
FACULTY GRIEVANCE COMMITTEE POLICIES AND PROCEDURES THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

(Approved by the Faculty Senate, February 6, 2002)

(Amended by the Faculty Senate, October 1, 2003)

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(Non-substantive Revisions¹ approved by the Faculty Grievance Committee, December 23, 2016)

I. Purpose

In accordance with Section 607 of *The Code of the Board of Governors of The University of North Carolina*,² the Faculty Grievance Committee of The University of North Carolina at Greensboro shall hear, pursue adjustment through mediation, and advise with respect to the adjustment of grievances of members of the faculty.³ The power of the Committee shall be solely to hear representations by the persons directly involved in a grievance, to pursue voluntary adjustment by the parties through mediation, and to advise adjustment by the administration when appropriate.

II. What is Grievable

Grievances within the province of the Faculty Grievance Committee's jurisdiction shall include matters directly related to a faculty member's employment status and institutional relationships within the University, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, demotion in rank, discharge or termination of a faculty member,⁴ or that is within the jurisdiction of another standing faculty committee, may be considered by the Faculty Grievance Committee.

In accordance with its charge in the UNC Policy Manual Section 101.3.2 II b, UNCG assigns all grievances that arise from the denial of promotion where that denial does not also involve discharge or termination of employment to the Faculty Grievance Committee.

III. Filing a Grievance

A. Petition to the Grievance Committee

¹ Non-substantive revisions address the need to update the cross-references between the *Regulations* and the Committee's procedural document (e.g., ensuring that the new section numbers in the revised *Regulations* are cited in written procedures). Other changes simply clarify language for purposes of interpretation and for consistency between statements of policy and procedure.

² See also UNC Policy Manual, Section 101.3.2, *Grievances Filed Pursuant To Section 607 of The Code*.

³ The faculty grievance process is a process available to current members of the faculty. A faculty member whose employment is terminated during the pendency of a grievance proceeding is not entitled to continue to pursue the grievance. If the employment of the faculty member is terminated after the grievance is filed, the Chancellor may, however, at his or her discretion, determine that it is in the best interest of the University to continue the grievance process.

⁴ Faculty having a grievance involving suspension, discharge, termination or demotion in rank should consult the policies of the Due Process Committee.

A faculty member may petition the Faculty Grievance Committee for redress if meeting(s) with the responsible university official have not resulted in a resolution of the problem. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the grievant considers pertinent to the case. The faculty member shall deliver the petition to the Chair of the Faculty Grievance Committee and shall deliver a copy of the petition to the respondent administrator by certified mail or by another means that provides proof of delivery.

B. Mediation

1. Upon receipt of a petition, the Faculty Grievance Committee will first pursue mediation if the matter in dispute is within the jurisdiction of the Committee as defined in Section II above, if it appears the dispute can be resolved through such an approach, and if the parties to the dispute express their willingness to cooperate with such an effort. Neither party is obliged to engage in mediation; it is a consensual undertaking. A decision by either party not to pursue mediation will not be held against that party in any way and no blame will attach to either party if the mediation does not produce a settlement.
2. The mediator's role is limited to efforts at facilitating communication between the parties and encouraging the discovery of a mutually agreeable basis for voluntary resolution of the dispute. Mediation does not entail evidentiary hearings, findings of fact, or recommendations to responsible administrators for resolving the dispute. Attorneys for either party will not be allowed to participate in the mediation process. When mediation succeeds, the grievance is withdrawn and the parties may implement the solution to which they have agreed. Any such mediated agreement that the parties are able to negotiate will be embodied in a written agreement, signed by both parties. Any such agreement that obligates the University must be signed by a University official with the authority to bind the University concerning the particular agreement.
3. Mediators may not be members of the Faculty Grievance Committee. Mediators must have completed formal mediation training substantially equivalent to that required for certification by the North Carolina Administrative Office of the Courts or have been formally trained in mediation specifically designed for use in a university setting. Mediators may be trained members of the faculty or staff, outside mediators from the community, or mediators from other campuses within the University of North Carolina system.
4. No record of a failed mediation process will be produced by the mediator other than an unelaborated written statement to the Faculty Grievance Committee necessary to invoke the next step in the grievance process, i.e., that mediation was attempted but settlement was not reached. The mediator may not be called as a witness in any subsequent proceeding, nor may anything done or said by either party during a mediation process be referred to or used against either party in any subsequent proceeding.
5. Time limits concerning the formal resolution of grievances filed pursuant to Section 607 of *The Code* will be suspended for the duration of a mediation process being held pursuant to this policy.

