

FACULTY GOVERNANCE COMMITTEE REPORT

Proposed Revision to the *ECU Faculty Manual*, Appendix D. Section V.
(additions are noted in **bold** print and deletions are noted by ~~strikethrough~~)

V. Procedures for Appeal of Notice of Non-Reappointment or Non-Conferral of Permanent Tenure

A. Deadlines for Appeals

Failure to submit the appeals documents specified in this section within the time periods allotted constitutes a waiver of the right to appeal the decision. 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 individual or committee who is next to consider the appeal. Decisions on requests for extension of time shall be made by the individual or committee who is next to consider the appeal.

B. Request for Hearing with the Faculty Hearing Committee

Within 25 working days of receiving written notice from the vice chancellor or chancellor of non-reappointment or non-conferral of permanent tenure, a faculty member (hereinafter, the complainant) may request a hearing before the Faculty Hearing Committee.

1. The Hearing Committee

The Hearing Committee shall be composed of five members and five alternates each of whom is a full-time, permanently tenured voting faculty member without administrative appointment. Members shall be elected in accordance with the procedures for election of appellate committees specified in the Bylaws of the East Carolina University Faculty Senate. Members and alternates shall be elected to three-year terms. A quorum for the committee shall be the five members or their alternates.

Upon organization, the members of the Hearing Committee shall elect a chair and a secretary. **The chair and the secretary of the committee are to be appropriately trained in accordance with guidelines and procedures jointly established by the faculty officers and chancellor.** Should any committee officer be absent at the beginning of a hearing, the committee shall elect an alternate officer for the purposes of the hearing.

When the committee is convened to consider any matter associated with a complainant's request for a hearing, those committee members who hold an appointment in the complainant's academic unit, those who might reasonably expect to be called as witnesses, those who might reasonably expect to be asked to serve as advisors (see Section V.D.2) to any party of the request for a hearing, or those who may have any other conflict of interest should disqualify themselves from participation in the activities of the committee related to this 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 (hereinafter, the respondents) are permitted to challenge committee members for cause. The other members of the committee will decide on any potential disqualifications if a committee member is so challenged but wishes to remain.

When, between elections, membership of the committee falls below the specified five members and five alternates, the chair of the faculty, in consultation with the Committee on Committees, shall appoint members to the committee. Vacancies on the committee will be filled by first moving alternates to members and by making appointments as alternates.

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Upon receipt of a request for a hearing, the chair of the committee shall determine the availability of the elected members and alternates, and shall select from those available one or more alternates, as necessary. The ranking of the available alternates for selection shall be determined by their years of service to the University. That available alternate who is most highly ranked shall attend all sessions of the hearing and shall replace a regular member should that member be unable to attend the entire hearing.

The committee may at any time consult with the University Attorney in matters of procedure. (See *Part VIII, Responsibilities of Administrative Officers.*)

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 Section 604B of The Code of The University of North Carolina; (b) the decision was attended by a material procedural irregularity.¹

"Material procedural irregularity" means a departure from prescribed procedures governing reappointment and conferral of permanent tenure that cast reasonable doubt upon the **integrity** validity of the original decision not to reappoint or not to confer permanent tenure. Whether a material procedural irregularity occurred shall be determined by reference to those procedures which were in effect when the initial decision not to reappoint or not to confer permanent tenure was made and communicated. The Hearing Committee shall ask the chancellor to certify what procedures were then in effect if that question is a matter of dispute.

The complainant's request for a hearing must specifically identify and enumerate all reasons for the request. The request must include (a) a description that is as complete as possible of the actions or the failures to act which support each specified contention; (b) the identification of the respondents; (c) 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 a hearing); (d) the 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. The complainant's request for a hearing shall be made to the chair of the Hearing Committee.

C. Validation of the Request for Hearing.

Validation of the complainant's request for a hearing is the first step in the hearing process. The Hearing Committee shall convene within 15 days after receipt of the complainant's request for a hearing. The committee shall notify the complainant of the meeting date by registered mail, return receipt requested. The committee shall meet in executive session and the meeting will be conducted according to the latest edition of *Robert's Rules of Order, Newly Revised*. The committee's evaluation of the complainant's request for a hearing shall be limited solely to the documents and information submitted as part of the complainant's request for a hearing.

¹ Appeals based on material procedural irregularity shall refer only to personnel actions which are initiated after the approval of material procedural irregularity as a basis for a request for a hearing.

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The complainant may submit additional documentation and information supporting the request for a hearing up to 72 hours prior to the committee meeting. All documentation and information submitted after the original request for a hearing must (a) support contentions set forth in the original request for a hearing and (b) be delivered to the chair in the same manner as the original request for a hearing. Such information or documentation shall be made a part of the original request for a hearing.

Documentation and information that do not meet criteria set forth in the previous paragraph will not be accepted and will be returned to the complainant.

The Hearing Committee's review of the complainant's request for a hearing shall be limited solely to determining whether the facts alleged by the complainant, if established, would support the contention that the decision not to reappoint or not to confer permanent tenure was based upon any of the grounds stated as impermissible in Section 604B of The Code of The University of North Carolina or was attended by a material procedural irregularity. Based on their review and evaluation of the submitted material, the committee shall decide whether the request for a hearing is to be validated.

If the request for a hearing is not validated, the complainant shall be notified by registered mail, return receipt requested, within 10 calendar days of the committee meeting. Such a determination confirms the decision not to reappoint or not to confer permanent tenure. (Faculty Senate Resolution #99-4, February 1999)

The complainant may accept the decision of the Hearing Committee not to validate or appeal to the chancellor within 10 calendar days of receipt of the Hearing Committee's decision. The chancellor, within 14 days of the complainant's appeal shall decide to confirm the committee's decision or shall support the complainant's request for a hearing. (Faculty Senate Resolution #99-4, February 1999)

The complainant may accept the chancellor's confirmation of the committee's decision not to validate the request for a hearing, or the complainant may appeal to the Board of **Governors** ~~Trustees~~ within 10 calendar days following receipt of the Chancellor's decision. ~~as provided in Section 501C (4) of the Code of the University of North Carolina and the regulations of the Board of Governors implementing that provision.~~ (Faculty Senate Resolution #99-4, February 1999)

If the committee validates the request for a hearing, or the decision not to validate the request for a hearing is not supported by the chancellor, the committee shall so notify the complainant by registered mail, return receipt requested, and begin the processes necessary to set the time and date for the hearing.

D. Procedures for the Hearing.

1. Time and Date of Hearing

If the request for a hearing is validated, the committee shall provide a complete copy of the request for a hearing to the individuals named in the request for a hearing. The committee shall set the time, date, and place for the hearing. The date for the hearing must be within 30 working days of the notification to the complainant that the request for a hearing was

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validated. The committee shall then notify the complainant, the respondents, the chair of the faculty, and the chancellor, of the time, date, and place of the hearing.

2. Conduct of the Hearing

The chair of the Hearing Committee 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 committee's members and alternates, the complainant, one person who may advise the complainant but who may not take an active part in the proceedings, the respondents, an East Carolina University faculty member (with or without administrative appointment) selected by the chancellor to represent the respondents in the conduct of the hearing, an East Carolina University attorney who shall advise the respondents and their representative but who may not take an active part in the proceedings, the chancellor, and an East Carolina University attorney representing the chancellor. Other persons (witnesses) providing information to the committee shall not be present throughout the hearing, but shall be available at a convenient location to appear before the committee as appropriate. ~~An audio recording or a court reporter's transcript of the proceedings shall be made.~~ For any hearing from which an appeal may be taken, a **professional** court reporter must be used to record and transcribe the hearing. (Faculty Senate Resolution #03-37, pending final approval) **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.**

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

Following the opening remarks by the committee chair, the complainant shall present his or her contentions and any supporting witnesses and documentary evidence. The respondents, through their representative, may then reply to these contentions and present any supporting witnesses and evidence. During these presentations, the complainant, and the respondents, through their representative, may cross-examine opposing witnesses. Committee members may question witnesses for purposes of clarification.

E. Procedures After the Hearing

After the hearing, the committee shall meet in executive session and begin its deliberations or shall adjourn for no more than two working days, at which time it shall reconvene in executive session to determine whether it sustains or does not sustain the allegations stated in the request for the hearing. In reaching its decisions the committee shall consider only the testimony and other materials entered or presented as evidence during the hearing. The complainant shall have the burden of proof by the greater weight of the evidence to establish that a basis for his or her contentions is found in one of the reasons listed in Section V.B.2.

● Within 10 working days of finishing its deliberations the committee shall provide the complainant, respondents, and the chancellor with a copy of the committee's report and a copy of the ~~audio recording or~~ court reporter's transcript of the hearing. (Faculty Senate Resolution #03-37, pending final approval)

If the Hearing Committee determines that the complainant's contention has not been established, it shall, by simple, unelaborated statement, so notify the complainant, the respondents, 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 Committee determines that the complainant's contention has been satisfactorily established, it shall notify the complainant, the respondents, the chair of the faculty, and the chancellor by written notice and shall recommend further substantive review.

~~Within 30 working days after receiving the recommendation of the Hearing Committee, the chancellor shall notify the complainant, the respondents, the chair of the faculty, and the chair of the Hearing Committee what further substantive review, if any, will be made of the original decision not to reappoint or not to confer permanent tenure.~~

~~The complainant may appeal an adverse decision to the Board of Trustees within 10 calendar days as provided in Section 501C (4) of the Code of The University of North Carolina and the Board of Governors regulations implementing that provision. (Faculty Senate Resolution #99-4, February 1999)~~

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* If the chancellor is considering taking action inconsistent with the committee's recommendations, the chancellor shall request that a joint meeting with the committee occur within 10 working days. At the joint meeting, the chancellor will communicate his or her concerns and the committee will have an opportunity to respond. The joint meeting must occur within the 30 working day period as referenced above. 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 committee. While the chancellor should give appropriate deference to the advice of the faculty committee, the final campus-based decision is the chancellor's.

The chancellor will inform the complainant of his or her decision in writing by a method that produces adequate evidence of delivery. In the event of an adverse decision, the chancellor's notice must inform the complainant: (1) that, within 10 calendar days of the complainant's receipt of the decision, the complainant may file a notice of appeal with the president requesting review by the Board of Governors in accordance with the Board of Governors Policy 101.3.1, (2) that a simple written notice of appeal with a brief statement of its basis is all that is required within this ten-day period, and (3) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely matter.

● The exercise of the Board of Governors' jurisdiction ~~under Section 501C (4) of the Code~~ is refined to insure that primary emphasis remains properly focused on the campus grievance procedures. Requests for appellate review will be screened to determine whether the Board

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● should consider the issues raised in a petitioner's request for review. The following basic standards will guide that screening process:

1. The Board will grant requests to review contentions that the grievance procedures followed by the campus in a particular case did not comport with University requirements that affect the credibility, reliability, and fairness of such inquiries, thereby arguably depriving the grievant of a valid opportunity to establish his or her contentions.
2. The Board will grant requests to review University policy issues implicated by a particular grievance, when the question appears to require intervention by the governing board to clarify the definition, interpretation, or application of such policies.
3. The Board will review questions about the sufficiency of the evidence to sustain the conclusion reached only if (a) the case involves a substantial interest of the grievant, e.g., tenure or reappointment and/or (b) the history of the case reveals disagreement, with respect to the sufficiency of the evidence to sustain the grievant's contentions, among the responsible decision makers, i.e., the hearing committee, the chancellor; ~~or the board of trustees~~²; if the responsible decision makers are in accord, normally no such appeal will be entertained by the Board of Governors.

● Under the foregoing prescriptions, it is necessary for prospective petitioners to evaluate their circumstances carefully, to understand the purposes of permissible appellate review, and to formulate clearly and concisely their statement of the one or more grounds on which they believe the Board should exercise its appellate jurisdiction. Thus, the first step in any appeal to the Board of Governors will be an evaluation by the Board, through a designated subcommittee, with staff assistance, of the grievant's written statement of grounds for appeal, to determine whether the issues sought to be raised warrant Board attention, as judged by the three basic standards.

● ²The board of trustees will remain responsible for reviewing, on appeal, a grievant's contention that the chancellor's decision (or affirmance of a faculty committee decision) was clearly erroneous.