

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

Applies To: ●Administrators ●Faculty ●Staff ●Students

History: Revised – September 24, 2020
Revised – December 8, 2016
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Related Policies:

- Tenure and Promotion Policies, Regulations and Procedures [§ IV, V, VI and VII]
- Procedures for the Review of Employment Decisions Affecting Certain Employees Exempt from the State Personnel Act
- Code of Student Conduct
- Officers of the University [UNC Policy #100.1.5, §502D(3)]
- Academic Freedom and Tenure [UNC Policy #100.1.6, §§ 603-605, 607-610 and 611]
- Regulation on Review of Intention to Discharge or Impose Serious Sanction Under Section 603 of The Code [UNC Policy #101.3.1.1[R]]
- Regulation on Review of Non-reappointment Decisions Under Section 604 of The Code [UNC Policy #101.3.1.2[R]]
- Grievances Filed Pursuant to Section 607 of the Code [UNC Policy #101.3.2]
- Senior Academic and Administrative Officers [UNC Policy #300.1.1]
- Employees Exempt from the State Human Resources Act [UNC Policy #300.2.1]
- Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings [UNC Policy #700.4.1]

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I. INTRODUCTION

The Code and other policies of the UNC Board of Governors and Fayetteville State University (“University”) provide for appeals to the Board of Trustees (Board) of certain decisions made by the Chancellor. The purpose of this policy (“Policy”) is to set forth, the conditions and procedures by which an employee or student may appeal decisions of the Chancellor. Consistent with UNC

and University policies, the following actions may be appealable to the Board under this Policy:

- **Student**
 - expulsion of a student for disciplinary reasons (*The Code*, § 502 D (3)).
- **Faculty**
 - imposition of a serious sanction against a faculty member or a faculty discharge (*The Code*, § 603)
 - faculty non-reappointment (*The Code*, § 604)
 - faculty termination (*The Code*, § 605)
 - faculty grievance (*The Code*, § 607)
- **Employees Exempt from the Human Resources Act (EHRA) Non-Faculty**
 - discharge, termination, discontinuation or other employment action (*The Code*, § 611).

II. NOTICE OF APPEAL

An employee or student (Appellant) who has a right to appeal a decision of the Chancellor under *The Code* and Section III of this Policy may, after receipt of the Chancellor's decision, file a written notice ("Notice") of appeal requesting review by the Board. The Notice shall include a brief statement outlining the basis for the appeal. The grounds for the appeal must be specifically stated in the Notice.

The Notice must be filed with the Chancellor for transmission to the Chair of the Board (Board Chair) no later than fourteen (14) calendar days following receipt of the Chancellor's decision. The Notice must be filed by certified mail, return receipt requested, or by another means that provides proof of delivery. If the Appellant fails to comply with the time period established for filing an appeal, the Board Chair may extend the period for complying for good cause or dismiss the appeal.

III. JURISDICTION AND GROUNDS FOR AN APPEAL

Consideration of an appeal of the Chancellor's decision shall not be granted automatically. Before a decision is made to consider an appeal, the Board Chair and either the Chair of the Academic Affairs and Personnel Committee (if the Appellant is an employee) or the Chair of the Student Affairs Committee (if the Appellant is a student), in consultation with an attorney designated by the Office of Legal Affairs, shall make a determination regarding jurisdiction. If it is determined that the Board does have jurisdiction, the respective Committee, in consultation with an attorney designated by the Office of Legal Affairs, shall determine whether the Appellant has included at least one of the permitted grounds for appeal.

A. Jurisdiction

Upon receipt of the Notice, the Board Chair and the respective Committee Chair, in consultation with an attorney designated by the Office of Legal Affairs, 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 Board Chair shall notify the Appellant and the Chancellor, in writing, that the appeal is being dismissed for lack of jurisdiction. No further action shall be taken on the appeal by the Board and the Chancellor's decision shall stand.

B. Grounds for Appeal

If it is determined that the Board has jurisdiction, the Notice shall be evaluated by the respective Committee, in consultation with an attorney designated by the Office of Legal Affairs, to determine whether the Appellant has included at least one of the permitted grounds for appeal (as outlined below). If the Committee determines that the Notice does not include at least one of the permitted grounds for appeal, the Board Chair shall notify the Appellant and the Chancellor, in writing, that the appeal is being dismissed for failure to state a permitted ground for appeal. The Board shall take no further action on the appeal and the Chancellor's decision shall stand.