C. Merits of Petition

If mediation is not deemed appropriate to the case or if it fails to produce a voluntary resolution, then the Faculty Grievance Committee must decide whether a hearing shall be held in response to the petition. The committee shall decide whether the facts merit a hearing so that submission of a petition shall not result automatically in a detailed consideration of the petition. The decision of whether or not a hearing shall be held is to be made by reference solely to the content of the grievant's petition. For the purposes of this decision *only*, the Committee must assume that the facts alleged in the petition are true. The petition shall be heard only if those facts state a grievance within the Committee's jurisdiction, as defined in Section II above, and if the facts show a violation of a right or privilege based on federal or state law, university policies or regulations, written unit or departmental policies or regulations, or commonly shared understandings within the academic community about the rights, privileges, and responsibilities attending university employment. Dismissal is required if the petition:

1. addresses a problem that is not within the Committee's jurisdiction (a matter that is the responsibility of another committee, e.g. suspension, discharge, termination, demotion in rank, non-reappointment, which are all matters handled by the Due Process Committee), or
2. fails to allege a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, university policies or regulations, written unit or departmental policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. Examples would be if the decision-maker disregarded an established standard for evaluation, relied on impermissible considerations such as race or sex, or failed or refused to consult with or receive information from mandated advisory bodies.

IV. Conduct of Hearing

If the Faculty Grievance Committee determines that the grievant has presented an apparently substantial issue within the purview of its responsibility, and if all other negotiation options have been exhausted, an evidentiary hearing will be held. The hearing will be closed to the public, and requires a quorum consisting of a majority of the eligible Committee members. Any member of the Faculty Grievance Committee whose role as adjudicator would present a conflict of interest in a specific case must recuse himself or herself from participation in the Committee's deliberations/decisions⁵.

In addition to the Committee, the grievant, and the respondent,⁶ only the following persons will be allowed to attend: witnesses or persons who have been asked to testify by either the grievant or the respondent (each witness will be present in the hearing room only during his or her individual testimony); and, in cases where the grievant has a disability that affects the grievant's ability to present his or her case, a non-lawyer assistant.

The hearing shall be tape recorded, and the recordings shall become the official record of the hearing. The Committee is to maintain a complete transcript of all evidence received. Only the evidence so compiled is to form the basis for Committee conclusions about the case and any resulting advice to the responsible

⁵ Following the call to order, each party will be given an opportunity to 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. If a quorum is lost through disqualification or the granting of challenges, the hearing will be adjourned until replacement members can be appointed.

⁶ In the event that the respondent is the Chancellor, the Chancellor may designate a representative to attend the hearing in his or her stead.
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administrator and the Chancellor. The transcript shall be retained for two (2) calendar years in the file under restricted access in the University Archives, and only the immediate parties to the controversy, the responsible administrators, and the members of the University governing boards and their respective committees shall be permitted access to such materials.

If it was not enclosed in his or her original filing, which was copied to the respondent, the grievant will provide the respondent a copy of his or her petition for redress no fewer than ten (10) working days prior to the hearing. The respondent and the grievant will provide each other copies of all documents to be submitted in evidence, if any, no fewer than five (5) working days prior to the hearing. A possible exception is any document submitted by the respondent containing confidential personnel information about another employee as determined by General Counsel, consistent with federal, state, and local statutes. If the respondent presents such confidential information, then the grievant will not be privy to that information without written consent from the other employee.

At the beginning of the hearing, the chair will:

- A. Introduce members of the Committee;
- B. Explain the hearing procedure to the parties, including
 - 1. the official record of the hearing,
 - 2. the order of presentation,
 - 3. the issues of confidentiality; and
- C. State the grievance.

It is understood that the spirit of the hearing shall be in the nature of an inquiry to ascertain the facts of the situation rather than as an adversarial proceeding. The hearing will be conducted by the chair of the Committee, guided by the sole purpose of providing a fair, balanced, and dispassionate hearing. The Committee shall hear the presentation by the grievant and the rebuttal and explanations of the respondent, and it shall advance such questions as are appropriate to establish the facts of the case.

The hearing will proceed in the following manner:

- 1. The grievant will have up to one (1) hour to present the charge, including the presentation of evidence in the form of documents and witnesses. Extensions may be granted with the permission of the Chair. The grievant must establish his or her case based on the preponderance of the evidence (which is the same as the greater weight of the evidence).
- 2. The respondent will have the right to question the grievant and the grievant's witnesses. The time spent questioning the grievant or the grievant's witnesses will not be deducted from the grievant's hour.
- 3. Committee members may directly question the grievant and the grievant's witnesses.
- 4. The respondent will have up to one (1) hour to respond to the charge, including the presentation of evidence in the form of documents and witnesses. Extensions may be granted with the permission of the Chair. The respondent may testify or may elect to remain silent.

