**Draft #3**

**10-17-13**

Required revision to Section 4.10 of the Faculty Handbook – delete Section 4.10(C). Insert the following procedures at new Section 4.10.D

**D. Faculty Grievance Policy and Procedures**

**1. Purpose of the Grievance Process**

1.1 Section 607 of *The Code of the Board of Governors of the University of North Carolina (*the “Code”) provides a process for faculty members to seek redress concerning employment related grievances. The purpose of the grievance process is to reach a consensual resolution of disputes between and among faculty members and administrators if possible, and, failing that, to determine whether a faculty member has been adversely affected or suffered a remedial injury in his/her professional or academic capacity, and the adverse affect or remedial injury is due to an administrator’s decision(s) that is alleged to violate law, or a university policy, regulation or rule, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. [UNC Policy 101.3.2, Section I]

1.2 The grievance process is not intended to second-guess professional judgments of officers and colleagues responsible for making administrative decisions based on permissible considerations. [UNC Policy 101.3.2, Section I]

**2. General Information about the Grievance Process**

2.1 Who May Grieve.

Grievances may be filed by any faculty member (the “Grievant”) during his/her employment at Western Carolina University (“WCU” or the “University”). If the Grievant is separated from employment while his/her grievance is pending, the grievance must be dismissed unless the Chancellor decides it is in the University’s best interest to allow the grievance to continue. [UNC Policy 101.3.2, Section IV.i.]

2.2 What May Be Grieved – General Grievances and Post-tenure Review.

Grievances are limited to matters directly related to a faculty member’s employment status and institutional relationship within WCU including matters related to post-tenure review. Grievances are further limited to matters where: (1) the Grievant has been adversely affected or suffered a remedial injury in his/her professional or academic capacity; ***and*** (2) the adverse affect or remedial injury is due to an administrator’s decision(s) that is alleged to violate law, or a university policy, regulation or rule, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment. [Section 607(3) of the Code]

2.3 What May Not Be Grieved.

The following matters may not be grieved: (1) dissatisfaction with the general application of a University, college or department policy, regulation or rule challenged on the grounds that the policy, regulation or rule itself is unfair or inadvisable; (2) non-renewal or non-extension of a contract upon expiration of an existing contract for non-tenure-track faculty; or (3) complaints, grievances or appeals that are subject to another university procedure or within the jurisdiction of another university committee (e.g., formal proceedings for the suspension, discharge or termination of a tenured faculty member, requests for the review of reappointment, tenure or promotion decisions).

**3. The Grievance Process**

3.1 Initiation of the Grievance Process / Informal Meeting with Administrator(s).

3.1.1 Prior to filing a grievance, the faculty member shall meet with the responsible administrators (typically the Department Head and Dean) to attempt to resolve the issue(s) giving rise to the grievance.

3.2 Filing a Grievance.

3.2.1 A grievance must be filed within twenty-one (21) calendar days from when the Grievant knew or should have known of the decision being grieved. If no grievance is filed within the prescribed timeframe, the faculty member will be deemed to have waived his/her right to an internal grievance process. Filing occurs when the written grievance is delivered to the responsible administrator by certified mail or by another means that provides proof of delivery, with a copy to Chair of the Faculty Grievance Committee (the “Committee”). The Chair of the Committee shall promptly forward copies of the grievance to the other members of the Committee and the Provost.

3.2.2 The grievance must include the following information:

1. A statement that the Grievant met with the Department head and Dean, or other responsible administrator, in an effort to resolve the matter, and the meeting was not successful;
2. The nature of and grounds for the grievance: specifically, a statement of facts to support a claim that the decision being grieved violated the Grievant’s rights under particular laws or policies, and how the Grievant has been adversely affected/injured;
3. The name(s) of the responsible administrator(s) for the alleged improper decision (the “Respondent(s)”). Persons may be named as Respondents only if they were active and substantial participants in the decision being grieved; and
4. The remedy sought.

3.3 Mediation.

3.3.1 Unless the parties to the grievance have participated in mediation prior to the faculty member’s filing the petition, before taking any action on the petition, the Committee shall refer the matter for mediation. [UNC Policy 101.3.2, Section II.c.]

3.3.2 Within seven (7) calendar days of receipt of the grievance, the Chair of the Committee will ask the parties if they are willing to participate in mediation. The parties shall respond in writing to the inquiry from the Chair regarding mediation. Neither party is obliged to engage in mediation. A decision by either party not to pursue mediation or to terminate mediation will not be held against that party. [UNC Policy 101.3.2, Section III.d.4.]

If the parties agree to mediate, the grievance process is suspended until the mediation is concluded and the Chair of the Committee is notified of the outcome. [UNC Policy 101.3.2, Section III.f.]

