

FAYETTEVILLE STATE UNIVERSITY

BOARD OF TRUSTEES APPELLATE POLICY AND PROCEDURES

Authority:	Issued by the Fayetteville State University Board of Trustees. Changes or exceptions to this policy may only be made by the Fayetteville State University Board of Trustees.
Category:	University-Wide Policies
Applies To:	●Administrators ●Faculty ●Staff ●Students
History:	Revised – September 22, 2011 September 22, 2005 First issued - December, 1996
Related Policies:	<ul style="list-style-type: none">●<i>Tenure and Promotion Policies, Regulations and Procedures</i> [Sections IV, VI and VII]●<i>Code of Student Conduct</i>●<i>The Code of the Board of Governors of the University of North Carolina</i> [UNC Policy #101.1, Sections 502D (3), 603, 605 and 607]●<i>Senior Academic and Administrative Officers</i> [UNC Policy #300.1.1, Section III]●<i>Employees Exempt from the State Personnel Act</i> [UNC Policy #300.2.1]●<i>Review of Personnel Actions Affective Specified Employees Exempt from the</i>●<i>State Personnel Act (EPA)</i> [UNC Policy #100.1, Section 611]
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I. INTRODUCTION

The Code of the Board of Governors of the University of North Carolina (The Code) provides for appeals to the Board of Trustees (Board) from certain decisions made by the Chancellor. Where the sanction is expulsion of a student for disciplinary reasons, an appeal may be made to the Board as governed by Section 502 D (3) of *The Code*. Sections 603, 605 and 607 of *The Code* govern the appeal of decisions regarding faculty discharges terminations and grievances. Additionally, Section 603 of *The Code* governs appeals of decisions regarding the imposition of a serious sanction against a faculty member. Section 611 of *The Code* governs appeals of decisions regarding discharges, terminations, discontinuations or other employment actions against employees exempt from the State Personnel Act (EPA non-faculty employees).

The purpose of this policy is to provide a means for the disposition of appeals from the Chancellor to the Board that is consistent with *The Code*, and other policies of the UNC Board of Governors and Fayetteville State University (University).

II. NOTICE OF APPEAL

A faculty member, EPA non-faculty employee or student (Appellant) who has a right and wishes to appeal a decision of the Chancellor must file written notice of appeal (*Notice*) with the Board. The Appellant shall file such *Notice* with the Chancellor for transmission to the Chair of the Board (Board Chair). The *Notice* must contain a brief statement outlining the basis for the appeal and be sent by certified mail, return receipt requested, or by another means that provides proof of delivery. The *Notice* must be filed no later than fourteen (14) calendar days following the Appellant's receipt of the Chancellor's decision.

III. STUDENT EXPULSIONS AND FACULTY/EPA NON-FACULTY ADVERSE DECISIONS

(This section is not applicable to a discharge for cause or imposition of serious sanctions involving a faculty member or a discharge for cause or other disciplinary action involving an EPA non-faculty employee. See Section IV or V for appeals involving such actions.)

Consideration of an appeal of the Chancellor's decision will not be granted automatically. Before a decision is made to consider an appeal, the Board (or a designated committee or subcommittee) shall first consider whether the Board has jurisdiction over the matter, and subsequently determine whether the Appellant has included in the *Notice* an allowable basis for appeal.

A. Jurisdiction

Upon receipt of the *Notice*, the Board (or a designated committee or subcommittee) shall first determine whether the subject matter of the appeal is within the Board's jurisdiction as defined by *The Code*. If it is determined that the Board does not have jurisdiction, the appeal shall be dismissed.

B. Grounds for Appeal

If it is determined that the Board has such jurisdiction, the *Notice* shall be evaluated by the Board (or a designated committee or subcommittee) to determine whether the Appellant has included an allowable basis for appeal. No review of the Chancellor's decision shall be granted unless the Appellant has alleged facts supporting one or more of the following grounds:

1. Student Expulsions

For decisions rendered in accordance with Section 502 D (3) of *The Code*, no review shall be granted unless the student alleges that there was a violation of the student's due process rights or that there was a material deviation from substantive and procedural standards adopted by the UNC Board of Governors.

2. Faculty Terminations

For decisions rendered in accordance with Section 605 of *The Code* involving a termination (resulting from a demonstrable, bona fide institutional financial exigency or major curtailment or elimination of a teaching, research or public-service program), no review shall be granted unless the faculty member alleges that the decision to terminate was arbitrary or capricious.

3. Faculty Grievances

For decisions rendered in accordance with Section 607 of *The Code* involving a grievance (a matter related directly to a faculty member's employment status and institutional relationship which does not involve a matter related to a suspension, discharge or termination of a faculty member), no review shall be granted unless the faculty member alleges 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.

4. EPA Non-Faculty Discontinuations, Expirations of Term Appointments or Terminations

For decisions involving discontinuations of at-will appointments, expirations of term appointments or terminations (resulting from a demonstrable, bona fide institutional financial exigency or major curtailment or elimination of a teaching, research or public-service program), no review shall be granted unless the EPA non-faculty employee alleges that the adverse action was a violation of rights guaranteed by the First Amendment of the United States Constitution or Article I of the North Carolina Constitution (subject to any limitations on political activity as established under North Carolina law and relevant UNC Board of Governors' policies) or the adverse action was a result of unlawful discrimination. (The specific protected classes are covered in the University's non-discrimination statement.)

5. EPA Non-Faculty Grievances

For grievances regarding a University policy interpretation/application or an illegal act, no review shall be granted unless the EPA non-faculty employee alleges that a University or Board of Governors personnel policy was misinterpreted or misapplied.

