

EAST CAROLINA UNIVERSITY FACULTY MANUAL

PART XII

Faculty Appellate Provisions

PART XII – FACULTY APPELLATE PROVISIONS

Revised 04-21

SECTION I

General Appellate Procedures and Reviews of Non-Reappointment, Non-Conferral of Tenure at the End of the Probationary Period, Discharge or Imposition of Serious Sanctions, and Termination Based on Institutional Considerations.

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- A. The Faculty Appellate Committee, established through the Bylaws (*Faculty Manual*, Part II, Section II) of the ECU Faculty Senate, shall serve as a pool for populating appeals panels for the four appellate processes covered by provisions of Part XII of this Faculty Manual. These are:
- 1) Hearing Panel (Section I.II),
 - 2) Due Process Panel (Section I.III),
 - 3) Reconsideration Panel (Section I.IV)
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Because hearings in matters of non-reappointment or conferral of permanent tenure can present complex and difficult questions of fact, policy, and law, and because of the central role of the panel in gathering and preserving the evidence upon which most subsequent decisions related to the matter will be based, it is important for the chancellor to ensure that Faculty Appellate Committee members, as well as relevant administrators and aggrieved faculty members, are appropriately trained in accordance with guidelines and procedures jointly established by the faculty officers and chancellor.

B. At its initial organizational meeting each year, the Faculty Appellate Committee will elect a steering committee of four individuals, each responsible for taking the lead in processing requests for hearings before one of the four respective types of appellate panels. These individuals will be designated as the “appellate chair” for grievances in their respective areas. Once constituted, the steering committee will elect a Chair and Secretary.

C. To determine panelists for appellate hearings, at the beginning of each academic year, the steering committee will develop a rank order for all members of the Faculty Appellate Committee by random lottery. Individuals will be asked to serve on panels in order of lottery rank, except when disqualified because of a conflict of interest or skipped over based on inappropriate rank for the

process in question. Conflicts of interest include, but are not limited to, those cases in which Appellate Committee members are from either the grievant's or respondent's relevant department, unit, college, or school, or with whom either the grievant or respondent has had an amorous relationship, or is related by blood, law, or marriage (as defined in UNC Policy Manual 300.4.2 and 300.4.2.1[G]). Individuals will not be asked to serve on a second panel until all eligible Appellate Committee members have already served, unless otherwise ruled out by conflicts of interest, at which time the steering committee will return to the top of the ranked list and proceed through the Appellate Committee membership again in the same order.

D. A request for an appeal panel is directed to the chair of the Appellate Steering Committee. The steering committee will determine the appropriate appellate process to be followed and the steering committee member responsible for that process (appellate chair for that area) will take the lead in further actions on that appeal request. The specified appellate chair will assemble a panel of five regular members and one alternate based on the rank order of Appellate Committee members. Once established, the panel will elect a chair and secretary, and follow the appropriate provisions, detailed below, for the specific type of appeal filed.

E. Notwithstanding anything in this document, the chancellor may extend any deadline for a reasonable amount of time in the best interests of the university. The chancellor will promptly inform grievants, respondent(s), the panel, the Chair of the Faculty and the vice chancellor with supervisory authority of the timing and basis of a deadline extension.

II. Descriptions of Grievants and Respondent(s)

A. A grievant is any faculty member or members who seek(s) the remedies afforded by the provisions of Part XII of the *Faculty Manual*. Grievants must be current faculty members of East Carolina University. If a faculty member's employment ends voluntarily during the grievance process, prior to the end of employment the grievant may request the chancellor to allow the grievance to continue. Copies of such a request must be provided to the appellate chair. The chancellor should respond to such a request, with a copy to the appellate chair, within 30 calendar days.

B. A respondent is the person or persons identified by a grievant as the individual(s) 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. "Respondent" may be used in the singular form, even where it stands for more than one person. Named respondents must be current employees of East Carolina University. If a named respondent is a former administrator and, therefore no longer in a position to provide a remedy regarding grieved issues, the person who presently occupies the administrative position will be considered as a substitute respondent for that purpose. If still an ECU employee, the former administrator may remain as a respondent or be called as a witness as determined by the Panel. An individual or a departmental/unit committee and/or its chairperson may be named as a respondent.

III. Annual Reports

Annually, the Appellate Committee will write a report specifying the number of each type of appeal, the outcomes, and the duration of the process, as well as any other concerns that occur to the committee. The report will be submitted to the Faculty Governance Committee for review.

