

ELIZABETH CITY STATE UNIVERSITY
Faculty Grievance Procedure

I. Purpose

In accordance with Section 607 of *The Code* of The University of North Carolina, this policy shall govern the process for handling employment-related faculty grievances at Elizabeth City State University (ECSU). The aim of the faculty grievance procedure is to facilitate dispute resolution. In the event that a consensual resolution is not achievable, the procedure provides a means for determining whether a contested decision was materially flawed, in violation of applicable policies, standards or procedures. This process is not intended to undermine the execution of the duties and responsibilities of the administrative decision makers.

II. Initiation of the Grievance Process for Grievances as Defined within Section 607 (3) of The Code

A. Any member of the faculty who has a grievance, as defined in Section 607 (3) of *The Code*, including matters directly related to a faculty member's employment status and institutional relationships, may file a petition for redress. The petition must be in writing and set forth in detail the basis of the grievance and against whom the grievance is directed. The person against whom a grievance is directed shall be referred to as the respondent. The petition must also include any information that the faculty member deems relevant to the grievance. The faculty member must deliver the petition to the Chairperson of the Faculty Grievance Committee by certified mail or by another means that provides proof of delivery within thirty (30) calendar days of the event triggering the grievance.

1. The first day following the triggering event, shall be counted as the first day of the thirty (30) calendar day period.
2. If the thirty (30) calendar day period ends on a weekend or an official holiday, the time for filing the petition shall be extended until the next business day.
3. If a faculty member fails to comply with the thirty (30) calendar day period established for filing a petition, the faculty grievance committee may, in its discretion, extend the time for compliance or dismiss the petition.

B. Unless the parties involved with the grievance have participated in mediation prior to the faculty member's filing the petition, before taking any action on the petition, the faculty grievance committee shall refer the matter for mediation.

III. Mediation of Grievances

- A. Mediation refers to an informal procedure in which a neutral party assists disputing parties in resolving a matter through a voluntary bilateral agreement that finally and definitely resolves all or portions of the dispute without resorting to adversarial procedures such as grievance hearings, administrative hearings or litigation. Any such mediated agreement that the parties are able to negotiate will be embodied in a written agreement.
- B. The appropriate functions of a mediator are to assist the disputing parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of the divisive issues and to aid the parties in generating, considering and communicating with each other about possible bases for reaching a resolution.
- C. As a prerequisite to access to the formal faculty grievance process, faculty members presenting disputes under Section 607 of *The Code* must participate in mediation. The mediator assigned to assist with the dispute may assess and make determinations regarding the value of continuing the mediation process. If the mediator determines that a settlement is unable to be reached between the disputing parties, the mediator may declare an impasse and end the mediation. If mediation is ended under such circumstances, the formal grievance hearing process will begin, as described in Section IV.
- D. The mediation process shall:
 - 1. Have at least four campus mediators available to assist in dispute resolution. These mediators may be either trained members of the faculty or staff, from the community or other campuses with the UNC system. Mediators may not be members of the faculty hearing committee with jurisdiction to hear Section 607 grievances.
 - a. Campus mediators shall be used unless either of the disputing parties challenges the neutrality or impartiality of available mediators within the campus pool.
 - b. Outside mediators shall be used whenever either of the disputing parties challenges the neutrality or impartiality of available mediators within the campus pool.
 - 2. All campus mediators must 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 mediation specifically designed for use in a university setting.
 - 3. Attorneys shall not be allowed to be present at mediation proceedings or participate in the mediation process.

4. The disputing parties shall not be penalized in any way for a decision not to pursue mediation beyond the campus-required minimum and no blame shall attach to either party if mediation does not produce a settlement.
 5. If the mediation fails, the mediator shall not provide a record of the mediation but will provide an unelaborated written statement to the Faculty Grievance Committee Chairperson confirming that mediation was attempted but settlement was not reached.
 6. Mediators shall be prohibited from being called as a witness in any subsequent proceeding and anything done or stated by either party during a mediation process is prohibited from being referred to or used against a party in any subsequent proceeding.
- E. Any mediation agreement that obligates ECSU must be signed by the Chancellor.
- F. Any time limitations adopted by ECSU or by the Board of Governors Policy concerning the formal resolution of Section 607 grievances shall be suspended for the duration of the mediation process.

IV. Administrative Decision

- A. If the mediation process fails to resolve the grievance, the matter shall proceed to the faculty grievance committee for review.
- B. The following standard shall be utilized for determining contested grievances. In order to prevail in the grievance process, a faculty member must establish that the faculty member experienced a remediable harm 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 attendant to university employment.
- C. If a dispute is not voluntarily resolved through mediation, the faculty grievance committee shall decide whether a hearing should be held in response to the petition. The submission of a petition shall not result automatically in an investigation or a hearing on the petition. The faculty grievance committee shall determine whether the facts alleged merit a detailed investigation. The faculty grievance committee shall consider the content of the grievant's petition. Assuming the truth of grievant's petition, the faculty grievance committee is to determine whether the contentions advanced by the grievant justify a hearing. A petition shall be properly dismissed if the grievant fails to allege an injury that would entitle the faculty member to relief in accordance with the standard set out in paragraph IV.B above. The grievant's petition shall be dismissed if it is based on matters outside of the faculty grievance committee's jurisdiction.
- D. If the faculty member presents an apparently substantial issue that is within the purview

of the faculty grievance committee's responsibility, the committee shall hold an evidentiary hearing. Both the faculty member and the respondent must attend the hearing. At the hearing, the faculty member shall present evidence in support of his/her contentions and the person charged with wrongdoing shall be given an opportunity to respond. The faculty grievance committee shall maintain a complete transcript of all evidence received. Only the evidence compiled by the committee is to form the basis for committee conclusions about the case and any resulting advice to the responsible administrator and the chancellor. The burden is on the faculty member to establish by the preponderance or greater weight of the evidence that the faculty member has experienced an injury that would entitle the faculty member to relief in accordance with the standard set out in paragraph IV.B above.

