



NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY

SEC. II—FACULTY-Dispute Resolution 3.0

SEC. III—EHRA Non-Faculty Dispute Resolution 1.0

FACULTY AND EHRA NON-FACULTY HEARINGS

UNIVERSITY POLICY

I. PURPOSE

This Policy sets forth procedures and rules governing hearings for faculty members and for those employees who are not faculty members and are not subject to the State Human Resources Act (“EHRA non-faculty”). It provides details on the various hearings to which members of these groups are entitled under other University policies and the associated appeal rights.

II. SCOPE

This policy addresses the hearings and appeals provided for in the policies cited, and heard by the committees identified, below:

- A. **Due Process before Discharge or the Imposition of Serious Sanctions**, Faculty Handbook Appendix B-2, Section 4, Faculty Hearing and Reconsideration Committee.
- B. **Non-Reappointment of Faculty Members on Probationary Term Appointment**, Faculty Handbook Appendix B-2, Section 5, Faculty Hearing and Reconsideration Committee.
- C. **Termination of Faculty Employment**, Faculty Handbook Appendix B-2, Section 6, Faculty Hearing and Reconsideration Committee.
- D. **Faculty Grievance**, Faculty Handbook Appendix F-2, Faculty Grievance Committee.

- E. **EHRA Non-Faculty Grievance**, Employment Policies for EPA Non-Faculty, Sections 4-6, EHRA Non-Faculty Grievance Committee.

III. CONFIDENTIALITY

Documents submitted or created in connection with all matters that come before a hearing committee, and the information contained therein, shall be treated as confidential personnel information. Such confidential records and information derived from any discussions that are part of the formal hearing process shall not be disclosed to or discussed with any person except:

1. Those participating in the hearing as provided in this policy;
2. Those persons required or permitted to be consulted in accordance with the requirements of the department, college, or University or the UNC Policy Manual; or
3. Those persons permitted access to such documents by law.

Violation of this section may expose an employee, including an administrator, to the imposition of discipline.

IV. PRE-HEARING CONSIDERATIONS

A. Conflicts of Interest, Bias, Incapacity, or Temporary Vacancy

1. A member of a hearing committee is disqualified and shall not participate as a committee member in the proceedings described herein if he or she:
 - a. holds an appointment in the department of a party or key witness directly involved in a hearing;
 - b. served on a committee that previously considered the matter;
 - c. will testify as a witness at the hearing; or
 - d. has any other conflict of interest, bias, or is unable for any reason to assess the evidence fairly, impartially, and without prejudice.
2. The faculty member or employee, or the administrator involved in a hearing, may challenge the participation of any member of a hearing committee on grounds of bias or a personal relationship that might affect impartial consideration of the case. The committee, excluding the member challenged, shall consider the charge of bias and, if it determines possible bias, shall disqualify the member challenged. If the disqualified member is the committee chair, the remaining committee members shall elect one of the members to fill the vacancy while these conditions exist. The committee shall also select one of its members to replace the chair if he or she is incapacitated or absent.

3. In the case of an elected faculty committee, if the committee should have an insufficient number of qualified members to carry out its obligations because of conflicts of interest, bias, incapacity, or temporary vacancy, elections shall be held promptly in accordance with the Standing Rules of the Faculty Senate of North Carolina A&T State University to staff the committee while these conditions exist. If the need arises during the summer terms, the Faculty Senate Chair in consultation with the Faculty Executive Committee may make temporary appointments to fill vacancies on the committee. If a permanent vacancy occurs, elections shall also be held promptly in accordance with the Constitution of the Faculty Senate of North Carolina A&T State University to fill the vacancy for the unexpired term.

B. Avoiding Improper Communications After a Hearing Has Been Requested

Once a faculty member or employee has initiated the hearing process, no hearing committee member may engage in an ex parte communications (written, oral, email, or otherwise) concerning the case with the faculty member or employee or with the administrator(s) involved in the case.