IV. Jurisdiction of the Board of Governors

It is the Board of Governors expectation that campus matters will be addressed appropriately at the constituent institution. Therefore, the board will not hear appeals of decisions that have been addressed through the appellate provisions of the ECU Faculty Manual. Under extraordinary

circumstances, as solely determined by the Board of Governors, the Board may exercise its discretion to review any matter that has not first been brought to the attention of the designated institutional administrator, chancellor, or president for appropriate review and handling. The Board of Governors may in its sole discretion conduct hearings, whether before the full board or a designated standing or special committee of the board. Such hearings shall be limited to matters as the Board of Governors deems appropriate. All appeals addressed to or requests for hearings by the Board of Governors, from whatever source, shall be transmitted through the president.

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I. Deadlines for Review

Failure to submit the review documents specified in this section within the time periods allotted constitutes a waiver of the right to have the decision reviewed by ECU faculty committees, institutional authorities, or the UNC Board of Governors; however, before the expiration of the deadline the faculty member may request an extension, provided that the request is made in writing and presented to the appellate chair for grievances covered by Part XII, Section I.II. The Appellate Steering Committee shall decide on an extension within 10 calendar days of receiving a request. 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 steering committee cannot be assembled.

II. Request for a Hearing Panel

Within 25 calendar days of receiving written notice from the vice chancellor of non-reappointment or non-conferral of permanent tenure, a faculty member (hereafter, the complainant) may request a review of the decision before a Hearing Panel.

1. The Hearing Panel

The Hearing Panel (hereafter, "the panel") shall be composed of five members and one alternate each of whom is a full-time, permanently tenured voting faculty member without administrative appointment (as per Part IX, Section IV). The alternate shall attend all sessions of the hearing and replace a regular member should that member be unable to attend the entire hearing. Members shall be chosen in accordance with the procedures for election of the Appellate Committee specified in the Bylaws of the East Carolina University Faculty Senate and provisions for appointment of appellate panels specified in Part XII, Section I.I. Upon organization, the members of the Hearing Panel shall elect a chair and secretary. Should either officer be absent at the beginning of a hearing, the panel members shall elect an alternate for the purposes of the hearing. A quorum for the panel shall be the five members or four members and the alternate.

When the panel is convened to consider any matter associated with a complainant's request for a hearing, those Appellate Committee members who (i) hold an appointment in the complainant's academic unit, (ii) might reasonably expect to be called as witnesses, (iii)

might reasonably expect to be asked to serve as an advisor (see subsection III.2, Conduct of the Hearing) to any party of the hearing, or (iv) may have any other conflict of interest should be disqualified from participation on a panel related to the specific request for a hearing. The complainant and those individuals or groups who are alleged to be responsible for the action or actions described by the complainant in the request for the hearing [hereafter, the respondent(s)] are permitted to challenge panel members for just cause. The other members of the panel, in consultation with the Appellate Steering Committee, will decide on any potential disqualifications if a panel member is challenged but wishes to remain.

When membership of the panel falls below the specified five members and one alternate, the appellate chair will select additional members of the Appellate Committee to the panel as specified in Part XII, Section I.I of the *Faculty Manual*.

The panel may at any time consult with an attorney in the office of the University Attorney. The consulting attorney should not have present or prior substantive involvement in the matter that gave rise to the hearing, nor advise the University administrator(s) substantively regarding the panel's recommendation(s) during the review process.

2. Initiation of the Hearing Process

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 [Chapter 100.1, Section 604B of The Code of The University of North Carolina](#); (b) the decision was attended by a material procedural irregularity such that doubt is cast on the integrity of the decision not to reappoint. In addition, the University Equal Employment Opportunity policy prohibits employment discrimination based on sexual orientation.

Chapter 100.1, Section 604B of The Code of The University of North Carolina states: "*In no event shall a decision not to reappoint a faculty member be based upon (1) 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 (2) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees; or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual.*"

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 of 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.” ([UNC Policy Manual Policy 101.3.1 II.B](#))

"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 that were in effect when the initial decision not to reappoint or not to confer permanent tenure was made and communicated. The Hearing Panel 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)

The complainant's request for a hearing must specifically identify and enumerate all reasons for the request. The request must include the following: a) a description that is as complete as possible of the actions or the failures to act that support each specified contention; b) identification of the respondent(s); c) an enumeration and description of the information or documents that are to be used to support the contention (copies of the described documents are to be made a part of the request for a hearing); d) identification of persons who may be willing to provide information in support of the contention; and e) a brief description of the information those persons identified in (d) may provide, and f) a copy of the vice chancellor's notice of non-reappointment or non-conferral of permanent tenure. The complainant's request for a hearing shall be made to the appropriate appellate chair and delivered to the Faculty Senate office by a method that provides delivery verification and is consistent with [UNC Policy 101.3.3](#). The Faculty Senate Office will promptly notify the appropriate vice chancellor.

