

**NONREAPPOINTMENT HEARING PROCEDURES
THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO**

<http://provost.uncg.edu/documents/personnel/hearings.pdf>

**(Faculty Committee on Due Process¹)
(Adopted, Fall 1995)
(Revised, January 2004)
(Revised, October 2008)**

1. Purposes of the Hearing

Hearings in nonreappointment cases serve several important purposes. The primary purpose of the hearing is to give the faculty member (hereafter, "Petitioner") the opportunity to prove his or her contention that the decision not to reappoint was improperly made. Conversely, the hearing provides an opportunity for the decision maker, either the department head or the Chancellor, (hereafter, "Respondent") to answer the Petitioner's allegations. Another important purpose of the hearing is to create a record of testimony and documentary evidence for review by the parties, the Chancellor, and the Board of Governors, should the Petitioner seek further review of the nonreappointment decision.²

2. The Scope of Review

The scope of review by the faculty Committee on Due Process (hereafter, the "Committee") is specified in Section 4 of UNCG's Promotion, Tenure, Academic Freedom, and Due Process Regulations (hereafter, the *Regulations*). Section 4.D states that, "This review is limited to determining whether the decision not to reappoint was based upon any of the grounds stated to be impermissible in Section 4.A or whether the procedures followed to reach the decision materially deviated from prescribed procedures specified in Section 3.G and 3.H such that doubt is cast on the integrity of the decision not to reappoint." Section 4.A provides that the decision not to reappoint may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution (protecting freedom of speech, religion and association), (2) discrimination based upon the faculty member's race, color, creed, religion, gender, sexual orientation, ethnicity, or national origin; age, veteran status, political affiliation, or disability as defined by law, or (3) personal malice,³ (see policy 101.3.1 II.B for details)

¹ These procedures are drawn from Section 4 of UNCG's *Promotion, Tenure, Academic Freedom, and Due Process Regulations*. They also reflect the experiences of members of the UNCG faculty who have served on the Faculty Due Process Committee. These procedures have been revised in consultation with the University Counsel.

² The preservation of evidence in a form that will permit later review is mandated by the Board of Governors in The Administrative Manual of The University of North Carolina, III-I-11, adopted November 13, 1987.

³ Additionally, the review for or against reappointment may not be used as a forum for consideration of unproven allegations of personal or professional misconduct. Discussion or consideration of personal or professional misconduct is considered an improper basis for decision making unless the candidate was previously found guilty of that misconduct by an appropriate hearing body (e.g., the Committee on Due Process) or by a court. Personal or professional misconduct may include, but is not limited to, criminal offenses, actions which are covered by various

by decision makers toward the faculty member. Section 3 sets out the criteria and procedures upon which a faculty member is to be reviewed for reappointment and tenure.

The Committee's role is not to "second-guess" the professional judgment of administrators and colleagues responsible for making the nonreappointment decision. In other words, the Committee does not reexamine the merits of the faculty member's candidacy. Its sole function is to determine if the decision was based on one of the three impermissible grounds, or resulted from a material deviation from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint.

3. The Burden and Standard of Proof

Unlike dismissal or the imposition of other serious sanctions, the faculty member has no constitutionally protected expectation of reappointment or tenure.⁴ Thus, the burden of proof in nonreappointment cases rests with the Petitioner and not with the Respondent. The hearing begins with the presumption that the nonreappointment decision was properly made. That presumption continues unless and until the Committee is satisfied that the Petitioner has proven otherwise.

The standard of proof, i.e., the degree of proof required, is proof by a preponderance of the evidence. This means that the Petitioner must prove that his or her allegations of impropriety are more likely true than not true. The Committee determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses, in the light of experience and common sense judgments.