C. Lack of Co-operation in Providing Needed Information

If a hearing committee seeks a written statement containing certain information from the faculty member or employee and it is not provided to the committee chair within fourteen (14) days of the request, the unfavorable decision is final without recourse to any further review by the hearing committee, the University, the Board of Trustees, or the Board of Governors. For good cause, the committee may excuse missing the deadline or grant an extension of time to the faculty member or employee.

V. SPECIAL CONSIDERATIONS

A. Discharge or the Imposition of Serious Sanctions

The Faculty Hearing and Reconsideration Committee shall provide the faculty member thirty (30) calendar days from the time it receives the faculty member's written request for a hearing to prepare a defense. The Faculty Hearing and Reconsideration Committee may, upon the faculty member's written request and for good cause, extend this time by written notice to the faculty member. The

Faculty Hearing and Reconsideration Committee will ordinarily endeavor to complete the hearing within 90 calendar days of receiving the request for hearing except under unusual circumstances such as when a hearing request is received during official university breaks and holidays and despite reasonable efforts the hearing committee cannot be assembled.

B. Non-reappointment of Faculty Member on Probationary Term Appointment

1. The hearing shall be limited to those grounds specified in the faculty member's request for a hearing.
2. The purpose of the Faculty Hearing Committee review process is not to second-guess professional judgment based on permissible considerations, but is to determine whether (1) the decision was based on considerations that *The Code of the University of North Carolina* provides are impermissible; or (2) the procedures followed to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint.

C. Termination of Faculty Employment

1. The reconsideration hearing shall be held promptly, but the Faculty Hearing and Reconsideration Committee shall accord the faculty member at least five (5) days from the time it receives his/her written request for a hearing to prepare for it.
2. The faculty member and the Faculty Hearing and Reconsideration Committee shall be given access, upon request, to documents of N.C. A&T State University that were used in making the decision to terminate the faculty member after the decision was made that the employment of some faculty member(s) must be terminated.
3. The reconsideration hearing shall be limited solely to a determination of whether the decision to terminate the faculty member was arbitrary or capricious.

D. Faculty Grievance

1. If any faculty member has a grievance, the faculty member may petition the Faculty Grievance Committee for redress. The petition shall be written and shall set forth in detail the nature of the grievance and against whom the grievance is directed. It shall contain any information that the faculty member considers pertinent to the case. The Committee shall decide whether the facts

merit a detailed investigation so that submission of a petition shall not result automatically in an investigation or detailed consideration of the petition

2. “Grievances” within the province of the Faculty Grievance Committee’s power shall include matters directly related to a faculty member’s employment status and institutional relationships within the University, including matters related to post-tenure review (but not when it is the basis for a discharge). However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the Committee.

E. EHRA Non-Faculty Grievance

1. The Human Resources Office facilitates the meeting logistics and provides established written procedures to the employee, the department, and the EHRA Non-Faculty Grievance Committee about the hearing itself. Human Resources has no decision-making role in the review. The Committee may consult with the Office of General Counsel as needed for assistance with hearing or review procedures and application of this Policy.
2. All attempts will be made to conduct the hearing within thirty (30) calendar days of the date that the chair of the Committee is notified by Human Resources that the Committee must be convened for review. In a discharge for cause case, the Committee shall provide the employee at least twenty (20) calendar days from the time it receives a written request for a hearing or from the failure of mediation, whichever is later, to prepare a defense. The Committee may, upon the employee’s written request and for good cause, extend this time by written notice to the employee and to the Chancellor.
3. Neither the employee nor the department may have an attorney or advisor at the hearing, but each may consult with an attorney or advisor outside of the hearing, when appropriate.

VI. CONDUCT AND RULES OF THE HEARING

The hearings to which this policy applies shall be conducted in the following manner:

- A majority of the committee membership constitutes a quorum to conduct the hearing.