III. Procedures for the Hearing.

1. Time and Date of Hearing

After the membership of a Hearing Panel is determined by the Appellate Steering Committee, the panel chair shall provide a complete copy of the request for a hearing to the individuals named in the request for a hearing. The panel shall set the time, date, and place for the hearing. The date for the hearing must be within 42 calendar days after receiving the request, except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts a panel cannot be assembled. Once determined, the panel chair shall notify the complainant, the respondent(s), the chair of the faculty, and the chancellor, of the time, date, and place of the hearing. At least 21 calendar days before the hearing, the complainant shall notify the panel, the respondent(s), the chair of the faculty, and the chancellor of the identity of the complainant's advisor, if any, and whether or not the advisor is an attorney ("attorney" is defined as anyone with a Juris Doctor, or other recognized law degree, regardless of whether or not that person is licensed to practice law in the State of North Carolina and/or whether or not that person is "representing" the employee). Within 14 calendar days before the hearing, the complainant and respondent(s) will submit documents and a list of witnesses to be used in the hearing along with a brief statement of the relevance of each witness.

2. Conduct of the Hearing

The panel chair is responsible for conducting the hearing and maintaining order. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to the panel members and alternate, the complainant, one person who may advise the complainant, the respondent(s), and one person who may advise the respondent(s). If there is more than one respondent, the respondents will designate a spokesperson for the hearing. The persons advising the complainant and respondent(s) may not take an active part in the proceedings. The person advising the respondent(s) at the hearing may be either an East Carolina University faculty member (with or without administrative appointment) approved by the chancellor, or an East Carolina University attorney under the condition that the complainant is accompanied by an attorney. Other persons (witnesses) providing information to the panel shall not be present throughout the hearing, but shall be available at a convenient location to appear before the panel as appropriate.

A professional court reporter must be used to record and transcribe the hearing (Faculty Senate Resolution #03-37). Any such record is a part of the personnel inquiry and must be treated with appropriate confidentiality. Only the immediate parties to the controversy, the responsible administrators and attorneys, and the members of the University governing boards and their respective committees and staff are permitted access to such materials. (Faculty Senate Resolution #03-49)

The hearing shall begin with an opening statement by the panel chair. This statement shall be limited to explaining the purpose of the hearing and the procedures to be followed. The hearing chair explicitly will note that the panel shall consider only information bearing on the allegations presented in the complainant's request for the hearing.

Following the opening remarks by the panel chair, the complainant shall present his or her contentions and any supporting witnesses and documentary evidence. The respondent(s), through their spokesperson, may then reply to these contentions and present any supporting witnesses and evidence. During these presentations, the complainant, and the respondent(s), through their spokesperson, may cross-examine opposing witnesses. For purposes of clarification, panel members may question witnesses, including the complainant and any respondent or spokesperson. At the conclusion of the hearing, the complainant may make a summary statement of up to ten minutes in duration. If the complainant elects to do so, then the respondent(s), through their spokesperson, will be given the same opportunity.

IV. Procedures After the Hearing

After the hearing, the panel shall meet in executive session within 3 calendar days and begin its deliberations on whether to sustain or not sustain the allegations stated in the request for the hearing. In reaching decisions on which the panel's written recommendations to the chancellor shall be based, the panel shall consider only the evidence presented at the hearing and such written or oral arguments as the committee, in its discretion, may allow. The complainant shall have the burden of proof. The standard applied by the panel shall be that the preponderance of the evidence establishes that a basis for the complainant's contentions is found in one of the reasons listed in subsection II.2, "Initiation of Hearing." Preponderance is defined as the greater weight of evidence and its probable truth or accuracy, and not the amount of evidence presented.

Within 14 calendar days of finishing its deliberations the panel shall provide the complainant, respondent(s), and the chancellor with a copy of the panel's report and, a copy of the court reporter's transcript of the hearing (Faculty Senate Resolution #03-37).

