

Faculty Senate Resolution #14-32

Approved by the Faculty Senate: March 18, 2014

Approved by the Chancellor: April 16, 2014 ([with stipulation](#))

Revised *ECU Faculty Manual*, Part XII, Section I. Faculty Grievance Policies and Procedures

The revised text will replace all of the [current text](#) in Part XII, Section I. of the *ECU Faculty Manual*.

(Additions are noted in **bold print** and deletions in ~~strike through~~.)

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Part XII-Section I is established to provide a peer review of faculty grievances, **and** 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 Part XII-Section I 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 requiring reappointment with conferral of permanent tenure decision because appeals to the Board of Governors are not allowed by the procedures in Part XII, Section I. In addition, the bases for the grievance provided in Part XII, Section I (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 **charge of the Faculty Grievance Committee**.

A grievant¹ is any faculty member who seeks the remedies afforded by the provisions of **Part XII, Section 1**, of the *Faculty Manual*. 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. Faculty Grievance Committee

The Faculty Grievance Committee ("**the committee**") shall be composed of **five regular** members and **five** alternates, each of whom is a full-time voting faculty member without administrative appointment. All committee members must have tenure or a probationary appointment. Each professorial rank, except instructor, shall be represented on the committee. The **Chair of the Faculty ("faculty chair")** or, the **faculty chair's delegates** (the vice-chair of the faculty or the chair of the Faculty Governance Committee) shall serve as an ex-officio member of the committee. **Other committee members will be elected to three-year terms** in accordance with the procedures for election of committees specified in the Bylaws of the East Carolina University Faculty Senate. A quorum for the committee shall be five **regular** members or alternates.

Upon receipt of the grievant's Petition for Redress (Step Two), the Faculty Grievance Committee Chair ("the committee chair") will automatically recuse a member from the grievant's or respondent's relevant department, unit, college, or school. Prior to the committee's determination whether the grievance is within the charge of Part XII, Section 1, members shall recuse themselves from further participating in a grievance if they have a reason to believe that such participation will create a conflict of interest.

Upon receipt of a request for a hearing (Step Four), the committee chair shall determine the availability of the regular members and alternates to form a hearing panel consisting of five members plus one who will replace any member that is unable to attend the entire hearing. The ranking of the available alternates for the hearing panel selection shall be determined by their years of service to the University. Any party to a grievance may request that a member of the committee **be recused** 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 **5** calendar days after notification **in Step Four** of the hearing date. If the member declines, the committee shall determine **obligatory recusal** by a majority vote (the member in question not participating).

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 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 **committee**.³

The committee holds the grievant responsible for progressing through the grievance steps in a timely manner. If time delays are encountered because of the respondent, the grievant shall bring this to the attention of the committee chair. **The deadline for submission of Petition for Redress to the Faculty Senate Office must be no later than the last day of the first month of the semester that follows the semester in which the grievant has met with the respondent. This deadline may be extended by a majority vote of the committee.**

The grievant may terminate the grievance at any time during the process by notifying the committee chair in writing. The **committee** 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)

“Respondent” is used in the singular form, even where it may stand for more than one person. 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 grievance.⁴ **Only the grievant and the respondent shall attend the meeting.** It is required that as part of this meeting the grievant provide the respondent with **a written statement setting forth the identity of the respondent, the nature of the grievance, and the redress sought. Individual claims must be numbered, developed and presented separately. This statement shall list all information necessary to support each of the grievant’s claims at this meeting with the respondent. Note that both parties will have an opportunity to submit information and documents in support of their claims before the hearing as specified in Step Four.**

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, **by a memorandum with a copy to the respondent**, inform the **committee chair** and the next highest level administrator in **the grievant’s unit. Before proceeding to Step Two, the grievant shall provide the respondent with the Petition for Redress that the grievant intends to submit in Step Two.**

Step One allows each party to select **their** own counselor who will serve as an advisor throughout the grievance process,⁵ and who shall not participate in the hearing nor be called as a witness (Step **Five**).