- The conduct of the hearing is under the control of the committee chair. The chair may determine if evidence is needlessly repetitive or irrelevant. If the chair does not allow evidence to be admitted into the hearing, provision should be made for that evidence to be provided to the court reporter during a break so as to preserve it in the event of an appeal.
- The hearing shall be closed to the public, except in the case of discharge or imposition of serious sanctions, in which case the hearing may be open if the faculty member and the hearing committee agree that the hearing may be open to the public.
- Written briefs/memoranda from the parties are not expected by the hearing committee.
- The hearing committee will use the requirement(s) of the policies listed in Section II of this policy, *The Code of the University of North Carolina*, and the UNC Policy Manual as guidance, and thus no issues will be set out for the committee.
- Each side may make a short opening statement (not argumentative), with the party having the burden of proof going first.
- The faculty member or employee shall have the right to legal counsel, or to be accompanied by the person of his/her choice, and the Provost, supervisor or other administrator may be accompanied by legal counsel or a person of his/her choice. Legal counsel may participate in the hearing to present testimony of witnesses and other evidence, to confront and cross-examine adverse witnesses, to examine all documents and other adverse demonstrative evidence, and to make argument.
- The faculty member or employee shall have the right to present the testimony of witnesses and other evidence.
- The faculty member or employee shall have the right to confront and cross-examine adverse witnesses.
- The faculty member or employee shall have the right to examine all documents and other adverse demonstrative evidence.
- The faculty member or employee shall have the right to make argument.
- A written transcript shall be prepared by a professional court reporter of all proceedings, including a copy of the documents received by the hearing committee. This transcript and attached documents should be treated the same as if they were part of a personnel file. Upon request, a copy thereof shall be furnished to the faculty member or employee at the University's expense.
- Members of the hearing committee may question any and all witnesses, though it is often best to wait until the party or attorney has finished questioning the witness before the committee member asks questions.
- Witnesses may testify not only in person, but also via telephone, skype, or other reliable method that permits cross-examination by the opposing party.
- Documentary evidence is generally presented by the witness who discusses it. If no witness discusses a document, it may be handed to the committee and court reporter by a party.

- Enough copies of exhibits should be brought to the hearing so that at least each committee member, both parties, a witness, and the court reporter will each have a copy.
- The faculty member or employee and administrator or supervisor will be treated as witnesses if they testify.
- Hearings under this policy do not operate like those in a court of law, and thus are not subject to the rules of civil procedure, the rules of evidence, etc. But, if a party should want to make an objection to something, the party should do so at the time of the objectionable conduct during the hearing.
- The party with the burden of proof goes first in presenting its witnesses and evidence. Only after that party finishes with a witness may the opposing party question that witness. Each party should be allowed to present follow-up questions to the witnesses. When the party with the burden of proof has finished presenting all of its witnesses and presenting its documents for its case, then the opposing party may present its witnesses and documents. After each witness, the party with the burden of proof may question the witness. When the both parties have finished presenting their cases, the party with the burden of proof may want to call witnesses or offer documents to rebut the opposing side's evidence. When that rebuttal is concluded, the opposing party may want to call witnesses or offer documents to refute the rebuttal evidence.
- Each side may make a time-limited closing argument, with the party having the burden of proof going last.
- At the end of the hearing, the committee shall consider the case in closed session.
- In reaching decisions on which its written recommendations to the Chancellor will be based, the hearing committee shall consider only the evidence presented at the hearing and such written and oral arguments as the committee, in its discretion, may allow. The committee need consider only the evidence that it considers fair and reliable.
- The record going to the Chancellor should include not only the transcript, but also the documents presented at the hearing, which the court reporter should collect at the hearing, mark as "exhibits," and attach to the transcript.

VII. BURDEN OF PROOF

- A. Faculty discharge or the imposition of serious sanctions: The administration (University) has the burden of proof; it must prove by clear and convincing evidence that permissible grounds for discharge or serious sanctions exist and are the basis for the recommended action.
- B. Non-reappointment of faculty member on probationary term appointment: The faculty member has the burden of proof; he/she must show by greater weight (preponderance) of the evidence that his/her allegation/contention is true.