If the Hearing Panel determines that the complainant's contention has not been established, it shall, by simple, unelaborated statement, so notify the complainant, the respondent(s), the chair of the faculty, and the chancellor. Such a determination confirms the decision not to reappoint or not to confer permanent tenure.

If the Hearing Panel determines that the complainant's contention has been satisfactorily established, it shall notify the complainant, the respondent(s), the chair of the faculty, and the chancellor by written notice and shall recommend further substantive review.

Within 42 calendar days after receiving the recommendation of the Hearing Panel and the transcript, the chancellor shall notify the complainant, the respondent(s), the chair of the faculty, and Hearing Panel chair what further substantive review, if any, will be made of the original decision not to reappoint or not to confer permanent tenure. If the chancellor is considering taking action inconsistent with the panel's recommendations, the chancellor shall request within 14 calendar days that a joint meeting with the panel occur. At the joint meeting, the chancellor will communicate his or her concerns and the panel will have an opportunity to respond. The joint meeting must occur within the 42 calendar-day period. No meeting is required if the chancellor decides to concur with the panel's recommendations.

The chancellor must base his or her decision on a thorough review of (1) the record evidence from the hearing and (2) the report of the panel. While the chancellor should give deference to the advice of the faculty panel, the final campus-based decision lies with the chancellor.

The chancellor will inform the complainant of a decision in writing by a method that produces adequate evidence of delivery. If the chancellor concurs in a recommendation of the committee that is favorable to the faculty member, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the faculty member, or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the chancellor's decision by filing a written notice of appeal with the Board of Trustees. This appeal shall be transmitted through the chancellor and be addressed to the chair of the Board of Trustees, by submitting such notice by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member's receipt of the chancellor's decision. The notice must contain a brief statement that alleges one or more of the following as the basis for the appeal: (a) that the campus-based process for reviewing the decision was materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered; (b) that the result reached by the chancellor was clearly erroneous; or (c) that the decision was contrary to controlling law or policy. The Board of Trustees' decision shall be made as soon as reasonably possible after receiving the faculty member's request for an appeal. This decision is final and shall end the University's appeals process.

SECTION I.III, Due Process Before Discharge or Imposition of Serious Sanctions

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I. Bases for Serious Disciplinary Sanctions or Discharge

A faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary sanctions. For purposes of the *Faculty Manual*, a faculty member serving in a fixed-term or probationary appointment shall be regarded as having tenure until the end of the term. During the period of such guarantees, the faculty member may be discharged from employment, suspended, or demoted in rank or serious sanctions may be imposed only for reasons of:

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

Classification of alleged conduct as one categorical basis for imposition of sanctions or discharge, when the conduct more appropriately meets the definition of another (e.g., willful, intentional neglect of duty might be considered misconduct), shall not be considered a deficiency in the charge if the conduct at issue is clearly referenced in the notice of intent to discharge and evidence of the nature and/or duration of the alleged conduct supports the severity of the sanction or discharge proposed.

These provisions do not apply to non-reappointment or non-conferral of permanent tenure at the end of the probationary period (governed by provisions in Part XII, Section I.II), or termination of employment based on institutional considerations (governed by provisions in Part XII, Section I.IV).

II. Notice to Faculty of Imposition of Sanctions or Discharge

The vice chancellor with supervisory authority shall provide written notice to the faculty member of intent to discharge from employment or to impose serious sanction, including a written specification of the reasons for the sanction. The notification shall be sent by a method

that provides delivery verification and is consistent with [UNC Policy 101.3.3](#). The notice shall include a statement of the faculty member's right, upon request, to a hearing by a Due Process Panel (Faculty Senate Resolution #99-10). If no written request for a hearing (see III. below) is received within 14 calendar days after receipt of this notification, the faculty member may be discharged or sanctions may be imposed without recourse to any institutional grievance or appellate procedure.

III. Request for a Hearing

A faculty member has 14 calendar days to request a hearing after receipt of written notification of the reasons for the sanction. A request for a hearing is made to the vice chancellor with supervisory authority, in writing by a method that provides delivery verification and is consistent with [UNC Policy 101.3.3](#). The vice chancellor shall notify the appropriate appellate chair of the need to convene a Due Process Panel within 10 calendar days of receiving this request.

IV. Due Process Panel

The Due Process Panel (hereafter, "the panel") shall be composed of five regular members and one alternate who shall attend all sessions of the hearing and replace, for the remainder of the process, a regular member who is unable to attend the entire hearing. Panel members shall be full time, permanently tenured voting faculty (as per Part IX, Section IV) without administrative appointment and be chosen in accordance with the procedures for election of the Appellate Committee specified in the Bylaws of the East Carolina University Faculty Senate, and appointment of appeals panels described in Part XII, Section I.I of this *Faculty Manual*. Upon organization, the members of the panel shall elect a chair and secretary. Should either officer be absent at the beginning of a hearing, the panel members shall elect an alternate for the purposes of the hearing. A quorum for the panel shall be the five members or four members and the alternate.

When the panel is convened to consider any matter associated with a faculty member's request for a hearing, those Appellate Committee members who (i) hold an appointment in the complainant's academic unit, (ii) might reasonably expect to be called as witnesses, (iii) might reasonably expect to be asked to serve as an advisor (see subsection V.B, Procedures for the Hearing) to any party of the hearing, or (iv) may have any other conflict of interest, should be disqualified from participation on a panel related to the specific request for a hearing. The faculty member and the vice chancellor with supervisory authority are permitted to challenge panel members for just cause. The other members of the panel will decide by majority vote on any potential disqualifications if a panel member is so challenged but wishes to remain (Faculty Senate Resolution #99-10).

When membership of the panel falls below the specified five members and one alternate, the appellate chair will select additional members of the Appellate Committee to serve on the panel as specified in Part XII, Section I.I of the *Faculty Manual*.

The panel may at any time consult with an attorney in the office of the University Counsel. The consulting attorney should not have present or prior substantive involvement in the matter that gave rise to the hearing, nor advise University administrator(s) substantively regarding the panel's recommendation(s) during the review process.

V. Procedures for the Hearing

A. Time and Date of Hearing

The Due Process Panel shall set the time, date, and place for the hearing. The panel shall accord the faculty member 30 calendar days to prepare a defense from the time it receives the faculty member's written request for a hearing. The panel may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member and vice chancellor. The panel shall promptly notify the affected faculty member, the vice chancellor with supervisory authority, and the chair of the faculty of the time, date, and place of the hearing. The panel ordinarily will endeavor to complete the hearing within 90 calendar days except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and, despite reasonable efforts, the panel cannot be assembled.

B. Conduct of Hearing

The hearing shall be concerned with the written specification of reasons for the intended discharge or imposition of a serious sanction. The panel chair is responsible for conducting the hearing and for maintaining order. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to panel members and the alternate, the faculty member requesting the hearing, advisor/attorney for the faculty member, the vice chancellor with supervisory authority, or their designee, and an advisor/attorney for the vice chancellor. The person advising the respondent(s) at the hearing may be either an East Carolina University faculty member (with or without administrative appointment) approved by the chancellor, or an East Carolina University attorney. Other persons (witnesses) providing information to the panel shall not be present throughout the hearing but shall be available at a convenient location to appear before the panel as appropriate. A professional court reporter must be used to record and transcribe the hearing (Faculty Senate Resolution #03-37). The hearing shall be closed to the public unless both the faculty member and the panel agree that it may be open.

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

VI. Procedures After the Hearing

After the hearing, the panel shall meet in executive session and begin its deliberations within three calendar days. In reaching its decisions the panel shall consider only the testimony and other materials entered or presented as evidence during the hearing and such written or oral arguments as the panel, at its discretion, may allow. The University has the burden of proof. In evaluating evidence, the panel shall use the standard of "clear and convincing" evidence in determining whether the institution has met its burden of showing that permissible grounds for

the discharge or serious sanction exist and are the basis for the recommended action. "Clear and convincing" is a higher standard than "preponderance" of evidence and must indicate that the University's case is substantially more likely to be true than not true.

Within 14 calendar days of finishing its deliberations or after the full transcript is received, whichever is later, the panel shall provide the faculty member and the chancellor with a copy of its report, including materials entered as evidence, and a copy of the court reporter's transcript of the hearing. In its report, the panel shall state whether it recommends that the intended sanction be imposed (Faculty Senate Resolution #03-37).

In reaching a decision, the chancellor shall consider only the written transcript of the hearing, including materials offered in evidence in the panel's hearing and the documents that constitute the record of the appeal, including but not limited to the notice of intent to discharge or impose sanctions, the faculty member's request for a hearing, and the report of the panel. Within 30 calendar days of receiving the report and the court reporter's written transcript of the hearing along with the materials offered in evidence at the hearing, the chancellor's decision shall be conveyed in writing to the panel and the affected faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3.

VII. Appeal of Chancellor's Decision

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

An appeal must contain a brief statement that alleges one or more of the following as the basis for the appeal: (1) that the process for making the decision was materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered; (2) that the result reached by the chancellor was clearly erroneous; or (3) that the decision was contrary to controlling law or policy.

This appeal shall be transmitted through the chancellor and be addressed to the chair of the Board. The faculty member must file the notice of appeal by certified mail, return receipt requested, or by another means that provides proof of delivery, within 14 calendar days after the faculty member receives the chancellor's decision. The notice of appeal shall be filed with the Board of Trustees within 14 calendar days after the faculty member receives the chancellor's decision. The appeal to the Board of Trustees shall be decided by the full Board of Trustees; however, the Board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three members.

The Board of Trustees, or its committee shall consider the appeal based on the written transcript of the hearing held by the Due Process Panel, including materials offered in evidence and the documents that constitute the record of the appeal, including but not limited to the notice of intent to discharge or impose sanctions, the faculty member's request for a hearing, and the report of the panel; however, at its discretion, the Board may hear such other evidence as it deems necessary, with the opportunity for rebuttal. The Board of Trustees' decision shall be made as soon as reasonably possible after the chancellor has received the

faculty member's request for an appeal to the Trustees. This decision is final and shall be the end of the University's appeal process.

VIII. Suspension During a Period of Intent to Discharge

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

SECTION I.IV, Appeals of Termination of Faculty Employment Based Upon Institutional Considerations

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I. Reasons Justifying Termination and Consultation Required

A. Reasons for Terminating Employment

The employment of a faculty member with permanent tenure or a faculty member holding a fixed-term or probationary appointment may be terminated by East Carolina University because of 1) demonstrable, *bona fide* institutional financial exigency, or 2) major curtailment or elimination of a teaching, research or public service program. Financial exigency is defined as a significant decline in the financial resources of the institution that is brought about by a decline in institutional enrollment or by other action or events that compel a reduction in the institution's current operations budget. If the institution faces financial exigency or needs to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's designee shall first seek the advice and recommendations of the academic administrative officers and faculties following the process defined in subsection I.B below.

This determination is subject to concurrence by the UNC President and then approval of the UNC Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the institution's contractual obligation to a faculty member cannot be met, the employment of the faculty member may be terminated in accordance with Section 605 B (1) of *The Code of The University of North Carolina* and the institutional procedures set out below.

B. Consultation with Faculty and Administrative Officers

If it appears that the institution will experience financial exigency or needs to consider a major curtailment or elimination of a teaching, research, or public-service program, the chancellor or chancellor's delegate shall seek the advice and recommendations of the academic administrative officers and faculties of the department(s) in question, from units representing complementary disciplines, and from other units that might be affected.

The chancellor or the chancellor's designee shall prepare a report that identifies specifically the state of financial exigency or the program change. The report should outline the options readily apparent to the chancellor at the time and must describe clearly any options that would or might involve terminations of faculty employment.

The chancellor's report shall be directed to the Educational Policies and Planning Committee (EPPC) for their written advice and recommendations. In considering this report the EPPC shall have access to information that formed the basis for the chancellor's report and may interview appropriate persons. The EPPC shall be provided a reasonable timeframe to prepare a response to the chancellor's report, to be submitted no later than a date determined by the chancellor.

Following receipt of the EPPC's report or expiration of the time allowed for submission of the report, should the chancellor decide to consider reducing a unit's faculty for reasons of financial exigency or major curtailment or elimination of a program, the chancellor shall promptly notify, in writing, any faculty member to be terminated following procedures outlined in section II below.

II. Termination Procedures

A. Consideration in Determining Whose Employment is to be Terminated

In determining which faculty member's employment is to be terminated for reasons set forth in Section 605 A of the UNC Policy Manual, the chancellor shall give consideration to tenure status, to years of service to the institution, and to other factors deemed relevant, but the primary consideration shall be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the institution.

B. Timely Notice of Termination

1. When a faculty member's employment is to be terminated because of major curtailment or elimination of a teaching, research, or public-service program, and such curtailment or elimination of program is not founded upon financial exigency, a permanently tenured faculty member shall be given at least twelve months of notice. A faculty member without permanent tenure shall be given notice in accordance with the requirements specified in subsection II.C below.
2. When a faculty member's employment is to be terminated because of financial exigency, the institution will make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as set forth in the preceding paragraph.

C. Type of Notice to be Given

1. An individual faculty member whose employment is to be terminated shall be notified of this fact in writing by a method that provides delivery verification and is consistent with [UNC Policy 101.3.3](#). This notice shall include: (i) a statement of the conditions requiring termination of the faculty member's employment; (ii) a general description of the procedures followed in making the decision; (iii) a disclosure of pertinent financial or other data upon which the decision was based; (iv) a statement of the faculty member's right to reconsideration of the decision by a faculty appellate panel if the faculty member alleges that the decision to terminate employment was arbitrary or capricious; and (v) a copy of this procedure on termination of employment.

2. For a period of two years after the effective date of termination of a faculty member's contract for only reasons specified in subsection I.A above, the institution shall not replace the faculty member in a comparably defined position without first offering the position to the person whose employment was terminated. The offer shall be sent by a method that provides delivery verification and is consistent with UNC Policy 101.3.3 to the address last furnished to the chancellor's office, and the faculty member will be given 30 calendar days after attempted delivery of the notice to accept or reject the offer. The offer to resume a terminated position shall provide for tenure status, rank, and salary at least equal to those held by the faculty member at the time of termination.
3. When requested by a faculty member whose employment has been terminated, the institution shall give reasonable assistance in finding other employment. Such assistance should include, for example, administrative assistance, access to the telephone (including long distance), University/unit stationery and postage, travel funds to professional meetings, and other assistance as deemed reasonable and appropriate in the profession.

D. Termination if Reconsideration is Not Requested

If, within 14 calendar days after receipt of required notice, the faculty member makes no written request for a reconsideration hearing, employment will be terminated at the date specified in the notice, and without recourse to any institutional grievance or appellate procedure.

III. Request for Reconsideration Hearing

Within 14 calendar days after receiving the required notice, the faculty member may request a reconsideration of the decision to terminate employment by a method that provides delivery verification and is consistent with UNC Policy 101.3.3. The request shall be submitted to the chancellor and shall specify the contention that the decision to terminate employment was arbitrary or capricious, and shall include a short, plain statement of facts that the faculty member believes support that contention. Upon receipt of such a request the chancellor shall, within 10 calendar days, notify the appropriate appellate chair of the need to convene a Reconsideration Hearing Panel.

IV. The Reconsideration Panel

The Reconsideration Panel (hereafter, "the panel") shall be composed of five members and one alternate, each of whom is a full time permanently tenured voting faculty member without administrative appointment. The alternate shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing. Members shall be chosen in accordance with the procedures for election of the Appellate Committee specified in the Bylaws of the East Carolina University Faculty Senate, and appointment of appeals panels described in Part XII, Section I.I of this Faculty Manual. A quorum for the panel shall be five members or four members and the alternate. If membership of the panel falls below the specified five members and one alternate, the appellate chair will appoint additional members of the Appellate Committee as described in Part XII, Section I of the *Faculty Manual*.

Upon organization, the members of the Reconsideration Panel shall elect a chair and secretary. Should either officer be absent at the beginning of a hearing, the panel members shall elect an alternate for the purposes of the hearing.

When the panel is convened to consider any matter associated with a faculty member's request for a hearing, those Appellate Committee members who hold an appointment in the faculty member's academic unit, those who might reasonably expect to be called as witnesses, those who participated directly in the decision to terminate the faculty member's employment, or those who may have any other conflict of interest should be disqualified from participation in the activities of a panel related to this specific request for a hearing. The faculty member and the chancellor, or the chancellor's designee, are permitted to challenge panel members for just cause. The other members of the panel, including the alternate, will decide by majority vote (excluding the panel member challenged) on any potential disqualifications if a panel member is challenged but wishes to remain.

The panel may at any time consult with an attorney in the office of the University Attorney. The consulting attorney should not have present or prior substantive involvement in the matter that gave rise to the hearing, nor advise the University administrator(s) substantively regarding the panel's recommendation(s) during the review, although individual attorneys may play the same role at different points in the process.

V. Procedures for the Hearing

A. Time and Date of Hearing

The Reconsideration Panel shall set the time, date, and place for the hearing. The date for the hearing should be within 42 calendar days of the time the appellate chair receives the chancellor's notification of the faculty member's written request for a hearing. The panel chair shall notify the affected faculty member, the chancellor, and the chair of the faculty of the time, date, and place of the hearing. The panel may, upon the faculty member's written request and for good cause, postpone the date of the hearing by written notice to the faculty member, chancellor, appellate chair, and chair of the faculty.

