

GUIDANCE FOR CONDUCTING A FACULTY HEARING

- I. Role of the Faculty Committee
 - a. Provide for a fair and impartial review
 - b. Receive evidence relating to a faculty matter at the hearing
 - c. Make findings of fact based on the evidence received
 - d. Provide advice to the chancellor/responsible administrator on the merits of the matter
 - e. Create a clear and permanent record of the evidence presented at the hearing

- II. Preliminary Matters for the Committee
 - a. Elect the chair of the committee
 - b. Consider whether any committee member has a real or perceived conflict of interest in hearing the matter. No one who is related to a party, has a personal stake in the matter or is a member of the same department may participate.
 - c. Determine whether the faculty member has right to a hearing under applicable Code section.
 - d. Determine whether faculty member has satisfied preliminary requirements such as meeting with department chair and dean or other informal means to resolve the matter.
 - e. Evaluate the grievance statement/petition and determine whether the facts stated would support the claim if established. If the grievance statement/petition fails to meet the applicable standards, the committee must either request the faculty member to supplement the grievance statement/petition or dismiss it. A denial of a request for a review confirms the decision finally. If the request is granted, a hearing must be held.
 - f. Ex parte communications with the parties are prohibited at all times. There must not be any 'private' or 'side bar' communications or meetings between individual committee members and the parties or any potential witnesses. Any communication must be conducted by the chair with both parties being present or being addressed in the same communication. Evidence may only be received at the hearing.

- III. Role of the Chair
 - a. Convene the committee
 - b. Make determinations relating to conflicts of interest of committee members
 - c. Communicate with the parties
 - d. Provide responding party a copy of the grievance statement, petition or specifications for notice purposes.
 - e. Schedule the pre-hearing conference and hearing
 - f. Conduct the pre-hearing conference and hearing
 - g. Preserve the Official Record of the hearing
 - h. Transmit committee's report to the chancellor or other responsible administrator
 - i. Ensure compliance with applicable scope, procedures and timelines in the Code
 - i. Section 603 for discharge or other serious sanctions

- ii. Section 604 and UNC Policy 101.3.1 for non-reappointments of tenure track faculty
- iii. Section 605 for terminations
- iv. Section 607 for grievances

IV. Hearing Requirements

- a. A quorum of the committee must be present to hear the matter. A quorum is a simple majority.
- b. The hearing must be taped or transcribed. Once the hearing date has been scheduled, the chair must contact the Office of General Counsel to arrange for a court reporter and the Office of the Provost to arrange for a hearing room.
- c. The committee must not consider any evidence outside the hearing. Though the chair must direct the parties to exchange witness lists and documents ahead of the hearing to each other so that both sides can prepare their presentations. The committee must not receive this information, just the parties.
- d. The hearing constitutes a confidential personnel event and is closed to the public unless the faculty member and the committee decide to open the hearing.
- e. In 603 and 605 hearings, the parties have the right to have an attorney representative. In 604 and 607 hearings, attorneys are not allowed.

V. Receiving and Considering Evidence at the Hearing

- a. While a faculty member is afforded due process, the committee is not a court of law. Accordingly, the rules of evidence do not apply. Hearsay evidence (e.g. telling what another person said) may be considered.
- b. The committee need only consider evidence that it considers fair and reliable. The chair is the sole decider of the admissibility of evidence. Testimony or questioning or other evidence that is irrelevant, immaterial, unduly repetitious or harassing may be prohibited by the chair.
- c. Evidence consists of verbal testimony, documents or demonstrative evidence. The best evidence is testimony from an individual who is the author of the words or the creator of a record or an eyewitness. The parties must identify by title or description and label each document for purposes of clarity in establishing the Official Record.
- d. It is the committee's responsibility to weigh the evidence.
 - i. The committee should assess evidence based on its relevance, reliability, credibility and authenticity.
 - ii. In some cases, there may be conflicting evidence. Consideration can be given to a party's or witness' demeanor, motive, corroboration of the testimony by others, and/or any inconsistent statements. Chronology of events may be relevant.
 - iii. For 604 and 605 hearings, the standard of proof is a "preponderance of the evidence" (i.e. more likely than not).
 - iv. For 603 hearings, the standard of proof is "clear and convincing."

VI. Conduct of the Hearing

- a. Hearing procedures are stated in the Code and in the Faculty Handbook:
 - i. Code Section 604 and Section VI for non-reappointment procedures (see also UNC Policy 101.3.1)
 - ii. Code Section 605 and Section IX for termination reconsideration procedures
 - iii. Code Section 603 for serious sanctions
 - iv. Code Section 607 for grievances
- b. In 604, 605 and 607 hearings, the faculty member has the burden of proof. In Section 603 hearings, the administrator(s) has the burden of proof. Whichever party has the burden of proof, that person will present his or her case first.
- c. The committee, the parties and their representatives, and the court reporter are the only people allowed in the hearing room. Witnesses should be kept out of the room until such time as the individual's testimony is requested (i.e. sequestered).
- d. The chair shall begin the hearing with a statement regarding the confidentiality of the hearing, the applicable Code section under which the hearing shall be conducted, and the reasons for the hearing.
- e. The chair can set time limits for the parties' opening statements and closing arguments. To accommodate witnesses' schedules, the chair may allow testimony out of order.
- f. The hearing should be presented in the following order
 - i. The party with the burden of proof gives his or her opening statement first followed by the other party.
 - ii. The party with the burden of proof presents his or her case, which includes the person's own testimony, witness testimony, and/or documentary evidence. The other party has the right to cross examine the party and any witness after the individual testifies on direct examination. The committee may ask questions at any time, but generally should wait until after the other party has the opportunity to cross examine.
 - iii. The scope of cross examination should be limited to the matters, facts, events, or issues provided in the witness' direct examination.
 - iv. At the conclusion of the first party's case, the committee must deliberate in private and determine whether a *prima facie* case has been established to support the grievance or the serious sanction. If the determination is that a *prima facie* case has not been established, the committee shall reconvene with the parties and communicate the determination and dismiss the matter. If the determination is that a *prima facie* case has been established, the other party has the opportunity to present his or her case.
 - v. The other party shall present his or her case as provided above in parts ii and iii.
 - vi. The parties then have the opportunity to make closing arguments. No new evidence should be entered at this point.
 - vii. The chair adjourns the hearing and ensures that all documentary evidence has been collected and labeled for purposes of preservation for the Official Record.

- VII. Procedure After the Hearing – the Committee’s Deliberation
 - a. At the conclusion of the hearing, the committee meets in private and deliberates.
 - b. It is the committee’s responsibility to weigh the evidence, make findings of fact, and a recommendation/advice to the chancellor or the responsible administrator.

- VIII. Committee’s Report
 - a. If the committee determines that the faculty member’s contention has not been established, it shall provide a simple unelaborated statement. If the committee finds the contentions established, it shall provide a recommendation for corrective action or advice to the chancellor or other administrator.
 - b. The chair must ensure that the committee’s report is prepared and transmitted to both parties and to the chancellor/responsible administrator within the time frame established by the Code. The chair must also create an index of records which constitute the Official Record.
 - c. If there are dissenting opinions, those should be noted in the chair’s written report. The dissenting committee member(s) may prepare his or her own written report to accompany the chair’s report.
 - d. The Office of the General Counsel coordinates with the chair to ensure that the court reporter’s transcript and the documents, all of which constitute the Official Record, are forwarded to the chancellor or responsible administrator for review and preservation.