If the Committee determines that the Notice does include one or more of the permitted grounds, the Board Chair shall notify, in writing, the Appellant and the Chancellor. The Board Chair's notification shall also inform the Appellant of any non-permissible grounds included in the Notice that will not be considered by the Board. Permitted grounds for appeal are as follows:

1. Student Appeals

For decisions rendered in accordance with Section 502 D (3) of *The Code*, no review of a student expulsion shall be granted unless the student has alleged one or more of the following:

- a violation of due process; or
- a material deviation from procedures outlined in the Board of Governor's policy on the minimum substantive and procedural standards for student disciplinary proceedings.

2. Faculty Appeals

a. Discharges

For decisions rendered in accordance with Section 603 of *The Code* involving a discharge or imposition of a serious sanction, no review shall be granted unless the faculty member has alleged one or more of the following:

- *Material procedural error.* The hearing conducted by the faculty hearing committee or the process followed by the Chancellor included a material procedural error that, but for the error, could have resulted in a different decision;
- *Clearly erroneous.* The decision was clearly erroneous in that the competent evidence in the record established that the decision to discharge or impose serious sanction was not based on a permissible reason; or
- *Contrary to law or policy.* During the University review process, controlling law or policies of the Board of Governors were disregarded, misinterpreted, or misapplied to the facts of the case.

b. 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 has alleged one or more of the following:

- *Materially flawed.* The process used in deciding the grievance was materially flawed;
- *Clearly erroneous.* The Chancellor's decision was clearly erroneous; or
- *Contrary to law or policy.* The Chancellor's decision violated applicable federal or state law or University policies or regulations.

c. Non-Reappointments

For decisions rendered in accordance with Section 604 of *The Code* involving a decision not to re-appoint a faculty member, no review shall be granted unless the faculty member has alleged one or more of the following:

- *Material procedural error.* The hearing conducted by the faculty hearing committee or the process followed by the Chancellor included a material procedural error that, but for the error, could have resulted in a different decision;
- *Clearly erroneous.* The decision was clearly erroneous in that the competent evidence in the record established that the decision to discharge or impose serious sanction was not based on a permissible reason; or
- *Contrary to law or policy.* In disposing of the request for review, controlling law or policies of the Board of Governors was disregarded, misinterpreted, or misapplied to the facts of the case.

d. 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 has alleged that the decision to terminate was arbitrary or capricious.

3. EHRA Non-Faculty Appeals

a. Discontinuations, Expirations 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 employee has alleged one or more of the following:

- a violation of applicable notice requirements;
- 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 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.)

b. Discharges or Other Disciplinary Actions

For decisions involving a discharge for cause or other disciplinary action, no review shall be granted unless the employee alleges one or more of the following:

- 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 established under North Carolina law and relevant UNC Board of Governors' policies);
- unlawful discrimination (the specific protected classes are covered in the University's non-discrimination statement.); or
- the University's interpretation or application of a policy that led to an adverse personnel action was illegal or violated a policy of the Board of Governors.

IV. REVIEW PROCESS

A. Schedule

If the respective Committee determines that the Appellant has set forth appropriate grounds for an appeal, the Board Chair shall notify the parties of a schedule for perfecting and processing the appeal. If the Appellant fails to comply with the schedule established for perfecting and processing the appeal, the Board Chair may extend the period for complying with the schedule for good cause shown, or after consulting with the respective Committee, dismiss the appeal.

B. Submittal of Relevant Documents

The schedule shall include an opportunity for the Appellant to submit relevant documents and for the Chancellor to respond. All such documents shall be transmitted to the Board Chair, with a copy being provided to the Chancellor. The submission of such documents must be sent by registered mail, return receipt requested or by another means that provides proof of delivery.

The Chancellor (or designee) shall be provided with the same amount of time to respond to the Appellant's submittal 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 within the same time frame. 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.