Documentation necessary to put forth or defend a grievance requires that each party to the grievance have available to them information that may be controlled or in the possession of another party to the grievance or the administration. Upon specific 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 privileged.⁶ The requested information shall be distributed to the committee chair and all parties to the grievance.

The committee chair will provide only procedural information to the parties of the grievance,⁷ and shall not function as an advocate for either party to the grievance. The committee's responsibility is to provide the grievant and respondent a process for a possible resolution of the grievance, and shall not function as an advocate for either party.

B. Step Two (Petition for Redress)

Petition for Redress should be addressed to the committee chair, and have appended a copy

of the grievant's written statement from the meeting with the respondent. It shall be submitted with a statement that the grievant informed the respondent that with this petition the grievant intends to pursue the grievance through as specified in Part XII, Section I.

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

Based on information contained in grievant's Petition for Redress, the committee shall determine whether the grievance is within the **charge** of Part XII, Section I. The committee may decide that none, some, or all of the issues in the Petition for Redress are within the **charge** of Part XII, Section I. Issues not within the **charge** of Part XII, Section I will receive no further attention. The committee's decision concerning grievance issues within the **charge** of Part XII, Section I 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 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. The grievant's and, where appropriate, respondent's Personnel File Checklist(s) will indicate that additional Personnel File records are located in the Faculty Senate Office.

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 I, the grievant may request:

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

1. Mediation

The **committee 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 committee chair as to **their** acceptance of mediation.⁸ **The rejection of mediation shall have no bearing on decisions or recommendations related to the grievance. Unless the grievant pursues the Chancellor Review**, if any party to the grievance rejects mediation **and the grievant requests a hearing**, the **committee chair** will **notify the parties** that the committee will meet to set a grievance hearing date (Step Four).

If the grievant and the respondent accept mediation, the Faculty Senate Office administrator will secure a mediator.^{9,10} The parties to the grievance will inform the **committee 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 the Chancellor Review**, if no acceptable mediator can be located, the **committee chair** will so notify the parties to the grievance and inform them that, **should the grievant request a hearing**, 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 **writes** to the committee chair that further mediation is unlikely to be successful.
- c. A party to the grievance **writes** to the **committee** chair that **the grievant or respondent** 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 **committee** chair to notify the parties to the grievance that the mediation process is being terminated and, **unless the grievant requested the 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. 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 **either the 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 **the Chancellor Review** or a hearing for remaining issues (Step Four).

2. Chancellor Review

Within 20 calendar days from the request for the Chancellor Review, the grievant shall provide **to the Chancellor, the respondent, and the committee 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 committee 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 committee chair and the respondent**, within 20 calendar days of the Chancellor's receipt of all materials.

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**. **Only if mediation has occurred**, the committee will **again** review the grievant's Petition for Redress, the committee's memorandum to the grievant **and respondent**, 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 subsection I. of Part XII, Section I 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, **and shall be communicated by a method that produces adequate evidence of delivery** to all parties to the grievance.

Otherwise, a hearing **will** be granted. The committee chair shall so notify the grievant and respondent, **setting** a time, date, and place for a hearing on the Petition for Redress.¹¹ The date of the hearing shall be **within 45 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 hearing committee cannot be assembled (The UNC Policy Manual 101.3.3).**¹²

The notice of hearing will request that both parties submit to the committee **the names of their counselors, and** all information and documents they intend to introduce at the hearing to support or defend their respective positions.¹³ The grievant's **submission** shall include 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 **submission** 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 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.

Ten copies¹⁴ 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 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. This number shall be preceded by a "G" for the grievant's submission and 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 committee chair.**

Once the copies as described above are received from both parties, one copy from the grievant's submission will be provided to the respondent and one copy **from the respondent's submission** will be provided to the grievant. The **hearing 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 hearing panel members and procedures for submission of new documents and handling of the witnesses**, will be distributed to **the hearing panel**, the grievant and **the** respondent no less than **5** calendar days prior to the hearing date.