4. Pre-Hearing Procedures

A. Initial Evaluation of Written Request from Petitioner

Upon receiving a written request for a hearing from the Petitioner, the Committee chair will determine if the written request meets the requirements specified in Section 4.D of the *Regulations*, i.e., that it specifies the grounds upon which the Petitioner contends that the decision was impermissibly based or improperly arrived at, and a brief statement of facts that Petitioner believes supports the contention. If the chair determines that the written request does not meet the above requirements, the chair will request the Petitioner to modify the written request to meet the requirements. In cases where the initial decision not to reappoint was made by the Petitioner's department head, the chair should also determine that the Petitioner has had a conference with his or her department head and the department head's supervisor as specified in Section 4.B of the *Regulations*. The time limitations on initiation of the hearing specified in Section 4.D of the *Regulations* do not begin until the chair has determined that the Petitioner's written request has met the requirements specified in Section 4.D of the *Regulations*. A copy of the written request will be sent to the Respondent when it is accepted by the chair.

B. Decision by Committee Whether to Grant Request for Hearing

University conduct policies such as sexual harassment, undue favoritism, ethics in research, drug and alcohol abuse, or other actions which may be deemed as inappropriate.

If the Committee chair determines that the written request for a hearing meets the requirements of the *Regulations*, the chair will convene the Committee in order to consider the request. As specified in Section 4.D of the *Regulations*, the request for a hearing will be granted if the Committee determines that (a) the request contains a contention that the decision was impermissibly based or arrived at improperly and (b) the facts suggested, if established, will support the contention. This is determined by a majority vote. A denial of the request finally confirms the decision not to reappoint and the Committee chair will write a simple statement to the Petitioner denying the request. A copy of that letter will be sent to the Respondent. If the request is granted, a hearing will be scheduled to be held within twenty days⁵ after the request was received. The Petitioner and the Respondent shall be given at least ten days' notice of the hearing and each will be sent a copy of these procedures. The Committee chair may seek agreement of the Petitioner and Respondent to extend these time limits if those limits are impractical.⁶

C. Arrangements for Court Reporter and Transcript

The Committee chair will arrange for the hiring and payment of a professional court reporter through the Office of the Provost. The court reporter will be present and will make a verbatim record of the hearing and properly maintain a record of the documents received by the committee. 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 staffs, are permitted access to such materials. Any of these parties desiring a transcript may obtain one from the court reporter at his or her own cost.

D. Notification of attendance at hearing by a representative or attorney

Section 4.E of the *Regulations* permits each party to be accompanied to the hearing by a person of his or her choosing. If either party chooses to be accompanied by an attorney, the attorney may not actively participate in the hearing. No later than five days prior to the hearing, Petitioner will notify the Committee chair, Respondent and University Counsel if he or she intends to be accompanied to the hearing by an attorney. The University may elect to obtain counsel to represent Respondent at the hearing and may request a reasonable continuance of the hearing date for that purpose.⁷

E. Witnesses and Exhibits

⁵The *regulations* define "day" to mean any day except Saturday, Sunday or an institutional holiday. In computing any period of time the day in which notice is received is not counted, but the last day of the period being computed is to be counted.

⁶ University Counsel should be contacted regarding the proposed hearing date.

⁷ University Counsel's role is limited by the Board of Governors to that of providing advice to the Committee on procedural matters. An attorney on the University Counsel's staff may be appointed by the University Counsel to represent the Department Chair or Chancellor. In such case, the University Counsel and staff attorney shall have no communications concerning the merits of the case, but may discuss matters of procedure.

In the spirit of avoiding unfair surprise, and to facilitate the hearing process, the parties should provide a list of witnesses and copies of exhibits they intend to introduce at the hearing, to each other, and to the Committee chair, at least two days prior to the date set for the hearing. Unless voluminous, copies of exhibits should also be made for each Committee member. The failure to list a witness or to provide advance copies of all exhibits will not preclude a party from calling the witness or from introducing a document. However, the opposing party may be granted a temporary adjournment of the hearing if the Committee deems a delay necessary in order for that party to adequately respond to the new evidence. It is important to note that the Committee has no authority to compel the attendance of witnesses. However, the chair may request that the Chancellor ensure that all witnesses who are employees of the University are given permission to attend the hearing.