- C. Termination of Faculty Employment: The faculty member has the burden of proof; he/she must show to a substantial certainty that his/her allegation/contention is true.
- D. Faculty Grievance: The faculty member has the burden of proof; he/she must show by greater weight (preponderance) of the evidence that his/her allegation/contention is true.
- E. EHRA Non-Faculty Grievance: The employee or former employee has the burden of proof by the greater weight (preponderance) of the evidence that his/her allegation/contention is true.

VIII. PROCEDURE AFTER THE HEARING AND APPEAL RIGHTS

A. Discharge or the Imposition of Serious Sanctions

1. Faculty Hearing and Reconsideration Committee and Chancellor

- a. The Faculty Hearing and Reconsideration Committee shall make its written recommendations to the Chancellor within fourteen (14) days after its hearing concludes or after the full transcript is received, whichever is later.
- b. If the Chancellor concurs in a recommendation of the Faculty Hearing and Reconsideration Committee that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor either declines to accept the Faculty Hearing and Reconsideration Committee's recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the Board of Trustees.

2. Appeal to the Board of Trustees

- a. An appeal to the Board of Trustees 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 members. The Board of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the

faculty hearing committee, but may, in its discretion, hear such other evidence as it deems necessary.

- b. 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 trustees. This decision shall be final unless the faculty member alleges that one or more specified provisions of the *Code of the University of North Carolina* have been violated. The *Code* may be found here:
<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=2>

3. Appeal to the Board of Governors

If the faculty member alleges that one or more specified provisions of the *Code of the University of North Carolina* have been violated, the faculty member may appeal to the Board of Governors. The faculty member must file a written notice of appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, with the Board of Governors within fourteen (14) calendar days after receiving the Trustees' decision. Any such appeal to the Board of Governors shall be transmitted through the UNC System President.

B. Non-reappointment of Faculty Member on Probationary Term Appointment

1. Faculty Hearing and Reconsideration Committee and Chancellor

- a. If the Faculty Hearing and Reconsideration Committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify him/her, the department chairperson, the dean, and the Provost and Executive Vice Chancellor for Academic Affairs. Such a determination confirms the decision not to reappoint.
- b. If the Faculty Hearing and Reconsideration Committee determines that the faculty member's contention has been satisfactorily established, it shall submit a report with its recommendations to the Chancellor containing the Committee's findings and recommendations and what it considers to be appropriate action by the Chancellor to resolve the matter. It shall also send a copy of that report with its recommendations to the department chairperson, the dean, and the Provost and Executive Vice Chancellor for Academic Affairs.
- c. The Chancellor must base his or her decision on a thorough review of (i) the record evidence from the hearing and (ii) the report of the faculty hearing committee. While the Chancellor should give appropriate deference to the advice of the faculty committee, the final campus-based decision is the

Chancellor's. The Chancellor shall notify the faculty member, the Faculty Hearing and Reconsideration Committee, and relevant administrators of the Chancellor's decision in writing.

- d. The Chancellor's notice to the faculty member of the decision concerning the faculty member's case must inform the faculty member: (1) of the time limit within which the faculty member may file a notice of appeal with the UNC System President requesting review by the Board of Governors, (2) that a simple written notice of appeal with a brief statement of its basis is all that is required within the fourteen (14) calendar-day period and, (3) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. The notice of the decision is to be conveyed to the faculty member by certified mail, return receipt requested, or by another means that provides proof of delivery. See UNC Policy Manual 101.3.1
<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=337>

2. Appeal to the Board of Governors

If the Chancellor concurs in a recommendation of the Committee that is favorable to the faculty member, the Chancellor's decision shall be final. If the Chancellor either declines to accept a Committee recommendation that is favorable to the faculty member or concurs in a Committee recommendation that is unfavorable to the faculty member, the faculty member may appeal by filing a written notice of appeal with the Board of Governors, by submitting such notice to the UNC System President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within fourteen (14) calendar days after the faculty member's 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 Governors is to assure (1) that the campus-based process for reviewing the decision was not 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 not clearly erroneous, and (3) that the decision was not contrary to controlling law or policy. (See Policy 101.3.1 of UNC Policy manual)

C. Termination of a Faculty Member

1. Faculty Hearing and Reconsideration Committee and Chancellor

Following the hearing, the Faculty Hearing and Reconsideration Committee shall make its written recommendations to the Chancellor within ten (10) days after its hearing concludes or it receives the full hearing transcript from the court reporter, whichever occurs last.