C. Record on Appeal (Official Record)

The University's General Counsel (or designee) shall be responsible for compiling the record on appeal (Record), which at a minimum shall consist of the materials the Chancellor relied upon in arriving at the Chancellor's decision in addition to the Appellant's statement and the Chancellor's (or designee's) response.

A listing of the materials to be included in the Record shall be provided to the Appellant. The Appellant may submit written objections to the inclusion or exclusion of material(s) to be included. The Chancellor may respond to the Appellant's objections. 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 Chancellor and/or Appellant, the information shall be included in the Record.

D. Committee and Board Review

The appeal shall be reviewed by the respective Board committee who shall make a recommendation to the full Board.

1. Faculty Discharge, Non-Reappointment, or Grievance

In their review, the Committee and Board shall consider whether the campus-based process or decision (1) had material procedural errors, (2) was clearly erroneous, or (3) was contrary to controlling law or policy.

a. In reviewing whether the process involved material procedural errors, the Committee and Board may review allegations that the hearing committee and/or the Chancellor did not follow its own procedures and such failure materially affected the credibility, reliability, and fairness of the process. A faculty member must demonstrate that, because of a material procedural error, he or she did not receive a fair hearing or fair review by the Chancellor such that, but for such error, a different decision may have been reached.

b. A clearly erroneous decision is one that a reasonable person could not have reached, based on the competent evidence in the record taken as a whole and the relevant controlling laws or policies. To demonstrate that a decision was clearly erroneous, the Appellant must show that a reasonable person could not have reached the conclusion that the decision maker reached. Such an appeal constitutes a request that the Board/Committee review the entire record of evidence to determine whether a reasonable person could have arrived at the decision in question. The issue is not

whether the Board/Committee would have evaluated the evidence the same way and reached the same conclusion as did the hearing committee or the Chancellor; rather, the question is whether the decision reached was a reasonable one, in light of the competent evidence in the record.

- c. In reviewing whether the process or decision was contrary to controlling law or policy, the Committee and Board must consider whether during the University's process, controlling law or policies of the Board of Governors were disregarded, misinterpreted, or misapplied to the facts of the case.

2. Faculty Termination

In their review, the Committee and Board shall consider whether the Chancellor's decision to terminate was arbitrary or capricious.

3. Student Expulsion

In their review, the Committee and Board shall consider whether the campus-based process or decision (1) was a violation of due process, or (2) was a material deviation from procedures outlined in UNC Policy #700.4.1 (*Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings*).

In reviewing whether a decision was a material deviation from procedural and substantive standards for student disciplinary proceedings, as outlined in UNC Policy #700.4.1, the Committee and Board may consider the review process outlined above in IV.D.1.a (material procedural errors) for deviations from procedural standards and IV.D.1.b (clearly erroneous) for deviations from substantive standards.

4. EHRA Non-Faculty Discontinuation, Contract Expiration or Termination

In their review, the Committee and Board shall consider whether the University's adverse action:

- a. Violated applicable notice requirements;
- b. Violated the employee's 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 established under North Carolina law and relevant UNC Board of Governors' policies); or
- c. Was a result of unlawful discrimination. (The specific protected classes are covered in the University's non-discrimination statement.)

5. EHRA Non-Faculty Discharge or Other Disciplinary Action

In their review, the Committee and Board shall consider whether the University's adverse action:

- a. Violated the employee's 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);

- b. Was a result of unlawful discrimination (the specific protected classes are covered in the University's non-discrimination statement.); or
- c. Was illegal or violated a policy of the Board of Governors.

VIII. DECISION OF THE BOARD

Following its review, the respective Committee shall make a recommendation regarding the disposition of the appeal to the full Board. Consistent with The Code, deference is to be given to the Chancellor's decision. The Board may affirm the Chancellor's decision; or, if the Board agrees with the Appellant, the Board may remand the matter to the Chancellor to provide for a new hearing or a supplemental review inquiry. The remedy available on appeal is never an award by the Board of the conferral of tenure, reappointment, reinstatement, change in employment, promotion or a reversal of a disciplinary action.

The Appellant and the Chancellor shall be notified in writing of the Board's decision. The notification shall be sent by registered mail, return receipt requested or by another means that provides proof of delivery. The Board's decision is final with no further appeals allowed.