- E. If, after hearing the matter, the faculty hearing committee determines that an adjustment in favor of the aggrieved faculty member is appropriate, the faculty grievance committee shall so advise the faculty member and the dean, department head, or other respondent administrator. If the relevant administrator does not make the recommended adjustment or other adjustment satisfactory to the faculty member, within a reasonable period of time, the faculty grievance committee shall advise the chancellor of its recommendation that an adjustment is appropriate.
- F. If, after reviewing the petition or hearing the matter, the faculty grievance committee determines that no adjustment in favor of the grievant is appropriate, the Committee shall so advise the faculty member and the chancellor.
- G. The chancellor shall base her or his decision on the recommendation of the faculty committee and the record from the faculty committee hearing. The chancellor may, in his or her discretion, consult with the faculty grievance committee before making a decision. The decision of the chancellor is the final administrative decision.
- H. The chancellor shall notify the faculty member and the respondent administrator in writing of the chancellor's decision. The notification shall include a notice of appeal rights, if any, and if the decision is appealable, it shall contain the information specified in paragraph V.C. ii, below.
- I. The faculty grievance process is a process available to current members of ECSU's faculty. A faculty member who is terminated during the pendency of a grievance proceeding is not entitled to continue to pursue the grievance. If the employment of the faculty member is terminated after the grievance is filed, the chancellor may, however, in the chancellor's discretion, determine that it is in the best interest of ECSU to continue the grievance process.

V. Appeal to the Board of Trustees

- A. Decisions which may be appealed.

1. If the faculty grievance committee did not advise that an adjustment in favor of the grievant was appropriate, then the decision of the chancellor is final and may not be appealed.
 2. If neither the relevant administrative official nor the chancellor makes an adjustment that is advised by the faculty grievance committee in favor of the aggrieved faculty member, then the faculty member may appeal to the Board of Trustees. The decision of the Board of Trustees is final.
- B. Delegation. The Board of Trustees may delegate to a designated committee the authority to make procedural decisions and to make final decision on behalf of the board concerning appeals of faculty grievances submitted pursuant to section 607 of *The Code*.
- C. Timeline for Appeals.

1. A faculty member who seeks to appeal the chancellor's decision of his or her grievance must file a written notice of appeal with the Board of Trustees, by submitting such notice to the chancellor, with adequate evidence of delivery, within ten (10) days after the faculty member's receipt of the chancellor's decision. The notice shall contain a brief statement of the basis for the appeal. If the board agrees to consider the appeal, it will do so on a schedule established by the chancellor, subject to any instructions received from the board or from a committee of the board which has jurisdiction of the subject matter of the grievance. The board will issue its decision as expeditiously as is practical. If the faculty member fails to comply with the schedule established for perfecting and processing the appeal, the board in its discretion may extend the time for compliance or it may dismiss the appeal.
2. If the chancellor's decision is appealable, the chancellor's notice of the disposition of a faculty member's case must inform the faculty member:
 - a. Of the time limit within which the faculty member may file a petition for review by the board of trustees;
 - b. That a written notice of appeal containing a brief statement of the basis for appeal is required within the ten day period;
 - c. That, after notice of appeal is received in a timely manner, a detailed schedule for the submission of relevant documents will be established.

All such notices of decision are to be conveyed to the grievant by a method which produces adequate evidence of delivery.

3. To insure full understanding by the faculty, ECSU's Faculty Handbook shall include a statement of the time limits established by the Board of Governors or Board of

Trustees policy.

- D. Standard of Review. In order to prevail before the board of trustees, the faculty grievant must demonstrate that the chancellor's decision was clearly erroneous, that it violated applicable federal or state law or university policies or regulations, or that the process used in deciding the grievance was materially flawed.

VI. Faculty Grievance Committee

- A. The faculty grievance committee shall be elected by the faculty and consist of members from each professorial rank. No officer of administration shall serve on the committee. For purposes of this policy, "officer of administration" shall be deemed to include department chairs and department heads.
1. The committee shall be comprised of a total of seven (7) members including one (1) member from each professorial rank and three (3) tenured faculty at-large members.
 2. The committee members shall serve for the following terms.
 - a. The member with the rank of Professor shall serve as committee chair for a 4-year term.
 - b. The member with the rank of Associate Professor shall serve for a 3-year term.
 - c. The member with the rank of Assistant Professor shall serve for a 2-year term.
 - d. The member with the rank of Instructor shall serve for a 1-year term.
 - e. The three at-large members shall serve for a 1-year term each.
 3. The committee shall elect a vice chair and secretary each academic year.
 4. The committee chair shall recuse herself or himself in the event that the faculty grievant is from the chairperson's school or department.
 5. In the event of a vacancy within the committee membership, the faculty shall elect a replacement to fill the unexpired term.
- B. The faculty grievance committee shall be authorized to hear and advise with respect to the adjustment of grievances of members of the faculty. The power of the committee shall be solely to hear representations by the persons directly involved in a grievance and to advise adjustment by the administration when appropriate.
- C. The faculty grievance committee shall have jurisdiction to hear matters directly related to

a faculty member's employment status and institutional relationships. The committee shall have no jurisdiction to hear matters related to a formal proceeding for the suspension, discharge or termination of a faculty member or matters within the jurisdiction of another standing faculty committee.