B. Conduct of Hearing

The Reconsideration Panel's review of the faculty member's appeal shall be limited solely to determining whether the decision to terminate employment was arbitrary or capricious. The panel chair is responsible for conducting the hearing and for maintaining order during the hearing. Except as provided for herein, the hearing shall be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. Attendance at the hearing is limited to the panel members and alternate, the faculty member requesting the hearing, advisor or counsel for the faculty member, the chancellor or designee (hereinafter, the chancellor), and counsel for the chancellor. Other persons (witnesses) providing information to the panel shall not be present throughout the hearing, but shall be available at a convenient location to appear before the panel as appropriate. Upon request, the faculty member and the panel shall be given access to documents that were used in making the decision to terminate the faculty member's employment. A professional court reporter must be used to record and transcribe the hearing (Faculty Senate Resolution #03-37).

The hearing shall begin with an opening statement by the panel chair limited to explaining the purpose of the hearing and the procedures to be followed. Following the opening remarks by the panel chair, the faculty member or the faculty member's counsel shall present his or her contentions and any supporting witnesses and documentary evidence. The chancellor or the chancellor's counsel may then reply and present any supporting witnesses and evidence in rebuttal of the faculty members contentions or in general support of the decision to terminate the faculty member's employment. During these presentations, the faculty member or his or her counsel, and the chancellor, chancellor's designee, or his or her counsel, may question

any of the witnesses. Panel members may question witnesses for purposes of clarification. At the conclusion of the hearing, the faculty member or their advisor or legal counsel, and then the chancellor, designee, or counsel will be given the opportunity to provide summary statements.

VI. Procedures After the Hearing

The panel shall meet in executive session to begin its deliberations no more than three calendar days after the hearing. In reaching its decisions the panel shall consider only the testimony and other materials entered or presented as evidence during the hearing.

Within 14 calendar days of finishing its deliberations or receipt of the court reporter's transcript, whichever is later, the panel shall provide the faculty member and the chancellor with a copy of its report, including materials entered as evidence, and a copy of the court reporter's transcript of the hearing (Faculty Senate Resolution #03-37).

If the Reconsideration Panel determines that the contention of the faculty member has not been established, the report shall, by a simple unelaborated statement, so notify the faculty member, the chair of the faculty and the chancellor.

If the panel determines that the faculty member's contention has been satisfactorily established, the report shall so notify the faculty member, the chair of the faculty, and the chancellor, and provide a recommendation for corrective action by the chancellor.

Within 10 calendar days after receiving the recommendation, the chancellor shall send written notice to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty and the chair of the Reconsideration Panel, giving a decision and stating what modification, if any, will be made with respect to the original decision to terminate the faculty member's employment.

If the chancellor concurs in the recommendation of the Reconsideration Panel and withdraws the termination notice, the decision is final and written notification thereof shall be sent to the faculty member, the chair of the faculty, and the chair of the Reconsideration Panel. If the original termination decision is not reversed, the chancellor shall send written notice of such to the faculty member by a method that provides delivery verification and is consistent with UNC Policy 101.3.3, with copies to the chair of the faculty and the chair of the Reconsideration Panel. The faculty member may appeal the termination to the Board of Trustees within 10 calendar days following receipt of the chancellor's decision (Faculty Senate Resolution #99-4).

VII. Appeal to the Board of Trustees

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

The Board of Trustees or its designated committee shall consider the appeal based on the written transcript of the hearing held by the Reconsideration Panel, including materials offered in evidence and the documents that constitute the record of the appeal. These include, but are not limited to, the statement of termination, the faculty member's request for a hearing, and the report of the panel. At its discretion, the Board may hear such other evidence as it deems necessary,

with the opportunity for rebuttal. The Board of Trustees' decision shall be made as soon as reasonably possible after the chancellor has received the faculty member's request for an appeal to the Trustees. The decision of the Board of Trustees shall be final.

In compliance with UNC Code 602 (1) final approval of this Part XII, Section I involves the Faculty Senate, Chancellor, Senior Vice President for Academic Affairs, General Counsel, and President of UNC System.

Faculty Senate Resolution #12-17, February 2012
Faculty Senate Resolution #14-32, April 2014
Faculty Senate Resolution #19-69, April 2021