5. The grievant may question the respondent and the witnesses. The time spent questioning the respondent or the respondent's witnesses will not be deducted from the respondent's hour.
6. Committee members may question the respondent and the respondent's witnesses. The time spent by the Committee questioning the parties or their witnesses will not be deducted from either party's hour.
7. The grievant may submit evidence, including testimony from witnesses, to rebut evidence presented by the respondent. The respondent and the Committee may question rebuttal witnesses.
8. The grievant will have up to five (5) minutes to make a final statement.
9. The respondent will have up to five (5) minutes to make a final statement.
10. The Committee chair will close the hearing and set a time for panel deliberations to begin at the earliest possible date when all those Committee members who participated in the hearing can be present. If all such Committee members are not reasonably available for deliberations, then deliberations may take place with a quorum of those Committee members who participated in the hearing. The deliberations may follow immediately upon the hearing. The chair will advise all hearing participants of the obligation of confidentiality and necessity of avoiding discussions among themselves except in regularly convened meetings.
11. The deliberations will continue until the Committee has reached a decision as to whether to make a recommendation. In coming to a decision, a majority of eligible voting members must concur. Committee members disqualified from the hearing may not be present during the deliberations, or vote on the outcome.
12. Findings must be based upon the standard of whether the faculty member experienced a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, University policies or regulations, written unit or departmental policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending University employment. The burden is on the grievant to establish by a preponderance of the evidence (which is the same as the greater weight of the evidence) that he or she has experienced such an injury.
13. If, after reviewing the petition or hearing the matter, the Committee determines that no adjustment in favor of the grievant is appropriate, it shall so advise the faculty member, the respondent and the Chancellor. The Chancellor shall notify the faculty member of her or his decision regarding the grievance as provided in item 16, below.
14. If, after hearing the matter, the Committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the Committee shall so advise the faculty member and the respondent administrator. The Committee's findings, opinions, and recommendations will be written and delivered to the respondent, with a copy to the grievant, normally within thirty (30) days after receipt of the request for review. Additional time may be requested by the chair of the Committee.
15. If the respondent so notified fails to make an adjustment that is advised by the Committee in favor of the faculty member, or a different adjustment satisfactory to the faculty member, within thirty (30) days, the Committee's findings, opinions and recommendations will be forwarded to the Chancellor.

The Chancellor shall notify the faculty member of her or his decision regarding the grievance as provided in item 16, below.

16. The Chancellor shall base his or her decision on the recommendation of the Committee and the record from the Committee hearing. The Chancellor may consult with the Committee before making a decision. The Chancellor's decision is the final administrative decision. The Chancellor shall notify the faculty member and the respondent administrator in writing of the Chancellor's decision. The notification shall include a notice of appeal rights, if any, and , if the decision may be appealed, it shall inform the grievant:
 - a. Of the time limit within which the grievant may file a petition for review by the Board of Trustees,
 - b. That a written notice of appeal containing a brief statement of the basis for appeal is required within the ten-day period and,
 - c. 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 which produces adequate evidence of delivery.

V. Proper Routes of Appeal

Further review may be had only in accordance with the provisions of the Board of Governors "Policy on Grievances Filed Pursuant to Section 607 of *The Code*," 101.3.2. An appeal must be based upon the record of the Committee's hearing and is permissible only under the following condition. If neither the relevant administrative official nor the Chancellor makes an adjustment that is advised by the Committee in favor of the aggrieved faculty member, then the faculty member may appeal to the Board of Trustees. The decision of the Board of Trustees is final.

If the Committee did not advise that an adjustment in favor of the grievant is appropriate, then the decision of the Chancellor is final and may not be appealed.

The Board of Trustees may delegate to a designated Committee the authority to make procedural decisions and to make final decisions on its behalf concerning appeals of faculty grievances submitted pursuant to Section 607 of *The Code*.

A. Timeline for Appeals

A grievant who seeks to appeal the Chancellor's disposition of his grievance must file written notice of appeal with the Board of Trustees by submitting such notice to the Chancellor, with adequate evidence of delivery, within 10 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 or from a Committee of the Board which 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 processing the appeal, the Board in its discretion may extend the time for compliance or it may dismiss the appeal.

B. 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.