E. Step Five (The Hearing)

The **hearing panel** 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 **hearing panel** 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 information presented as part of Step Four and at the hearing. Except as noted in **Part XII, Section I (III.D.)**, the power of the **hearing panel** shall be solely to hear the testimony of the grievant, the respondent, and witnesses.

The **hearing panel** chair shall preside and **be** 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 **hearing 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 **hearing panel** 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 **correspondence generated prior to the hearing as the 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 **hearing panel**, the grievant, respondent, or a witness may submit information during the hearing. All such information must be numbered, **with copies to be presented to the opposing party and members of the hearing panel**, and it becomes a part of the formal record of the hearing.

Only the grievant, the respondent, members of the **hearing 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 I (l).

The grievant is responsible for presentation of **the grievant's** case, including the testimony of witnesses. **Hearing 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 hearing **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. **Hearing panel** members may question the grievant, the respondent, or witnesses during the hearing. **When the hearing panel has 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 **or respondents'** final statement.

F. Step Six (Hearing Panel Report)

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

Copies of **the hearing panel's** report will be available to the grievant and respondent **for their retrieval from the Faculty Senate Office.** A copy of the **hearing 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 **hearing panel** and all parties to the grievance until the grievance is closed.

If the **hearing panel** finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the **hearing panel** shall submit its report to the grievant,

respondent, **faculty chair**, and Chancellor. Within 20 calendar days the Chancellor shall in writing inform the grievant, respondent, **faculty chair**, and the **hearing panel** of the **Chancellor's** decision. The decision of the Chancellor is final.

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

If the **hearing panel** finds that some or all the grievant's contentions are supported and makes one recommendation or more in favor of the grievant, the **hearing panel** shall submit its report to the grievant, respondent, and **faculty chair**. Within 20 calendar days of the recommendations, the respondent shall, **with copies to the grievant and the faculty chair**, communicate in writing to the committee chair the **respondent's** response to the hearing panel recommendations. **Within 15 calendar days of receipt of the respondent's response, the grievant will inform the hearing panel chair 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. By memorandum, the grievant shall inform the Chancellor of the grievant's appeal and include a detailed explanation of the reasons for the appeal. A copy of the appeal memorandum shall be sent to **the respondent, hearing panel chair, and faculty chair**. The **hearing panel chair** shall forward **the grievant's appeal memorandum** and the **hearing panel** report along with all supporting documentation to the Chancellor.

If the grievant appeals or the **hearing panel** requests the Chancellor to make the recommended adjustment, the Chancellor's **decision shall be based** on the recommendations of **the hearing panel** and the record from the faculty grievance committee hearing. The Chancellor may, in **the Chancellor's** discretion, consult with the faculty grievance committee before making a decision. ([The UNC Policy Manual 101.3.2.IV.g](#)). The Chancellor's decision shall be communicated in writing within 20 calendar days to the grievant, respondent, **faculty chair**, and the Faculty Grievance Committee's **hearing panel members**. 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 **hearing 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 hearing panel's report on its interpretation of Part XII, Section I (I.) of the *Faculty Manual*, the Chancellor shall withhold the Chancellor's decision, and inform the **hearing panel**, all parties to the grievance, and the **faculty chair** of those areas of disagreement within the required 20 calendar days. The **hearing panel chair** will then request the **faculty chair** to begin the normal interpretation process as set forth in the *Faculty Manual*. It is expected that the **faculty chair** will expedite this request. Upon completion of the interpretation process, the Faculty Grievance **Committee's hearing panel** will make any necessary

recommendations. The report will be distributed in accordance with Part XII, Section I (III.F.) with the grievant's rights to appeal intact.

G. Step Seven (Appeal to Board of Trustees)

1. Decisions which may be appealed.
 - a. If the **hearing panel** 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 **hearing panel** in favor of the grievant, 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 grievant's** 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 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 **10** 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 (**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 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 communicate¹⁵ 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 **summer months**, 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 (1., below), and claims an infringement of one or more of the 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 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.