3.3.3 The parties will, by mutual agreement, select one (1) mediator from a pool of outside mediators from the community who have successfully completed formal mediation training substantially equivalent to that required for certification by the North Carolina Administrative Office of the Courts or to have been formally trained in university setting mediation. The pool of mediators will be maintained by the Provost’s Office. This selection should normally occur within twenty-one (21) calendar days of the agreement to mediate. If the parties cannot agree upon a mediator, the mediation will be terminated. [UNC Policy 101.3.2, Section III.d.1.]

3.3.4 Attorneys for either party may not participate in the mediation process. However, the mediator may be an attorney specially trained in mediation. [UNC Policy 101.3.2, Section III.d.3.]

3.3.5 The mediator will schedule and conduct all mediation activities in a timely fashion.

3.3.6 Any mediated agreement shall be in writing and shall be signed by the Grievant and the University official with authority to bind the University to the particular agreement. [UNC Policy 101.3.2, Section III.e.] Copies shall be provided to the parties and the original shall be kept by the Provost. The mediator will send an unelaborated written statement, signed by the parties, to the Committee informing it that the matter has been resolved.

3.3.7 The only record to be produced in the event of a failed mediation is an unelaborated written statement from the mediator to the Committee informing it that mediation has terminated without an agreement. [UNC Policy 101.3.2, Section III.d.5.]

3.3.8 As a condition of participating in the mediation process, both parties must agree in writing that: (1) the mediator cannot be called as a witness in any subsequent proceeding involving the matter being grieved and, (2) nothing done or said by either party during a mediation process may be referred to or otherwise used against a party in any subsequent proceeding. [UNC Policy 101.3.2, Section III.d.5.]

3.4 Grievance Hearing.

3.4.1 Duties and Authority of the Chair of the Committee

The Chair of the Committee shall determine all procedures for the entire grievance process, unless otherwise indicated in this policy. The Chair shall set the schedule for the grievance proceeding, and the order of presentation at the hearing. The Chair, with the assistance of administrative staff in the Provost’s Office, is responsible for logistics (e.g., reserving a room and obtaining a court reporter). The Chair is responsible for maintaining all records of the grievance proceeding, for compiling the official record to transmit to the Chancellor, and for writing a report of the Committee’s recommended findings and conclusions for transmission to the Chancellor.

The Chair shall have complete authority to ensure a full and fair hearing including, but not limited to, the authority to grant extensions, recesses and adjournments, require witnesses to stay outside the hearing room before or after testifying, set time limits for arguments, reject evidence which is repetitive or has no relevance to the issues, and terminate or recess the proceeding if it becomes unproductive due to disruptive behavior.

3.4.2 Determination of Committee Jurisdiction.

3.4.2.1 If mediation is declined or fails to produce an agreed upon resolution, the Committee must decide whether a hearing should be held in response to the grievance. For the purpose of determining whether a hearing should be held, the Committee must assume the truth of the information contained in the written grievance. [UNC Policy 101.3.2, Section IV.c.]

3.4.2.2 A grievance properly is dismissed if the Grievant fails to specify in the grievance a remediable injury attributable to the alleged violation of a right or privilege based on federal or state law, University policies or regulations, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending University employment. [UNC Policy 101.3.2, Section IV.c.]

3.4.2.3 Dismissal is required if the grievance addresses a problem that is not within the Committee jurisdiction, such as a disciplinary issue or a matter that is the responsibility of another body. [UNC Policy 101.3.2, Section IV.c.]

3.4.2.4 The Committee’s decision to dismiss a grievance shall be communicated to the Grievant, with a copy to the Provost, within ten (10) calendar days from the date the grievance was filed, or after the termination of an unsuccessful mediation process, if applicable. The dismissal decision shall be prepared by the Chair and shall be no more than an unelaborated written statement. [UNC Policy 101.3.2, Section IV.f.]

3.4.3 Scheduling the Hearing and Notice.

3.4.3.1 The grievance hearing shall be held no later than thirty (30) calendar days from the date the grievance was filed, or after the termination of an unsuccessful mediation process, if applicable. The Chair has authority to grant extensions on the Chair’s own motion or the motion of any of the parties. An extension may be granted only for good cause as determined by the Chair. An extension may not exceed ten (10) calendar days in length; however, more than one extension may be granted.

3.4.3.2 The Chair shall serve a Notice of Hearing on the Grievant, the administrator(s) identified as Respondent(s) to the grievance, and the Provost no later than ten (10) calendar days before the hearing. The Notice of Hearing shall include: (1) the date, time, and place of the hearing; (2) a copy of the grievance; (3) the names of the Committee members; (4) the names of all parties to the grievance; and (5) a summary of the issues to be considered by the Committee.

3.4.4 Composition of the Committee.

3.4.4.1 A minimum of five (5) Committee members is required to hear the matter and take action. In the event that fewer than five (5) members remain after challenged are allowed, the Secretary of the Faculty shall make temporary appointments in accordance with 1.7.2(e) of the Faculty Constitution.

3.4.5 Committee Conflicts of Interest and Challenges Without Cause.

3.4.5.1 A conflict of interest occurs in the hearing context if a member of the Committee: (i) is potentially beneficially or adversely affected by the outcome of the hearing; (ii) has particular knowledge about the matter to be reviewed; or (iii) may otherwise be viewed as biased in hearing the matter.

3.4.5.2 A member of the Committee is obligated to disclose any potential conflict of interest to the Chair and recuse him/herself from the Committee if the conflict of interest could affect his/her ability to decide the case in an objective manner.

3.4.5.3 The Chair has the authority to remove a member of the Committee upon the disclosure of a conflict of interest or upon a request by the Grievant that a member be removed for cause (i.e., undisclosed conflict of interest). The Chair will replace a removed member with another eligible member of the Committee.

3.4.5.4 Each party shall have an unlimited number of challenges to Committee membership if the challenge is for cause (i.e., a conflict of interest).

3.4.5.5 Each party shall have a maximum of two (2) challenges without cause to the composition of the Committee.

3.4.5.6 Challenges shall be filed in writing with the Chair within seven (7) calendar days of receipt of the Notice of Hearing. The Chair shall have the authority to decide whether a Committee member challenged for cause should be disqualified. If the Chair is thus removed, the Committee shall elect a new chair after Committee replacements, if any, have been appointed.

3.4.6 General Hearing Procedures.

3.4.6.1 North Carolina law provides that personnel records are confidential, and all participants must not disclose information acquired during the hearing except as provided by law.

3.4.6.2 The hearing is closed to the public.

3.4.6.3 Witnesses may appear voluntarily in the hearing and may not be compelled to appear by either party. Witnesses in the proceeding shall be sequestered in separate witness rooms until such time as they testify and are dismissed.

3.4.6.4 Each party may bring one (1) advisor. Advisors may not participate in the hearing or be a witness for a party. Attorneys are not permitted to attend or participate in the hearing, in any capacity, including as an advisor.

3.4.6.5 Hearing testimony must be recorded by a court reporter, and a copy of the hearing transcript will be provided to the Grievant upon written request to the Legal Counsel’s Office.

3.4.6.6 Hearings are informal; rules of evidence do not apply in the proceeding. The Chair of the Committee will make determinations of whether evidence is unduly repetitious, irrelevant or immaterial and should be excluded.

3.4.6.7 The Grievant has the burden of proof by a preponderance of the evidence (the greater weight of evidence).

3.4.7 Order of Hearing Procedures.

3.4.7.1 The Chair of the Committee will commence the hearing with a summary of the hearing procedures and order of presentation of evidence.

3.4.7.2 The Chair of the Committee will read the grievance into the hearing record or ensure that an accurate and complete copy of the grievance is introduced as an exhibit.

3.4.7.3 The hearing begins with the Grievant’s presentation of his/her case. The Grievant may testify on his/her own behalf and call witnesses, all of whom may be questioned by the Committee and cross-examined by the Respondent. The Grievant may introduce documentary evidence.

3.4.7.4 At the close of the Grievant’s case, the Respondent will present his/her case in the same manner as described in Section 3.4.7.3 above.

3.4.7.5 At the close of the Respondent’s case, the Grievant may present evidence to rebut the Respondent’s case.

3.4.8 Committee Deliberations and Recommendations.

3.4.8.1 Following the hearing, the Committee must deliberate to determine whether the Grievant met his/her burden of proof and established that he/she has been adversely affected or suffered a remedial injury in his/her professional or academic capacity; ***and*** (2) the adverse affect or remedial injury is due to an administrator’s decision(s) that is alleged to violate law, or a university policy, regulation or rule, or commonly shared understandings within the academic community about the rights, privileges and responsibilities attending university employment.

3.4.8.2 The Committee shall consider only the record evidence presented at the hearing. [UNC Policy 101.3.2, Section IV.d.]

3.4.8.3 The Committee cannot reverse a Respondent administrator’s decision, but can only recommend a reassessment and adjustment of that decision.

3.4.8.4 If, after hearing the matter, the Committee determines that an adjustment in favor of the Grievant is appropriate, the Committee shall so advise the Grievant and the Dean, Department Head, or other Respondent administrator. [UNC Policy 101.3.2, Section IV.e.] The Committee’s written decision must be provided to the Grievant, with copies to the Respondent(s) and the Provost, within seven (7) calendar days after the conclusion of the hearing.

3.4.8.5 If the Committee determines that no adjustment in favor of the Grievant is appropriate, it shall so advise the Grievant, the Respondent, and the Chancellor. [UNC Policy 101.3.2, Section IV.f.]

3.4.9 Respondent/Administrator’s Response.

3.4.9.1 If the Committee’s decision favors the Grievant, the Respondent administrator with the authority to act on the recommendations made by the Committee shall have seven (7) calendar days to provide his/her written response to the Committee’s recommendation(s) to the Grievant, with copies to the Chair and Provost.

3.4.9.2 If the Respondent administrator does not make the recommended adjustment, or a different adjustment satisfactory to the Grievant, within a reasonable period of time, the Committee shall advise the Chancellor of its recommendation that an adjustment is appropriate. [UNC Policy 101.3.2, Section IV.e.]

3.4.10 Chancellor’s Decision.

3.4.10.1 The Chancellor shall base his/her decision on the record evidence from the hearing and the written decision/recommendation of the Committee. [UNC Policy 101.3.2, Section IV.g.]

3.4.10.2 The Chancellor may, in his/her discretion, consult with the Committee before making a decision. The decision of the Chancellor is the final administrative decision. [UNC Policy 101.3.2, Section IV.g.]

3.4.10.3 The Chancellor shall notify the Grievant and the Respondent of his/her decision as soon as practicable. The Chancellor’s written decision shall include: (1) the time limit within which the Grievant may file an appeal to the Board of Trustees; (2) a written notice of appeal containing a brief statement of the basis for appeal is required within fourteen (14) calendar days following receipt of the Chancellor’s decision; and (3) following receipt of the notice of appeal, a detailed schedule for the submission of relevant documents will be established. [UNC Policy 101.3.2, Section IV.h.]

**4. Appeal to the Board of Trustees**

4.1 Decisions Which may be Appealed to the Board of Trustees.

4.1.1 If the Committee did not recommend an adjustment in favor of the Grievant, then the decision of the Chancellor is final and may not be appealed to the Board of Trustees. [UNC Policy 101.3.2, Section V.a.i.]

4.1.2 If the Committee recommended an adjustment in favor of the Grievant, and neither the Respondent nor the Chancellor made the adjustment, the Grievant may appeal to the Board of Trustees. The decision of the Board of Trustees is final. [UNC Policy 101.3.2, Section V.a.i.i.]

4.2 Board of Trustees Appeals Process.

4.2.1 A Grievant entitled to appeal the disposition of his/her grievance to the Board of Trustees must deliver a written notice of appeal to the Board of Trustees, in care of the Chancellor, by certified mail or by another means that provides proof of delivery within fourteen (14) calendar days after receipt of the Chancellor’s written decision. . [UNC Policy 101.3.2, Section V.c.i.]

4.2.2 The notice of appeal shall contain a brief statement of the basis for the appeal. The grounds for appeal are: (1) the Chancellor’s decision was clearly erroneous and not supported by the record evidence; (2) the Chancellor’s decision violated applicable federal or state laws, the Code or University of North Carolina Policies, or University policies or regulations; or (3) the process used in deciding the grievance was materially flawed. [UNC Policy 101.3.2, Section V.d.]

4.2.3 The Board of Trustees may delegate to a designated committee the authority and responsibility to make final decisions on behalf of the full board concerning appeals of faculty grievances. [UNC Policy 101.3.2, Section V.b.]

4.2.4 If the Board of Trustees agrees to consider the appeal, it will do so on a schedule established by the Chancellor, subject to any instructions received from the Board of Trustees or a committee thereof that is authorized to consider the appeal. If the Grievant fails to comply with the schedule established for perfecting and processing the appeal, the Board of Trustees may extend the time for compliance or it may dismiss the appeal. [UNC Policy 101.3.2, Section V.c.i.]

4.2.5 The purpose of the Board of Trustees review is to determine whether: (1) the Chancellor’s decision was clearly erroneous and not supported by the record evidence; (2) the Chancellor’s decision violated applicable federal or state laws, the Code or University of North Carolina Policies, or University policies or regulations; or (3) the process used in deciding the grievance was materially flawed. [UNC Policy 101.3.2, Section V.d.]

4.2.6 The Board of Trustees shall base its decision on the record evidence from the hearing and the written decision of the Committee.

4.2.7 The Board of Trustees will issue its decision as expeditiously as is practical. [UNC Policy 101.3.2, Section V.c.i.]

4.2.8 The decision of the Board of Trustees is final. [Section 607(6) of the Code]