

# 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 – December 8, 2016  
Revised – September 22, 2011  
Revised – September 22, 2005  
First issued – December, 1996
- Related Policies:**
- Tenure and Promotion Policies, Regulations and Procedures* [§ IV, VI and VII]
  - Code of Student Conduct*
  - The Code of the Board of Governors of the University of North Carolina* [§ 502D (3), 603, 605, 607 and 611]
  - Senior Academic and Administrative Officers* [UNC Policy #300.1.1]
  - Employees Exempt from the State Human Resources Act* [UNC Policy #300.2.1]
  - Grievances Filed Pursuant to Section 607 of the Code* [UNC Policy #101.3.2]
- Contact for Info:** Office of Legal Affairs (910) 672-1145
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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. 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). Thus, based upon an individual's status, the following actions may be appealable to the Board:

- **Student** - The expulsion of a student for disciplinary reasons (*The Code*, § 502 D (3)).
- **Faculty** The imposition of a serious sanction against a faculty member or a faculty discharge (*The Code*, § 603), faculty termination (*The Code*, § 605) or faculty grievance (*The Code*, § 607).
- **EHRA Non-Faculty** - The discharge, termination, discontinuation or other employment action (*The Code*, Section 611).

## II. SUBMISSION OF AN APPEAL

A faculty member, EHRA non-faculty employee or a student, who has a right and wishes to appeal a decision of the Chancellor, shall file an appeal petition (Petition) 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 faculty member, EHRA non-faculty employee or student (Appellant) shall 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 in the time period specified above, the Appellant's case shall be dismissed. If however, the Appellant makes good cause showing for an extension of time to file the Petition, the Board Chair may in his or her discretion grant a reasonable extension of time.

The Petition must consist of clear and concise written statements specifying the policy and specific sections of the policy under which the appeal is based, the grounds for the appeal as detailed in Section III.A, and a summary of facts supporting the grounds for appeal.

## III. JURISDICTION AND GROUNDS FOR AN APPEAL

*(This section is not applicable to a discharge for cause or imposition of serious sanctions involving a faculty member. See Section IV for appeals involving such actions.)*

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 in the Office of Legal Affairs, shall make a determination regarding jurisdiction and grounds for appeals.

### A. Jurisdiction

Upon receipt of the Petition, the Board Chair and the respective Committee Chair, in consultation with an attorney in 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 Petition shall be evaluated by the Board Chair and the respective Committee Chair, in consultation with an attorney in the Office of Legal Affairs, to determine whether the Appellant has included a permitted ground for appeal (as outlined below), and has alleged facts supporting the ground. If the Board Chair and the respective Committee Chair determine that the Petition does not include a permitted ground and the associated facts supporting the ground, 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 Board Chair and the Committee Chair determine that the Petition states a permitted

ground for appeal, the Board Chair shall notify the Appellant and Chancellor, in writing, and include in the notification if there were any non-permissible grounds alleged by the Appellant that will not be considered for appeal.

Permitted grounds for appeal are as follows:

**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 one or more of the following:

- a violation of the student's due process rights; or
- 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 Appellant alleges one or more of the following:

- the Chancellor's decision was clearly erroneous;
- the Chancellor's decision violated applicable federal or state law or University policies or regulations; or
- the process used in deciding the grievance was materially flawed.

**4. EHRA 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 Appellant alleges one or more of the following:

- violations 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 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. EHRA Discharge for Cause or Other Disciplinary Action**

For decisions involving a discharge for cause or other disciplinary action, no review shall be granted unless the Appellant 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 as 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. 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; 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 Appellant 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.

### **VI. CHANCELLOR'S RESPONSE**

Upon a determination that the Board has jurisdiction and the appeal states a permissible ground for review, the Chancellor (or designee) shall be provided with the same amount of time to respond to the

Appellant's Petition as was provided to the Appellant to submit the Petition. 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.

**VII. RECORD ON APPEAL (OFFICIAL RECORD)**

The Office of Legal Affairs shall be responsible for compiling the record on appeal 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 Petition and the Chancellor's response. A listing of the materials to be included in the Record on Appeal shall be provided to the Appellant. The Appellant may submit written objections to the exclusion or inclusion of material(s) to be included. 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.

**VIII. 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.

**VIII. DECISION OF THE BOARD**

Either the Chair of the Academic Affairs and Personnel Committee (for employee appeals) or the Chair of the Student Affairs Committee (for student appeals) shall make a recommendation regarding the disposition of the appeal. The full Board shall consider the recommendation and issue its decision as soon as reasonably practical.

The Appellant and the Chancellor shall be notified in writing of the Board's decision when its review is completed. 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.