grievance is within the scope of Appendix Y, the grievant will be allowed to choose mediation or request a hearing. A Chancellor Review is not an option.

¹⁴Scheduling a committee hearing during the summer months is complicated by the absence of faculty and teaching schedules. If the committee on its first effort cannot schedule a hearing during the summer, a fall hearing date will be scheduled during the committee's fall organizational meeting.

¹⁵If either the grievant or the respondent petitions the committee in writing for a postponement of the hearing for health reasons or due to a personal emergency, the committee chair shall postpone the meeting for a period of time appropriate to the circumstances. If either the grievant or the respondent petitions the committee in writing for a postponement of the hearing for reasons other than health or personal emergency, the committee chair shall determine by telephone or e-mail whether it is the general agreement of the committee to postpone the hearing for one week from the scheduled date.

¹⁶Such information and documents are not limited to written materials but may include sound recordings, video recordings, photographs as well as other forms of information or documentation.

¹⁷This statement shall only include information as to the beginning and ending dates of the mediation and whether mediation was successful, partially successful, or unsuccessful. For a grievant requesting a hearing under Footnote 13, who did not choose mediation, this statement is unnecessary.

¹⁸The department or unit to which a party to a grievance is assigned is responsible for providing access to copy services during the grievance process. These services shall be at no cost to the grievant or respondent.

¹⁹Required Numbering: One Grievance

Grievant: Petition for Redress G page 1.....n

Supporting Information G, page 1...n

Respondent: Supporting Information R, page 1...n

Multiple Grievances

Grievant: Petition for Redress:

Grievance I G I page 1...n

Grievance II G page 1...n

Continue for the number of included grievances.

Supporting Information:

Grievance One: G I, page 1....n

Grievance Two: G II, page 1....n

Continue for the number of included grievances.

Respondent: Supporting Information:

Grievance One R I, page 1....n

Grievance Two R II, page 1...n

²⁰"Material procedural irregularity" means a departure from prescribed procedures governing reappointment and conferral of permanent tenure that is of such significance as to cast reasonable doubt upon the integrity of the original decision not to reappoint or not to confer permanent tenure. Whether a procedural irregularity occurred, and whether it is material, shall be determined by reference to those procedures which were in effect when the initial decision not to reappoint or not to confer permanent tenure was made and communicated. The Grievance 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)

²¹ Definition of "personal malice": As used in *The Code*, the term "personal malice" means dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid University decision making. For example, personnel decisions based on negative reactions to an employee's anatomical features, marital status or social acquaintances are

intrinsically suspect. If reappointment is withheld because of personal characteristics that cannot be shown to impinge on job performance, a wrong likely has been committed. On the other hand, if personal characteristics can be shown to impede a faculty member's capacity to relate constructively to his or her peers, in a necessarily collegial environment, withholding advancement may be warranted. For example, the undisputed record evidence might establish that the responsible department chair declined to recommend a probationary faculty member for reappointment with tenure because of the faculty member's "unpleasant personality and negative attitude." Disposition of such a case requires a determination of whether the personality and attitude impeded the faculty member's job performance. While the terms "ill-will," "dislike," "hatred" and "malevolence" may connote different degrees of antipathy, such distinctions make no difference in applying the fundamental rationale of the prohibition. Any significant degree of negative feeling toward a candidate based on irrelevant personal factors, regardless of the intensity of that feeling, is an improper basis for making decisions."