5. The Hearing

A. Call to Order-Quorum

The chair will call the hearing to order, determine whether a quorum exists, and explain procedures. A quorum consists of a simple majority of the total Committee membership.

B. Challenge to Committee Membership

Section 4.E of the *Regulations* provides that Committee members who hold an appointment in the Petitioner's department or school (in schools which have no departments), who will testify as witnesses, or who have any other conflict of interest, are disqualified from participating in that hearing. Following the call to order, each party will be given an opportunity challenge any Committee member's qualifications to serve. The Committee (excluding the Committee member under challenge) will decide whether to grant or deny that challenge based on a majority vote.

C. Opening Remarks

Starting with the Petitioner, each party will be given the opportunity to make opening remarks limited to five minutes each. The purpose of opening remarks is to orient the Committee to the nature of the case and to the facts the party intends to establish. Opening remarks are not evidence.

D. Petitioner's Case in Chief

At the conclusion of opening remarks, the Petitioner will present evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegations. All witnesses may be questioned by members of the Committee, by the Petitioner and Respondent, and by the representatives of the Petitioner and Respondent. Except under extraordinary circumstances, Petitioner will be limited to a total of three hours to present his or her case. Petitioner may reserve a portion of that three hours for rebuttal at the conclusion of Respondent's evidence. If the Petitioner wishes to reserve rebuttal time, Petitioner must notify the Committee of that fact at the beginning of the hearing.

E. Determination of Whether a Prima Facie Case Has Been Presented

After the Petitioner concludes his or her presentation, the Committee will recess the hearing and withdraw into closed session to determine whether Petitioner has established a prima facie case. A prima facie case is established if the Petitioner's evidence, standing without rebuttal and with the most reasonably favorable inferences to be drawn from them, proves his or her contention. The Committee's decision will be by majority vote. If the Committee determines that the Petitioner has not established a prima facie case, the chair will orally notify the parties of that decision and thereby end the hearing. That decision confirms the decision not to reappoint and will be confirmed in writing to both parties. If the Committee determines that Petitioner has established a prima facie case, it will resume the hearing.

F. Respondent's Case

The Respondent may present evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegations. All witnesses may be questioned by members of the Committee, by the Respondent and Petitioner, and by the representatives of the Respondent and Petitioner. Except under extraordinary circumstances, Respondent will be limited to a total of three hours to present his or her case.

G. Petitioner's Case in Rebuttal

At the close of the Respondent's case, the Petitioner may submit evidence limited to rebuttal of Respondent's evidence.

H. Closing Remarks

At the conclusion of all the evidence, Petitioner may make closing remarks to the Committee, followed by the closing remarks of Respondent. Since Petitioner bears the burden proof, Petitioner may also make brief final remarks in response to Respondent's closing. Closing remarks shall not exceed fifteen minutes per side.

I. Committee Deliberations and Decision

After closing remarks are concluded, the chair will close the hearing and the Committee will withdraw into closed session. If the Committee wants to see the transcript, the chair will adjourn the hearing and reconvene the Committee after the transcript is available, otherwise, the Committee may begin its deliberations immediately. The Committee's decision will be by majority vote. As discussed earlier, the Petitioner bears the burden of proving, by a preponderance of the evidence, his or her contention that the nonreappointment decision was impermissibly based or resulted from a failure to comply with the procedures set out in Section 3 of the *Regulations*.

6. Post-Hearing Procedures

If the Committee decides that the Petitioner has not established his or her case, it will so notify Petitioner and Respondent by a simple, unelaborated written statement. If the Committee determines that the Petitioner has established his or her case, it will so notify the Petitioner and Respondent by a

written notice that includes a recommendation for corrective action. Procedures beyond this point are specified in Section 4.G of the *Regulations*.