2. **The basis for a request for a hearing must be found in 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](#)¹⁶; (b) the decision was attended by a material procedural irregularity¹⁷.**

Ten copies of Petition for Redress, which should not exceed 20 pages, shall be addressed to the **committee chair** and delivered to the Faculty Senate **Office**. Upon receipt of the grievant's Petition for Redress the **committee** 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 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 **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 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 when a Petition for Redress is received during **summer months**, official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.

The committee **chair** shall notify the grievant, the respondents, the **faculty** chair, 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 committee 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 (grievant) or to defend (respondent) the grievance. The **grievant's** and respondent's information must 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 **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 committee's **hearing panel** 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. The **hearing panel** may explore issues raised by any party to the grievance that are concretely based on issues raised in the Petition for Redress. The **hearing panel's** responsibility is limited to issuing recommendations based on the Petition for Redress, information and documentations **submitted prior the hearing**, and information developed during the hearing. The power of the hearing panel shall be solely to hear the testimony of the grievant, the respondent, and witnesses.

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

The **hearing panel** chair shall then enter into the hearing record **correspondence generated prior to the hearing as the committee's Exhibit C, and information submitted (above)** by the grievant and the respondent **as Exhibits G and R**. It is expected that the hearing will be limited to this information. **However, with approval of the committee, the grievant, respondent, or a witness may submit information during the hearing. All such information must be numbered, with copies to be presented to the opposing party and members of the hearing panel, and it becomes a part of the formal record of the hearing.**

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

The grievant is responsible for presentation of **the grievant's** case, including the testimony of witnesses. **Hearing panel** members may question the grievant, the respondent or witness(es) at any time during the hearing. After each of 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 hearing **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. **Hearing panel** members may question the grievant, the respondent, or witnesses during the hearing. **When the hearing panel has no further questions**, the grievant is given the opportunity to make a **10-minute** final statement, and then and then **a total of 10 minutes is available for the respondent's or respondents'** final statement.

D. Hearing Panel Report

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

Copies of the **hearing panel's** report will be available to the grievant and respondent **for their retrieval from the Faculty Senate Office**. A copy of the **hearing 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 **hearing panel** and all parties to the grievance until the grievance is closed.

The **hearing 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 **hearing panel's** actions for each of these findings are noted below.

a. Do Not Support the Grievant's Contentions

If the **hearing panel** finds that the grievant's contentions are not supported or makes no recommendations in favor of the grievant, the **hearing panel** shall submit its report to the grievant, respondent, **faculty chair**, and Chancellor. Within 20 calendar days the Chancellor shall in writing inform the grievant, respondent, faculty chair, and grievance **committee's hearing panel** of his/her **the Chancellor's** 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 **hearing panel** finds that the grievant's contentions are supported and makes recommendations in favor of the grievant, the **hearing panel** shall submit its report to the grievant, respondent, and **faculty chair**. Within 20 calendar days of the recommendations, the respondent shall, **with copies to the grievant and the faculty chair**, communicate in writing to the ~~committee~~ **hearing panel chair** the **respondent's** response to the hearing panel recommendations. Within 15 calendar days of receipt of the respondent's response, the grievant will inform the **hearing panel chair** if the adjustments are satisfactory or not satisfactory. If the respondent's adjustments are not consistent with the recommendations of the **hearing 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 noted below.

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

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

The **hearing 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 **hearing panel**. The Chancellor may, at **the Chancellor's** discretion, consult with the **hearing 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 **hearing panel**, but the final campus-based decision is the **Chancellor's**. Within 30 calendar days of receipt of the **hearing panel's** request, the **Chancellor** will inform the grievant, respondent, **hearing panel chair**, and **faculty chair** of **the Chancellor's** decision. If the **Chancellor** does not support the **hearing panel's** recommendation, the Chancellor is to inform the grievant that **the grievant** 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 **hearing panel's** recommendations [from b.) or c.) above]