C. Consideration of an Appeal by the Board

1. Decision Not to Consider an Appeal

If the Board determines that it does not have jurisdiction or that the stated grounds for an appeal have not been met, the Board Chair shall notify the Chancellor and the Appellant, in writing, of the Board's decision not to consider the appeal. The Board's decision shall be final, except in the case of an expulsion of a student.

2. Decision to Consider an Appeal

If the Board determines that the Board does have jurisdiction and that the stated grounds for an appeal have been met, the Board Chair shall notify the Chancellor and the Appellant, in writing, of its decision to consider the appeal. In the same correspondence, the Appellant shall be notified that in order to perfect the appeal, the Appellant must file a clear and concise written petition (*Petition*) specifying the following:

- a. the grounds for appeal including, if applicable, the specific federal or state law or University or UNC policy or regulation that was violated;

- b. the specific facts supporting the grounds for appeal; and
- c. the precise remedy sought.

The *Petition* shall be transmitted through the Chancellor and be addressed to the Board Chair, no later than fourteen (14) calendar days following receipt of the Board Chair's notification to the Appellant. The Appellant must also provide a copy of the *Petition* to the Chancellor within the same time frame. The *Petition* must be sent by registered mail, return receipt requested or by another means that provides proof of delivery. If the Appellant fails to submit the *Petition* within the time frame provided by the Board Chair, the Appellant's case shall be dismissed. If however, the Appellant makes a request for an extension of time to file the *Petition*, the Board Chair may in his or her discretion extend the time for compliance.

D. Chancellor's Response

If the Appellant files a *Petition*, the Board Chair shall provide the Chancellor with an opportunity to respond to the Appellant's *Petition*.

The Chancellor shall be provided with the same amount of time to respond to the Appellant's *Petition* as was provided to the Appellant. The Chancellor's response shall be transmitted to the Board Chair, with a copy being provided to the Appellant. The Chancellor's response shall be sent to the Appellant by registered mail, return receipt requested or by another means that provides proof of delivery.

IV. DISCHARGE FOR CAUSE OR THE IMPOSITION OF SERIOUS SANCTIONS (FACULTY)

An appeal of the Chancellor's decision filed under Section 603 of *The Code* shall be transmitted through the Chancellor and be addressed to the Board Chair. Notice of appeal shall be filed within fourteen (14) calendar days after the faculty member receives the Chancellor's decision. The Board shall consider such an appeal on a schedule established by the Chancellor, subject to any instructions received from the Board or the Board Chair. 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 period for complying with the schedule or it may dismiss the appeal.

The appeal to the Board 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, or its committee, shall consider the appeal on the written transcript of the hearing held by the faculty Hearing and Reconsideration Committee, but it may, in its discretion, hear such other evidence as it deems necessary.

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

V. DISCHARGE FOR CAUSE OR OTHER DISCIPLINARY ACTIONS (EPA NON-FACULTY)

An appeal by an EPA non-faculty employee of the Chancellor's decision regarding a discharge for cause or other employment related disciplinary action (i.e., demotion, suspension) shall be transmitted through the Chancellor and be addressed to the Board Chair. Notice of appeal shall be filed within fourteen (14) calendar days after the employee receives the Chancellor's decision. The Board shall consider such an appeal on a schedule established by the Chancellor, subject to any instructions received from the Board or the Board Chair. If the EPA non-faculty employee fails to comply with the schedule established for perfecting and processing the appeal, the Board in its discretion may extend the period for complying with the schedule or it may dismiss the appeal.

The Board, or its committee, shall consider the appeal on the written transcript of the hearing held by the University's grievance committee, but it may, in its discretion, hear such other evidence as it deems necessary.

The Board's 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 Board's decision shall be final.

VI. RECORD ON APPEAL

Upon the receipt of the Chancellor's response by the Board Chair, the proposed Record on Appeal (Record) shall be submitted to the Board Chair within fourteen (14) calendar days. The University's General Counsel shall be responsible for compiling and forwarding the Record. The Record must contain, at a minimum, all of the materials the Chancellor relied upon in arriving at the challenged decision in addition to the Appellant's *Petition* and the Chancellor's response. The General Counsel shall send a copy of the proposed Record to the Appellant who may submit written objections to the exclusion or inclusion of material to the Board Chair and the Chancellor. The Board Chair shall resolve all disputes concerning the Record. The Board Chair's resolution shall be final.

The Board may consider any information it deems relevant to the disposition of an appeal. If the Board considers information, other than that submitted by the Appellant and/or Chancellor, the information shall be included in the Record and copies shall be sent to the Appellant and Chancellor.

VII. PERSONAL APPEARANCE BY THE APPELLANT

The Board does not conduct formal, adversarial hearings. A personal appearance before the Board is not a matter of right. Any Appellant whose case is to be heard by the Board and who wishes to make a personal appearance must make a written request to the Board, through the Chancellor. If the request is granted, the Chancellor or his or her designee shall also be permitted to appear before the Board. A written transcript of the appearances shall be made and furnished to either party upon request.

VIII. DISPOSITION OF THE APPEAL

The Board shall issue its decision as soon as reasonably practical. If the Appellant's appeal was referred to a committee designated to consider the appeal, that committee shall submit a report, including its findings and recommendations, to the full Board. A decision regarding the appeal shall be made by the full Board.

The Appellant and the Chancellor shall be notified in writing of the decision of the Board when its review is completed. The notification shall also inform the Appellant of any rights per *The Code* that

the Appellant may have to seek review by the UNC President or the UNC Board of Governors. The notification shall be sent by registered mail, return receipt requested or by another means that provides proof of delivery. If no such appeal exists under *The Code*, the Board's decision shall be final.

IX. OTHER APPELLATE JURISDICTION

The Board reserves the right to consider such other appeals that it is authorized to consider pursuant to authority vested in it by the UNC Board of Governors.