

Faculty Senate Routing Form
(action/proposal attached)

I. Item Title: Revision of Section 4.11 Hearing and Review Committees and Processes

a) Brief Description: Clarify and streamline the Faculty Hearing Committee's review process by standardizing the process across the different types of review described in a new section (4.11.A.6). Language is updated to reflect current practices (the University's representative, email as method of notice) and references to the UNC Policy Manual and Code.

b) Initiated by: Academic Policy and Review Council (originated by Kelly Tornow, Chief Compliance Officer)

II. Faculty Senate Action: approved not approved other date: 03/22/2023

Comments: _____

Vote: Voice Vote, Unanimous Voice Vote, Majority In Favor
 Hand Vote: Ayes Nays Abstentions
 Paper Ballot Vote: Ayes Nays Abstentions

FS Secretary signature: *Erin McAlister* date 3/28/2023

III. Provost: for information Recognition of Receipt
 for action..... approved not approved

Comments: _____

Person responsible for Implementation: *Board Council*

Provost signature: *[Signature]* date 13 Apr 23

IV. Chancellor: for information Recognition of Receipt
 for action..... approved not approved

Comments: _____

Chancellor signature *Kelli R. Mann* date 4-16-2023

Once finalized copies will be returned to the Provost Office's representative who will scan and distribute electronically to:
Chancellor
Provost
Chair of Faculty Senate
Secretary of the Faculty Senate
Associate Vice Chancellor for Academic Affairs (for catalog and handbook)
Associate Dean of Graduate School (for catalog)
Others (i.e. person responsible for implementation)

4.11 Hearing and Grievance Committees and Processes

A. Review of Reappointment, Tenure, and Promotion Decisions

All university policies relating to tenure are subject to and must be consistent with The Code and Policies of the Board of Governors of The University of North Carolina (“The Code” and “UNC Policy/ices” respectively). The Code and UNC Policies may be accessed in their entirety at: <https://www.northcarolina.edu/apps/policy/index.php>

Faculty members may seek review of negative reappointment, tenure, and promotion decisions in accordance with the policies described in Sections 4.01 through 4.10 of the Faculty Handbook (hereinafter referred to as the “Tenure Policies”). Review procedures set forth in the Tenure Policies apply to the following cases:

- i. Review of negative reappointment decisions for tenure-track faculty (Section 604 of The Code);
- ii. Review of negative tenure and/or promotion decisions (Sections 602 and 604 of The Code);
- iii. Review of negative early tenure decisions;
- iv. Review of intended discharge of or imposition of serious sanction on a tenured faculty member (or a faculty member serving a stated term) (Section 603 of The Code); and
- v. Reconsideration of termination due to financial exigency or the major curtailment or elimination of a program (Section 605 of The Code).

4.11. A.1 Review of Negative Reappointment Decisions for Tenure-track Faculty

1.1 Administrative Reconsideration of Provost’s Negative Decision.

1.1.1 A faculty member who would like the Provost to reconsider their negative reappointment decision must file a written request for administrative reconsideration within fourteen (14) calendar days from the date of receipt of the decision. The written request shall consist of a short statement detailing the faculty member’s reasons/grounds for challenging the negative decision. ***Administrative reconsideration is a condition precedent to further institutional review, and the failure to file the written request in a timely manner constitutes a waiver of the faculty member’s right to a hearing before the Faculty Hearing Committee or one of its Review Panels.***

1.1.2 The Provost shall meet with the faculty member within seven (7) calendar days of receipt of the faculty member’s written request for administrative reconsideration. The faculty member may not submit to the Provost any documents or records that were not originally included in the dossier. The Provost’s reconsideration will be

limited to the dossier and matters considered during the original collegial review process.

1.1.3 After meeting with the faculty member, the Provost may consult with the dean, department head, and/or others involved in the collegial review process.

1.1.4 The Provost shall provide their written reconsideration decision to the faculty member within fourteen (14) calendar days following their meeting.

1.2 Faculty Hearing Committee Review of Provost's Negative Decision.

1.2.1 Grounds for Review.

1.2.1.1 The review procedures set forth in this Section pertain to the next level of campus-based review following the Provost's administrative reconsideration. The faculty member who seeks review of a negative reappointment decision is referred to as the "Petitioner" (and also may be referred to as a "party").