based on its interpretation of Part XII, Section I of the *ECU Faculty Manual*, UNC Code or Policies, the Chancellor shall withhold the Chancellor's decision, and inform the **hearing panel**, all parties to the grievance, and the **faculty chair** of those areas of disagreement within the required 30 calendar days. The **hearing panel** 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 Part XII, Section I (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 **the grievant's** appeal and include a detailed explanation of the reasons for the appeal. A copy of the appeal memorandum shall be sent to the **hearing panel chair and faculty chair**. Upon receipt of the grievant's appeal, the **hearing panel** chair shall forward the **hearing panel's** 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 **hearing panel** and may, at the **Chancellor's** discretion consult with the committee ([The UNC Policy Manual 101.3.2.IV.g](#)). It is expected that the **Chancellor** will give deference to the advice of the faculty **hearing panel**, but the final campus-based decision is the **Chancellor's**.

Within 30 calendar days of receipt of the **hearing panel's** recommendations, the **Chancellor** will inform the grievant, respondent, **hearing panel chair and faculty chair of the Chancellor's** decision. If the **Chancellor** does not support the **hearing panel's** recommendation, the Chancellor is to inform the grievant that the **grievant** may appeal to the Board of Trustees. This appeal process is described in subsection III.G. The decision of the Board of Trustees is final and may not be appealed to the Board of Governors.

V. Annual Report

A preliminary report will be submitted to the Faculty Senate Office on May 31 of the current year. At the second meeting of the Faculty Senate, the Grievance Committee chair shall report on grievances from August 31 of the preceding year until September 1 of the current year. Such reports shall protect the confidentiality of the grievance proceedings and parties. The following form and information will be used (example from spring 2013).

Faculty	Tenured, Probationary, or Fixed Term Appointment	Tenured
Step 1	Meet with Respondent	YES
Step 2	Petition for Redress	YES
Step 3	(45 days) Mediation and/or (20 days) Chancellor Review	NO
Step 4	(45 days) Request for Hearing	35 days; YES
Step 5	The Hearing	YES
Hearing Panel Report	In favor of	Grievant
Terminated		NO
Appealed to Chancellor		YES
Chancellor's Decision	(20 days) in favor of	60 days; Respondent
Number of days	After Step 1 until the last completed event	160

VI. Application

ECU Faculty Manual Part XII, Section I 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 *ECU Faculty Manual Part XII, Section I* by the East Carolina University Board of Trustees.

VII. 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 **is** 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 (**if still an employee of ECU**). 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. **"The respondent" is used in the singular form, even where it may stand for more than one person.**

³The committee may waive the time requirement if, in the committee's opinion, there are extenuating circumstances despite due diligence.

⁴If 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.

⁵A 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.

⁶**The 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.

⁷ **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. With copies to the opposing party, procedural questions may be emailed to the committee chair, whereas all non-procedural communications should be delivered in print to the Faculty Senate Office. The parties to the grievance may request that non-email communications from the committee chair be available for their retrieval from the Faculty Senate Office. Otherwise, the parties agree that all**

communications from the committee chair, including e-mail, will be sent to their university addresses.

⁸Once all parties to the grievance have accepted mediation, the grievant shall not take the **grievant's** 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 Part XII, Section I, ending administrative review of the grievance.

⁹To 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.

¹⁰Procedures for the origination of purchase orders and payment for services of the mediator will be developed and administered by the **faculty chair**.

¹¹Scheduling a committee hearing during the summer months is complicated by the absence of **some** faculty and teaching schedules **of remaining faculty**. 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.

¹²If 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.

¹³Such 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.

¹⁴The 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.

¹⁵**The parties to the grievance may request that non-email communications from the committee chair be available for their retrieval from the Faculty Senate Office. Otherwise, the parties agree that all communications from the committee chair, including e-mail, will be sent to their university addresses.**

¹⁶**In no event shall a non-conferral decision of early permanent tenure be based upon (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) 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 (c) personal malice ([The UNC Policy Manual 101.3.1.II.B](#)).**

¹⁷"Material procedural irregularity" means 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, which were in effect when the initial decision 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](#)).