

FAYETTEVILLE STATE UNIVERSITY

APPELLATE POLICY AND PROCEDURES

- Authority:** Issued by the Fayetteville State University Board of Trustees
- Category:** General University Policies
- Applies To:** ●Faculty ●Students
- History:** Revision approved, September 22, 2005
First issued, December, 1996
- Related Policies:** *The Code* of the University of North Carolina, Sections 502D(3), 603, 605 and 607
FSU Tenure Policies and Regulations, Sections IV, V, VI and VII
FSU Code of Student Conduct
- Contact for Info:** University Legal Counsel (910) 672-1141
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I. INTRODUCTION

- A. *The Code* of the Board of Governors of the University of North Carolina 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 of Trustees as governed by Section 502 D(3). Sections 603, 605 and 607 govern the appeal of decisions regarding faculty discharge, termination and grievance cases. Additionally, Section 603 governs appeals of decisions regarding the imposition of serious sanctions against a faculty member.
- B. The purpose of this document is to establish specific guidelines and procedures, consistent with *The Code*, and with the policies of the Board of Governors for the disposition of appeals from the Chancellor to the Board.

II. NOTICE OF APPEAL

- A. A faculty member may appeal the Chancellor’s decision on a matter pertaining to Sections 605 or 607 if the faculty member alleges that the decision was based upon grounds outlined under Determination of Jurisdiction and Grounds for Appeal.
- B. A faculty member may appeal the Chancellor’s decision on a matter pertaining to Section 603 in accordance with the procedures outlined under Appeals Filed under Section 603 of The Code.

- C. A student may appeal the Chancellor's decision to expel him or her if the student alleges that the decision was based upon grounds outlined under Determination of Jurisdiction and Grounds for Appeal of this policy.
- D. Such appeal must be transmitted through the Chancellor and be addressed to the chair of the Board. The notice shall be sent by registered mail, return receipt requested, within ten (10) days¹ after the faculty member or student has received written notice of the Chancellor's decision. A simple written notice of appeal, with a brief statement of its basis, is all that is required within the ten (10) day period.

III. DETERMINATION OF JURISDICTION AND GROUNDS FOR APPEAL (Excludes appeals filed under Section 603 of *The Code*)

- A. A review of a faculty member's or student's appeal will not be granted automatically. Before agreeing to consider an appeal, the Board will first determine whether the subject matter of the appeal is within its jurisdiction as defined by *The Code* and whether the faculty member or student has alleged facts (as identified in a-c below) that warrant the Board's attention.
- B. In order for these determinations to be made, the faculty member or student must have presented to the Board a clear and concise written statement of the grounds for appeal ("*Petition*"). The *Petition* must be transmitted to the chair of the Board through the Chancellor, by registered mail, return receipt requested, no more than twenty (20) days after the faculty member or student has received written notice of the Chancellor's decision. In addition, the faculty member or student shall provide a copy of the *Petition* to the Chancellor at the time the *Petition* is submitted to the chair of the Trustees.
- C. Appeals from decisions of the Chancellor are allowable only on the following grounds:
 - 1. For decisions rendered in accordance with Section 502 D(3) of *The Code*, no review shall be granted unless the student alleges facts supporting his or her contention 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 Board of Governors.
 - 2. For decisions rendered in accordance with Section 605 of *The Code*, no review shall be granted unless the faculty member alleges facts supporting his or her contention that the decision was arbitrary or capricious.

¹Wherever it is used in this chapter, except when calendar day is specified, the word "day" shall mean any day except Saturday, Sunday or an institutional holiday. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

3. For decisions rendered in accordance with Section 607 of *The Code*, no review shall be granted unless the faculty member alleges facts supporting his or her contention 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.
- D. Upon receipt of the faculty member's or student's *Petition*, a determination shall be made as to whether or not the Board has jurisdiction. This may occur through a designated committee or subcommittee of the Board. If it is determined that the Board has such jurisdiction, the *Petition* shall be evaluated by the Board (or a designated committee or subcommittee) to determine whether the faculty member or student has alleged facts that support the grounds for review as identified in a-c above).
- E. If the Board determines that it does not have jurisdiction or that the *Petition* does not include facts that support the grounds for review, the Board may dismiss the appeal without further proceedings.
- F. If the faculty member or student has made allegations that are sufficient to invoke the jurisdiction of the Board, and if the Board determines that the allegations raised warrant its attention, the Board shall notify the Chancellor (with a copy to the faculty member or student) to begin the processing of the appeal.

IV. PROCESSING OF THE APPEAL (Excludes appeals filed under Section 603 of *The Code*)

- A. With the exception of appeals filed pursuant to Section 603 of *The Code*, the Board shall consider an appeal on a schedule established by the Chancellor, subject to any instructions received from the committee or sub-committee of the Board which has jurisdiction of the subject matter of the appeal. If the faculty member or student 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 they may dismiss the appeal.
- B. As part of processing an appeal, the Chancellor shall be given ample opportunity to respond to the *Petition*. Such response shall be in accordance with the established schedule. The Chancellor shall be given the same amount of time to respond as has been provided to the faculty member or student. The Chancellor's response shall be transmitted to the chair of the Board, with a copy being provided to the faculty member or student. The Chancellor's response shall be sent to the faculty member or student by registered mail, return receipt requested.
- C. Upon the receipt of the Chancellor's response by the chair of the Board, the Chancellor shall submit a proposed Record of Appeal (Record) to the Board within twenty (20) days. The record of appeal must contain, at a minimum, all of the

materials the Chancellor relied upon in arriving at the challenged decision. The Chancellor will send a copy of the proposed Record to the grievant faculty member or student who may submit written objections to the exclusion or inclusion of material to the Board and to the Chancellor. The Board will resolve all disputes concerning the Record. The Board's resolution shall be final.

- D. 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 parties, the information will be included in the Record and copies will be sent to the parties.

V. APPEALS FILED UNDER SECTION 603 OF *THE CODE*

Appeals of the Chancellor's decision filed under Section 603 of *The Code* shall be transmitted through the Chancellor and be addressed to the chair of the Board. Notice of appeal shall be filed within ten (10) days after the faculty member receives the Chancellor's decision. 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 hearings 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 within forty-five (45) days after the Chancellor has received the faculty member's request for an appeal to the Board. This decision shall be final except that the faculty member may, within ten (10) days after receiving the Board's decision, file a written petition for review with 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.

VI. PERSONAL APPEARANCE BY THE GRIEVANT

The Board does not conduct formal, adversarial hearings. A personal appearance before the Board is not a matter of right. Any grievant 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 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.

VII. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard of review in all appeals is that of "clear and material error." The burden of proving clear and material error lies with the faculty member or student.

VIII. DISPOSITION OF THE APPEAL (Excludes appeals filed under Section 603 of *The Code*)

- A. The Board will issue its decision as expeditiously as is practical.
- B. If the faculty member's or student's appeal was referred to a committee designated to consider the appeals, that committee will submit a report including its findings and recommendations to the full Board or its Executive Committee. A decision

regarding the appeal will be made by the full Board or its Executive Committee and not by the committee designated to consider the appeal.

- C. The faculty member or student will be notified in writing of the decision of the Board when its review of the case is completed. The notification will also inform the faculty member or student of any rights the faculty member or student may have to seek review by the President of the University of North Carolina or the Board of Governors. The notification shall be sent by registered mail, return receipt requested.

IX. OTHER APPELLATE JURISDICTION AS DELEGATED BY THE BOARD OF GOVERNORS

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