1.2.1.2 Review of a negative reappointment decision may proceed only if the Petitioner - (1) timely requested the Provost's administrative reconsideration pursuant to Section 1.1 above; **and** (2) contends that the procedures followed to reach the negative reappointment decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint; **and/or** (3) that the negative reappointment decision was based on one (1) or more "Impermissible Grounds". [Section 604.B of The Code]

Impermissible Grounds under WCU and UNC Policy are the following: (i) the exercise by the Petitioner of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution; (ii) the Petitioner's race, color, national origin, creed, religion, sex, age, gender identity or expression, genetic information, sexual orientation, veteran status, disability, political affiliation or other forms of discrimination prohibited under policies adopted by WCU's Board of Trustees or the UNC Board of Governors; or (iii) personal malice, which is defined by UNC Policy to mean dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid university decision-making. [UNC Policy 101.3.1]

1.2.2 Filing a Petition for Review.

1.2.2.1 In the event the Provost's administrative reconsideration decision is averse to the Petitioner, the petitioner may file a petition for review of the negative reappointment decision within fourteen (14) calendar days following receipt of the reconsideration decision.

1.2.2.2 The petition must be filed electronically via official University email with the Provost and must include the following information:

a. A statement that the Petitioner requested Provost's administrative reconsideration and that decision was adverse to the Petitioner; and

b. A statement of specific facts to support a claim that the negative reappointment decision was based on one (1) or more specified Impermissible Grounds or that the review procedures materially deviated from prescribed procedures; and

c. The name of the person(s) responsible for the alleged impermissible decision or the material deviation from procedure (the "Respondent(s)" and also a "party" or "parties"). The term Respondent shall also refer to the academic administrator who is designated by the Provost and presents the University's case at the hearing if the person has not been identified as the responsible person(s).

1.2.3 Burden of Proof and Purposes of Review.

1.2.3.1 The Petitioner has the burden of proof by a preponderance of the evidence (the greater weight of evidence). [Section 604.D (1)(c) of The Code]

1.2.3.2 The purpose of the campus-based review of a negative reappointment decision is to determine whether the decision was based on Impermissible Grounds, and/or whether the procedures followed to reach the negative reappointment decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision: it is not to second-guess professional judgments of colleagues based on permissible considerations during the collegial review process. [Section 604.D (1) (d) of The Code]

1.2.3.3 The Faculty Hearing Committee ("FHC") and its Review Panels (see the Bylaws of the General Faculty, Article V, Section 4) are responsible for receiving relevant evidence, making findings of fact, and providing recommendations and advice to the Chancellor on the merits of the Petitioner's allegations. The role of the FHC is to create a clear, permanent record of the evidence presented at the hearing and to advise the Chancellor whether or not the Petitioner has demonstrated, by a preponderance of the evidence, that the decision not to reappoint the Petitioner was materially procedurally flawed or was based in significant part on Impermissible Grounds.

1.2.4 Scheduling the Hearing.

The Chair of the Review Panel shall schedule the hearing as soon as practicable and shall provide written notice to the parties of the date, time, and location of the hearing, with copies to the Provost's Office and the Legal Counsel's Office. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. Notice of the hearing shall be provided no fewer than seven (7) calendar days prior to the scheduled date and time, but no more than twenty-one (21) calendar days prior to the scheduled date and time. A hearing may be continued upon request of a party for good cause.

1.2.5 Representatives of the Parties.

Each party may bring one (1) advisor. Advisors may not participate in the hearing or be a witness for a party. Attorneys, licensed or unlicensed, are not permitted to attend or participate in the hearing, in any capacity, including as an advisor. The parties may consult with attorneys prior to the hearing, including preparing materials for the hearing.

1.2.6 Hearing Procedures.

The hearing shall be conducted in accordance with Section 4.11.A.6 below.

1.2.7 Chancellor's Decision.

The Chancellor shall base the decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in their discretion, consult with the Review Panel. While the findings and recommendations of the Review Panel are entitled to appropriate deference, the final campus-based decision is the Chancellor's.

Within forty-five (45) calendar days after receiving the Review Panel's report, the Chancellor shall notify the Petitioner and the Respondent(s) of the decision. If the Chancellor concurs with a recommendation of the Review Panel that is favorable to the Petitioner, the Chancellor's decision shall be final. If the Chancellor either declines to accept a recommendation that is favorable to the Petitioner or concurs in a recommendation that is unfavorable to the Petitioner, the Petitioner may appeal the decision by filing a written notice of appeal with the WCU Board of Trustees.

1.2.8 Appeals to the WCU Board of Trustees.

Appeals to the Board of Trustees shall be submitted to the Chancellor, by email, with copy to the General Counsel, within fourteen (14) calendar days after receipt of the Chancellor's decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Trustees is to assure: (i) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the Petitioner's contentions were fairly and reliably considered; (ii) that the result reached by the Chancellor was not clearly erroneous; and (iii) that the decision was not contrary to controlling law or policy. [Section 604.C (2) of The Code]

4.11. A.2 Review of Negative Tenure and/or Promotion Decisions

2.1 Administrative Reconsideration of Provost's Negative Recommendation.

2.1.1 A faculty member who would like the Provost to reconsider their negative tenure and/or promotion recommendation must file a written request for administrative reconsideration within fourteen (14) calendar days from the date of receipt of the

recommendation. The written request shall consist of a short statement detailing the faculty member's reasons/grounds for challenging the negative decision. Administrative reconsideration is a condition precedent to further institutional review, and the failure to file the written request in a timely manner constitutes a waiver of the faculty member's right to a hearing before the Faculty Hearing Committee or one of its Review Panels.

- 2.1.2 The Provost shall meet with the faculty member within seven (7) calendar days of receipt of the faculty member's written request for administrative reconsideration. The faculty member may not submit to the Provost any documents or records that were not originally included in the dossier. The Provost's reconsideration will be limited to the dossier and matters considered during the original collegial review process.
- 2.1.3 After meeting with the faculty member, the Provost may consult with the dean, department head, and/or others involved in the collegial review process.
- 2.1.4 The Provost shall provide their written reconsideration decision to the faculty member, with a copy to the Chancellor, within fourteen (14) calendar days following their meeting.
- 2.1.5 Within thirty (30) calendar days from receipt of the Provost's reconsideration decision, the Chancellor shall review the Provost's recommendation and reconsideration decision, and shall notify the faculty member in writing of the Chancellor's tenure and/or promotion decision.

2.2 Faculty Hearing Committee Review of Chancellor's Negative Decision.

Upon receipt of a negative tenure and/or promotion decision from the Chancellor, the faculty member may file a petition for review of the negative decision by the Faculty Hearing Committee. Sections 1.2 and 4.11.A.6 of the Faculty Handbook apply to negative tenure and/or promotion decisions under this Section.

4.11. A.3 Review of Negative Early Tenure/Promotion Decisions

- 3.1 Negative early tenure and promotion decisions (i.e., tenure and promotion decisions not involving reappointment) shall be reviewed in accordance with faculty grievance procedures set forth in Section 4.11.B of the Faculty Handbook.

4.11. A.4 Review of Intended Discharge or Imposition of Serious Sanction

4.1 Grounds for Discharge or Imposition of a Serious Sanction.

In accordance with Section 603 of The Code, a faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees

the faculty member may be discharged from employment, suspended, or demoted in rank for reasons of:

- a. incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time; or
- b. neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or
- c. misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either sufficiently related to a faculty member's academic responsibilities as to disqualify the individual from effective performance of university duties, or sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

For purposes of this Section, a faculty member serving a stated term shall be regarded as having tenure until the end of that term in accordance with Section 603(1) of The Code.

4.2 Notice of University Intention to Discharge / Suspend Prior to Final Decision.

4.2.1 The Provost, as the charging party, shall send the faculty member a written notice of the University's intention to discharge the faculty member or impose a serious sanction, which must include a written specification of the reasons ("Specifications"). The notice and Specifications shall be sent by certified mail, return receipt requested. The notice shall include notice of the faculty member's right to request a hearing before the FHC. [Section 603(2) of The Code]

4.2.2 In accordance with Section 603(2)(a) of The Code, when a faculty member has been notified of the University's intention to discharge the faculty member, the Chancellor may reassign the individual to other duties or suspend the individual at any time until a final decision concerning discharge has been reached in accordance with the procedures set forth in this Section. Suspension shall be exceptional and shall be with full pay.

4.3 Filing a Request for Review.

4.3.1 The faculty member may file a written request for review of the University's intention to discharge or impose a serious sanction within fourteen (14) calendar days following receipt of the notice and Specifications. The request must be filed electronically via official University email with the Chair of the Faculty Hearing Committee, with a copy to the General Counsel.

4.3.2 If, within fourteen (14) calendar days after receiving the notice and Specifications, the faculty member makes no written request for a hearing, the faculty member may be discharged or a serious sanction imposed without recourse to any institutional hearing, grievance or appellate procedure. [Section 603(2)(b) of The Code]

4.4 Burden of Proof and Purposes of Review.

4.4.1 The Provost or designee presents the University's case and has the burden of proof, by clear and convincing evidence (evidence that is substantially more likely than not true), to show that permissible grounds for discharge or the imposition of a serious sanction exist and are the basis for the recommended action. [Section 603(2)(f) of The Code]

4.4.2 The Review Panel is responsible for receiving relevant evidence, making findings of fact, and providing recommendations and advice to the Chancellor on the merits of the Provost's Specifications. The role of the Review Panel is to create a clear, permanent record of the evidence presented at the hearing and to advise the Chancellor whether or not the Provost has demonstrated, by clear and convincing evidence, that the Specifications for discharge or imposition of a serious sanction have a reasonable basis in fact and are consistent with Section 603 of The Code, the Tenure Policies, and applicable state and federal law.

4.4.3 In proceedings under Section 603 of The Code involving imposition of serious sanctions based upon the Title IX complaint resolution process, the Title IX record may be included as evidence of the grounds for the sanction; however, the Title IX determination(s) of responsibility is not subject to review. The review shall be limited to the question of whether the recommended sanction is supported by clear and convincing evidence. [Section 1300.11[R]II.C. of The UNC Policy Manual]

4.5 Scheduling the Hearing.

4.5.1 The hearing shall be on the Specifications for the intended discharge or imposition of a serious sanction. The Review Panel shall accord the faculty member at least thirty (30) calendar days from the time it receives the faculty member's written request for a hearing to prepare. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. [Section 603(2)(c) of The Code]

4.5.2 The Chair of the Review Panel will consult with the Review Panel, the parties and their counsel, if applicable, to identify several potential dates and times for the hearing. To meet this deadline, the parties and the members of the Review Panel are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two (2) or more sessions. [See FN 12 to Section 603(5) of The Code]

4.5.3 The Chair of the Review Panel may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member, with a copy

to the Provost and the General Counsel. The Review Panel will ordinarily endeavor to complete the hearing within ninety (90) calendar days except under unusual circumstances such as when a hearing request is received during official University breaks and holidays, and despite reasonable efforts, the Review Panel cannot be assembled. [Section 603(2)(c) of The Code]

4.6 Representatives of the Parties.

4.6.1 The parties may be represented by counsel. The Chair of the Review Panel shall contact the faculty member to determine whether the faculty member is represented by counsel and, if so, the Chair of the Review Panel will forward legal counsel's contact information to the University's General Counsel. [Section 603(2)(d) of The Code]

4.6.2 The University's Legal Counsel Office shall arrange for the provision of counsel to the Provost or designee.

4.7 Hearing Procedures.

The hearing shall be conducted in accordance with Section 4.11.A.6 below.

4.8 Chancellor's Decision.

The Chancellor shall base their decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in discretion, consult with the Review Panel. While the findings and recommendations of the Review Panel are entitled to appropriate deference, the final campus-based decision is the Chancellor's. If the Chancellor concurs in a recommendation of the Review Panel that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor either declines to accept a Review Panel recommendation that is favorable to the faculty member or concurs in a recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the Board of Trustees. [Section 603(2)(g) of The Code]

4.9 Appeals to the Board of Trustees.

4.9.1 Appeals to the University Board of Trustees shall be transmitted through the Chancellor and addressed to the Chair of the Board. Notice of appeal shall be filed within fourteen (14) calendar days after the faculty member receives the Chancellor's decision.

4.9.2 An appeal must contain a brief statement that alleges one or more of the following as the basis for the appeal: (1) that the process for making the decision was materially flawed, so as to raise questions about whether the faculty member's contentions were fairly and reliably considered; (2) that the result reached by the chancellor was clearly erroneous; or (3) that the decision was contrary to controlling law or policy.

- 4.9.3 The appeal to the Board of Trustees shall be decided by the full Board of Trustees. However, the Board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three (3) members. The Board of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the Review Panel, but it may, in its discretion, hear such other evidence as it deems necessary. The Board of Trustees' decision shall be made as soon as reasonably possible after the Chancellor has received the faculty member's request for an appeal to the Board. The decision of the Board of Trustees is the final decision. [Section 603(3) of The Code]

4.11. A.5 Reconsideration of Termination Due to Financial Exigency or Program Curtailment or Elimination

- 5.1 Grounds for Faculty Hearing Committee Review of Chancellor's Negative Decision.
- A faculty member terminated based upon financial exigency or the major curtailment or elimination of a program pursuant to Section 4.09.E of the Faculty Handbook may request reconsideration if the faculty member alleges that the decision to terminate was arbitrary or capricious.
- 5.2 Filing a Petition for Review.
- 5.2.1 Within fourteen (14) calendar days after receiving the notice of termination from the Chancellor, the faculty member may request by certified mail, return receipt requested, a reconsideration of the decision to terminate the faculty member's employment if the faculty member alleges that the decision was arbitrary or capricious. [Section 605.C (4) of The Code]
- 5.2.2 The request shall be submitted to the Provost and shall specify the grounds upon which it is alleged that the decision to terminate employment was arbitrary or capricious, and shall include a statement of facts that support the allegations. The faculty member must support the allegations with sufficient evidence, and, by requesting reconsideration, represents that the allegations are supported by sufficient evidence/facts.
- 5.2.3 If the faculty member makes no written request for a reconsideration hearing within fourteen (14) calendar days after receipt of the notice of termination, the faculty member's employment shall be terminated at the date specified in the termination notice without recourse to any University grievance or appellate procedure.
- 5.3 Burden of Proof and Purposes of Review.
- The Petitioner has the burden of proof by a preponderance of the evidence (the greater weight of evidence) to show that the termination decision was arbitrary or capricious.
- 5.4 Scheduling the Hearing.

The Chair of the Review Panel shall schedule the hearing as soon as practicable and shall provide written notice to the Provost and the faculty member of the date, time, and location of the hearing. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. Notice of the hearing shall be provided no fewer than seven (7) calendar days prior to the scheduled date and time, but no more than twenty-one (21) calendar days prior to the scheduled date and time. A hearing may be continued upon request of a party for good cause.

5.5 Representatives of the Parties.

Each party may bring one (1) advisor. Advisors may not participate in the hearing or be a witness for a party. Attorneys, licensed or unlicensed, are not permitted to attend or participate in the hearing, in any capacity, including as an advisor. The parties may consult with attorneys prior to the hearing, including preparing materials for the hearing.

5.6 Hearing Procedures.

The hearing shall be conducted in accordance with Section 4.11.A.6 below.

5.7 Chancellor's Decision.

The Chancellor shall base their decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in his/her discretion, consult with the Review Panel. Within forty-five (45) calendar days after receiving the Review Panel's report, the Chancellor shall notify the faculty member and the Provost of the decision.

5.8 Appeals to the Board of Trustees.

In the event the Chancellor's decision is averse to the faculty member, the faculty member may appeal the decision to the Board of Trustees in accordance with Section 605.C (6) of The Code. Appeals shall be transmitted through the Chancellor and be addressed to the Chair of the Board of Trustees. Notice of appeal shall be filed within fourteen (14) calendar days after the faculty member receives the Chancellor's decision. The appeal to the Board of Trustees shall be decided by the full Board of Trustees. However, the board may delegate the duty of conducting a hearing to a standing or ad hoc committee of at least three (3) members. The Board of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the Review Panel, but it may, in its discretion, hear such other evidence as it deems necessary. The Board of Trustees' decision shall be made as soon as reasonably possible after the Chancellor has received the faculty member's request for an appeal to the board. The decision of the Board of Trustees is the final decision.

4.11. A.6 The Faculty Hearing Committee Review Process

6.1 Initial Steps by the Provost and Chair of the Faculty Hearing Committee.

- 6.1.1 The Provost shall promptly forward the petition to the Chair of the FHC and send an acknowledgement of receipt to the Petitioner.
- 6.1.2 The Chair of the Review Panel shall determine if the petition was timely filed and if it contains the required information. If the Petitioner has met these requirements, the Chair of the Review Panel may ask the Petitioner for more information or for clarification, which includes permitting the Petitioner to file an amended petition if necessary. If the Review Panel has jurisdiction over the matter, the Chair shall schedule a hearing. If the petition was not timely filed or does not contain the required information, the Review Panel does not have jurisdiction to hear the matter. In that event, the Chair of the Review Panel shall submit a written report to the Chancellor recommending dismissal of the petition, with copies to the Petitioner, Respondent, and the Provost.
- 6.1.3 The Chair of the FHC shall form a sub-committee (hereinafter referred to as “Review Panel”) for each case. Review Panels shall be selected from the membership of the FHC, and shall consist of five (5) members. The Chair shall also select one (1) alternate member. The Chair of the FHC shall appoint the Chair of the Review Panel, who shall be a voting member of the panel. The Chair of the FHC may serve as Chair of a Review Panel.
- 6.1.4 The Provost or the Provost’s designee presents the case for the University in the Faculty Hearing Committee Review Process and shall notify the Chair and the Petitioner of the designation, if applicable.

6.2 Role of the Faculty Hearing Committee and Review Panel

The Faculty Hearing Committee (“FHC”) and its Review Panels (see the Bylaws of the General Faculty, Article V, Section 4) are responsible for receiving relevant evidence, making findings of fact, and providing recommendations and advice to the Chancellor on the merits of the Petitioner’s allegations. The role of the FHC is to create a clear, permanent record of the evidence presented at the hearing and to advise the Chancellor whether the party with the burden of proof has met that burden.

6.3 Selection of Review Panel / Conflicts of Interest.

- 6.3.1 A conflict of interest occurs in the hearing context if a member of a Review Panel: (i) is potentially beneficially or adversely affected by the outcome of the hearing; (ii) has particular knowledge about the matter to be reviewed (e.g., served on a department, college, and/or university collegial review committee that considered the Petitioner’s dossier); or (iii) may otherwise be viewed as biased in hearing the matter.
- 6.3.2 A member of a Review Panel is obligated to disclose any potential conflict of interest to the Chair of the FHC and recuse themselves from the Review Panel if the conflict of interest could affect the member’s ability to decide the case in an objective manner.

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

6.4 Responsibilities of the Chair of the Review Panel.

6.4.1 The Chair of the Review Panel shall determine all procedures for the review process consistent with the requirements set forth in Sections 1.2.9 and 1.2.10 below. The chair shall set the date and time for the hearing and shall coordinate logistics (e.g., reserving appropriate rooms for the hearing and witnesses, and scheduling a court reporter) with the assistance of administrative staff in the Office of Legal Counsel.

6.4.2 The Chair of the Review Panel shall instruct the parties on the hearing procedures. The chair may make procedural rulings such as the number of witnesses a party may call or the length of each party's presentation. The Chair of the Review Panel may explore whether the parties can agree to stipulate to certain facts that could reduce the time required to hear the matter. Stipulated facts must be documented and introduced as a joint exhibit at the hearing.

6.4.3 The Chair of the Review Panel is ultimately responsible for receiving records of the hearing and shall ensure that all original documents and exhibits forming the record of the hearing have been provided to the court reporter.

6.4.4 The Chair of the Review Panel is responsible for writing a report to the Chancellor of the Review Panel's findings of fact, conclusions, and recommendations.

6.5 Pre-hearing Procedures / Exchange of Witness Lists and Proposed Exhibits.

At least five (5) calendar days before a scheduled hearing, the Petitioner and Respondent shall exchange witness lists and copies of exhibits (documentary evidence) that the parties intend to introduce into the record at the hearing. The parties are responsible for making sufficient copies of exhibits for all of the members of the Review Panel, the court reporter, and the opposing party. Exhibits should be clearly marked by the parties (e.g., Petitioner's Exhibit 1, 2, 3, etc.).

6.6 General Hearing Procedures.

6.6.1 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.

6.6.2 The hearing is closed to the public.

6.6.3 Witnesses in the proceeding shall be sequestered in separate witness rooms until such time as they testify and are dismissed.

- 6.6.4 Hearing testimony must be recorded by a court reporter, and a copy of the hearing transcript will be provided to the Petitioner upon written request to the Legal Counsel's Office.
- 6.6.5 Hearings are informal; rules of evidence do not apply in the proceeding. The Chair of the Review Panel will make determinations of whether evidence is unduly repetitious, irrelevant or immaterial and should be excluded.
- 6.6.6 Ex parte communications regarding the subject matter of the hearing are prohibited (i.e., communications between either the Petitioner or the Respondent and members of the Review Panel). Questions about the hearing shall be directed to the Chair of the Review Panel.
- 6.7 Order of Hearing Procedures.
- 6.7.1 The Chair of the Review Panel will commence the hearing with a summary of the hearing procedures, including any applicable time limitations, and order of presentation of evidence.
- 6.7.2 The Chair of the Review Panel will read the Petition or Specifications into the hearing record or ensure that an accurate and complete copy is introduced as an exhibit.
- 6.7.3 The party with the burden of proof ("first party") shall present their case first and may start with an opening statement. The first party may testify on his/her own behalf and call witnesses, all of whom may be questioned by the Review Panel and cross-examined by the other party. The first party may introduce documentary evidence. For reference, the party with the burden of proof for each type of case is as follows:
- a. Review of Negative Reappointment Decisions for Tenure-Track Faculty – Petitioner (preponderance of the evidence) (see Section 4.11.A.1)
 - b. Review of Negative Tenure/Promotion Decisions – Petitioner (preponderance of the evidence) (see Section 4.11.A.2)
 - c. Review of Intended Discharge or Imposition of Serious Sanction – Provost or designee (clear and convincing evidence) (see Section 4.11.A.4)
 - d. Reconsideration of Termination Due to Financial Exigency or Program Curtailment or Elimination – Petitioner (preponderance of the evidence) (see Section 4.11.A.5)
- 6.7.4 At the close of the first party's case, the second party will present his/her case in the same manner as described in Section 6.7.3 above.
- 6.7.5 At the close of the second party's case, the first party may present evidence to rebut the second party's case.

6.7.6 At the end of the first party's rebuttal, if any, the Chair may permit the parties to provide brief closing statements, summarizing the key points of their case.

6.8 Review Panel Deliberations.

The Review Panel's deliberations take place in closed session after completion of the hearing. The Review Panel Chair will facilitate discussion, and is a voting member of the Review Panel. The Review Panel should: (i) consider all relevant evidence presented by the parties but only that evidence presented at the hearing; (ii) evaluate conflicting evidence and assign appropriate weight to the evidence presented; (iii) determine whether the party with the burden of proof met that burden; (iv) make findings of fact; and (v) make recommendations concerning the disposition of the matter.

6.9 Review Panel Report.

The Chair of the Review Panel is responsible for preparing the panel's written report, which should include the hearing date, the Review Panel members hearing the matter, the nature of the Petitioner's allegations, findings of fact/statement of the evidence supporting the panel's decision, and the Review Panel's decision and recommendations. The report shall be provided to the Chancellor, with copies to the Petitioner and the Respondent(s), within fourteen (14) calendar days from completion of the hearing. The Chair of the Review Panel shall ensure that a complete record of the hearing is provided to the Chancellor with the report. **Following completion of the Review Panel's report, the review continues to the Chancellor in accordance with the appropriate type of decision (i.e., negative reappointment, negative tenure/promotion decision, etc.).**

B. Faculty Grievance Policy and Procedures

4.11. B.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 effect 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]

4.11. B.2 General Information about the Grievance Process

2.1 Who May Grieve

Grievances may be filed by any faculty member (the “Grievant”) during their employment at Western Carolina University (“WCU” or the “University”). If the Grievant is separated from employment while their 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 their professional or academic capacity; and (2) the adverse effect 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, and complaints of harassment/discrimination).

4.11. B.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 their right to an internal grievance process. Filing occurs when the written grievance is delivered to the responsible administrator by email, with a copy to Chair of the Faculty Grievance Committee (the "Committee") and the General Counsel. 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 specified 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. The term Respondent shall also refer to the academic administrator who is designated by the Provost and presents the University's case in any mediation and at the hearing if the person has not been identified as the responsible person(s); 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 Office of Legal Counsel. 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 Office of Legal Counsel, 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 a specified federal or state law, specified 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 and General Counsel, 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, the Provost or designee, and the General Counsel 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. The Chair shall also select one (1) alternate member. In the event that fewer than five (5) members remain after challenges 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 is potentially beneficially or adversely affected by the outcome of the hearing or 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 themselves from the Committee if the conflict of interest could affect the 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 their case. The Grievant may testify on their 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 their 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 their burden of proof and established that the grievant has been adversely affected or suffered a remedial injury in their professional or academic capacity; and (2) the adverse effect 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 recommend only 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), the Provost, and the General Counsel 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 the written response to the Committee's recommendation(s) to the Grievant, with copies to the Chair, Provost, and General Counsel.
- 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 their 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 their 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 their 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) that 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) that, following timely 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.]

4.11. B.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 their 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 specified federal or state laws, The Code or Policies of the University of North Carolina, 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 Policies of the University of North Carolina, 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]