The burden is on the faculty member to satisfy the Committee that his/her contention is true to a substantial certainty. If the Committee determines that the contention of the faculty member has not been established, it shall, by a simple unelaborated statement, so notify the faculty member and the Chancellor. If the Committee determines that the contention of the faculty member has been satisfactorily established, it shall so notify the faculty member and the Chancellor by a written notice that shall also include a recommendation for corrective action by the Chancellor.

The Chancellor shall send written notice to the faculty member and the Chairperson of the Committee what modification, if any, the Chancellor will make with respect to the original decision to terminate the faculty member's employment. If the Chancellor fails to reverse the original decision, the faculty member may appeal the reconsideration decision to the Board of Trustees.

If the Chancellor concurs in a recommendation of the Committee that is favorable to the faculty member, the Chancellor's decision is final.

2. Appeal to the Board of Trustees

If the Chancellor either declines to accept the Faculty Hearing and Reconsideration Committee's recommendation that is favorable to the faculty member or concurs in a Committee recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the Board of Trustees. This appeal 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 members. The Board of Trustees shall consider the appeal on the written transcript of hearing held by the faculty Reconsideration Committee, but 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 Trustees. The decision by the Board of Trustees is final.

D. Faculty Grievance

1. Chancellor's Decision

If the Chancellor concurs in a recommendation of the Faculty Grievance Committee that is favorable to the faculty member, the Chancellor's decision is final. If the relevant administrative official does not make an adjustment that is advised by the Faculty Grievance Committee in favor of the aggrieved faculty

member and if the Chancellor either declines to accept the Faculty Grievance Committee's recommendation that is favorable to the faculty member or concurs in a committee recommendation that is unfavorable to the faculty member, the faculty member may appeal to the Board of Trustees.

2. Appeal to the Board of Trustees

An appeal to the Board of Trustees 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. The Board of Trustees shall consider the appeal on the written transcript of hearing held by the Faculty Grievance Committee. The decision of the Board of Trustees is final.

E. EHRA Non-Faculty Grievance

1. Chancellor's Decision

The EHRA Non-Faculty Grievance Committee makes a recommendation for a reassessment of a decision if it reaches the conclusion, based on a preponderance of evidence, that the decision was reached improperly. The Committee presents its recommendations, along with the records of the hearing, to the Chancellor. After review of the record and the Committee's recommendations, the Chancellor shall seek to written decision within fifteen (15) calendar days.

2. Appeal to the Board of Trustees

If the Chancellor concurs in a recommendation of the Committee that is favorable to the employee, the Chancellor's decision shall be final. If the Chancellor either declines to accept a Committee recommendation that is favorable to the employee or concurs in a Committee recommendation that is unfavorable to the employee, the employee may appeal within fourteen (14) calendar days after receiving the Chancellor's written decision, by filing with the Chancellor for transmission to the Board of Trustees a written notice of appeal, including a brief statement of the basis for the appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in UNC Code 611 sub-section (1)(b).

<http://www.northcarolina.edu/apps/policy/index.php?pg=vs&id=2>

The appeal to the Board of Trustees shall be decided by the full Board of Trustees. The Board of Trustees shall consider the appeal on the written

transcript of hearing held by the EHRA Non-Faculty Grievance Committee. The decision of the Board of Trustees is final.

All policies that contain statements about hearings and appeals for faculty members and EHRA non-faculty members are hereby repealed unless they are posted on the University's policy website. If this policy should conflict with any policy posted on that website, this policy shall prevail.

Approved by the Board of Trustees

Date policy is effective: Upon approval

First approved: November 16, 2018

Revised: