

Final Report

Code 603/604 Review Committee

June 22, 2007

Committee Charge: On November 10, 2006, Senior Vice President Harold Martin charged the committee to review sections of the UNC Code dealing with various faculty and EPA discharge and appeal processes, generally encompassing Chapter VI of the UNC Code. The committee's responsibility was to make recommendations regarding ways to strengthen and streamline these processes.

Committee Membership and Process: Our committee included 12 members representing General Administration (Harold Martin, Leslie Winner and Charles Waldrup), campus provosts (Charles Harrington, Pedro Martinez and Larry Nielsen), campus legal staff (David Broome, Mary Elizabeth Kurz and Wanda Jenkins), and campus faculty members (Paul Gates, Gene Hughes and Delacy Stith). Professor Hugh Hindman (ASU) was appointed to the committee originally, but could not continue because he was on scholarly leave; Paul Gates replaced him after the first meeting. Dr. Martin and Ms. Winner did not participate in regular meetings, but provided input as needed. Dr. Stith was prevented from participating actively by his teaching schedule.

Our committee met in person and via conference call on seven dates (February 12 and 20, March 6 and 20, and April 10 and 24, May 8), generally for two-hour periods. We discussed specific issues according to a tentative agenda (see attachment), with opportunities for committee members to add agenda items as they wished. All meetings were announced and open to the public. Minutes of each meeting are attached.

Following suggestions from Vice President Martin and General Administration legal staff, we expanded our consideration to include most sections of Chapter VI of the UNC Code (primarily sections 603, 604 and 609), the post-tenure review process, and related sections of the code and policies as needed.

The active committee members are unanimous in their support of the recommendations that follow.

Recommendations:

The following recommendations comprise the narrative and other information regarding our proposed changes to Chapter VI of the UNC Code and related policies. Complete drafts of our recommended revision of the chapter itself and related policies is appended.

Section 600: No recommendations.

Section 601: No recommendations

Section 602:

Recommendation 1: Add a fourth reason for discharge of a faculty member, here and wherever appropriate, relating to unsatisfactory performance. Currently the reasons are incompetence, neglect of duty or misconduct; these reasons are generally considered in a narrow definition. Therefore, we recommend adding "unsatisfactory performance" to cover situations in which a faculty member has failed to perform his/her duties as expected for a substantial period of time.

Section 603:

The process for discharge or the imposition of serious sanctions requires substantial revision to make the process both efficient and effective. The current process allows 210 days for all steps to be concluded, not including two steps that carry no time limits (one of which is the conduct of the faculty panel appeal hearing). Our recommendations reduce the process by 75 days and set a reasonable limit for the faculty panel appeal hearing.

Recommendation 2: Combine the first two steps in the process (notification of intent to discharge or impose serious sanctions and specifications of reasons), saving 20 days.

Recommendation 3: Limit the time for conducting the faculty panel appeal hearing to 90 days, not counting days during summer or winter breaks. Although the time saved by this limit cannot be determined, we believe that the current practice of no limit often causes faculty panel hearings to drag on for many months.

Recommendation 4: Eliminate the possibility of an appeal to the campus Board of Trustees, saving 55 days. Beyond saving these days, this change would make the process consistent with other appeal processes in the UNC Code and would eliminate an awkward conflict-of-representation that occurs because campus legal staff cannot currently staff the Board of Trustees appeal after having staffed the chancellor's appeal and decision.

Recommendation 5: Eliminate the time limits currently specified for Board of Governors' actions on appeals, allowing the Board of Governors to remand the decision to additional review.

Recommendation 6: Revise the entire section to include mention of serious sanctions as an option in addition to discharge, to be consistent with the section title and obvious intention.

Recommendation 7: Add language, here and elsewhere, that establishes preponderance of evidence as the appropriate standard for judgment.

Post-tenure Review:

Although post-tenure review is not currently included in Chapter VI of the UNC Code, we believe that the process of post-tenure review should be considered in the same context as section 603 because 603 proceedings will emanate from post-tenure reviews if a faculty member is performing unsatisfactorily and has not been able to improve performance through the various post-tenure steps.

Furthermore, both faculty and administration feel that certain expectations of the current post-tenure review process cause an undue administrative burden on the university system with little real impact. Thus, for reasons of both efficiency and effectiveness, we recommend a substantial change in the post-tenure review process.

Our recommendations are embodied in a re-write of UNC Policy 400.3.3.1(G), "Guidelines on Performance Review of Tenured Faculty."

Recommendation 8: The PTR process should allow faculty members undergoing review to select either a peer or an administrative review. The administrative review should be conducted by the lowest appropriate administrative level (typically the department chair/head).

Recommendation 9: The dossier used for PTR review should be, at a minimum, a compilation of the previous five annual faculty reports plus a cover description of the faculty member's cumulative accomplishments and his/her goals and plans for the subsequent review period. This will accomplish the stated intention that previous annual reviews should be part of the PTR process.

Recommendation 10: If a PTR review is found to be unsatisfactory, the subsequent review must be a peer review. This assures that a peer review is conducted if the possibility of subsequent future negative actions exists.

Recommendation 11: Faculty should have an opportunity to respond to the assertions of unsatisfactory performance in post-tenure review, just as they are during the regular tenure and promotion process. The details of the response process should be formed at the institutional level, but might include a required review by the next higher level of administration if a finding of unsatisfactory performance is made, before which the faculty member could review and respond to the assertion.

Section 604:

Currently, section 604 is a mixture of matters relating to tenure-track faculty and non-tenure-track faculty. We recommend several steps to clarify the section.

Recommendation 12: Add appropriate language to all parts of section 604 to designate that the section covers tenure-track faculty only.

Recommendation 13: Add several process steps to section 604 D that define the appeal process to be consistent with appeal processes elsewhere in the UNC Code.

Recommendation 14: Create a new section in Chapter VI that addresses the appointment, notice and appeal conditions for non-tenure-track faculty (i.e., special faculty). The current wording in section 604 C is an appropriate model for the new section.

Section 605: No recommendations

Section 606: No recommendations

Section 607: No recommendations

Section 608: No recommendations (note: Some committee members wondered why this material related to students is included in Chapter VI, but we agree that because the chapter deals with academic freedom as well as tenure, this is the appropriate location for this material.)

Section 609:

This section nominally describes the kinds of appeals, hearings and other reviews that the Board of Governors undertakes. However, it also includes a seemingly misplaced statement about non-faculty EPA employee appeal rights. This should be changed.

Recommendation 15: Remove part 609 C from section 609, and create a new section that prescribes the appeal rights of non-faculty EPA employees (note: Some committee members questioned why matters relating to non-faculty employees are covered in Chapter VI, but we could find nowhere else in the Code where such matters could be placed; if such a location were found, this material should be placed there.)

Other findings and recommendations:

As we reviewed Chapter VI, our committee identified other places in the UNC Code or policies that require clarification or change in order to be consistent or to allow the conduct of these processes efficiently and effectively.

Recommendation 16: Special faculty should be able to be appointed as at-will or term employees, at the discretion of the departmental administrator. This will allow non-paid adjunct faculty to be associated with the campus for as long as relevant and will allow discharge of an undesirable adjunct faculty member without using the 603 process.

Recommendation 17: UNC policy 101.3.1 should be clarified so as not to duplicate proposed changes to Code 604, be consistent with Code 103, and improve other language (specifically related to veterans).

Recommendation 18: UNC policies 300.1.1 and 300.2.1 should be clarified so as not to duplicate and to be consistent with Code 607 and proposed Code 611.

Recommendation 19: Conduct a thorough reading and cross-referencing of Chapter VI so that formats are consistent, text is not redundant, language is clear and consistent (for example, the terms reappointment, discharge, and termination all have specific meanings such that the terms are not interchangeable).

Recommendation 20: The Faculty Assembly and Chief Academic Officers should review these proposed changes before the BOG adopts them. However, we believe that these changes are consistent with the principles and practices of shared governance and good management.

Draft Language:

We have appended draft language for the committee's recommendations. The team of university attorneys on the committee drafted the language in separate, additional meetings—a significant and daunting task.

Next Steps:

The Committee Chair, Larry Nielsen, will coordinate review of these recommendations by the Faculty Assembly and the Chief Academic Officers. Should these reviews raise significant objections or changes to the proposed revision, the chair will re-convene the committee to address those matters. Should these reviews result in minor changes (e.g., clarification of language) or recommendations that do not materially affect the principles underlying the proposed changes (e.g., extending the time for faculty review from 90 days to 100 days), the chair will make those changes without re-convening the committee.

The desired outcome is a recommendation for adoption of these changes to the Board of Governors for consideration at their September, 2007, meeting.

Final Matters:

On behalf of the committee, the chair wishes to acknowledge the conscientious and thoughtful work of the committee members. We also thank Lisa Adamson (UNC-GA) and Amy Jinnette (NC State) for their assistance in facilitating the work of our committee and Charles Waldrup for his additional service performing legal and peer research and drafting.

We believe that our recommendations for improving the processes in Chapter VI will make all the processes more fair, timely, efficient and effective. We appreciate the opportunity to serve the UNC System and our faculty and administrative colleagues on this committee.

Respectfully submitted

Larry Nielsen, Chair
David Broome
Paul Gates
Charles Harrington
Gene Hughes
Wanda Jenkins
Mary Beth Kurz
Harold Martin
Pedro Martinez
Delacy Stith
Charles Waldrup
Leslie Winner

Attachments:

1. Committee roster
2. Committee schedule
3. Committee minutes
4. Chart of current and proposed 603 discharge process
5. Recommended draft of UNC Code, Chapter VI
6. Recommend draft of Post-Tenure Review Policy
7. Recommended draft of related policies