**MEMORANDUM**

To: Leroy Kauffman

From: Mary Ann Lochner

Date: October 17, 2013

Re: Suggested Revisions to faculty hearing procedures

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Drafting notes:

## “Tenure Policies” should be defined to mean those policies/procedures contained in Faculty Handbook Sections 4.01 to 4.10 (remember to find and replace all references to “Tenure Policies and Regulations of Western Carolina University”). This will facilitate review and approval processes involving the UNC president. Policies adopted by a board of trustees regarding academic tenure and promotion shall be effective upon review by the senior vice president for academic affairs and the vice president and general counsel, and approved by the president. (UNC Code, Section 602)

Summary of Substantive/Significant Revisions to Bylaws Article V:

* V.2.1 – Faculty Hearing Committee (“FHC”) membership increased from 9 to 12
* V.2.4 – consider increasing the term of the membership to 4 years
* V.3.1 – created new officer – Vice Chair – because the Chair may be unable to assume duties for a variety of reasons
* V.4.1 – creation of a new “Review Panel” – subcommittee of the FHC. Reasons for doing this include: (i) ensures increased scheduling flexibility; (ii) ensures availability of members to hear the matter; and (iii) permits multiple hearings in a short period of time
* V.5.1 – new training provision, which is required by UNC Policy 101.3.1

Summary of Substantive/Significant Revisions to Faculty Handbook, Section 4.10:

* Timeframes are generally expanded – current timeframes are impractical
* Use of calendar days uniformly throughout the procedures
* Break out/clearly delineate sections for (i) non-reappointment; (ii) tenure/promotion denial; (iii) denial of early tenure; (iv) due process related to serious sanctions; and (v) due process related to program elimination/curtailment or financial exigency. These matters are all very different and have different constitutional due process requirements as well as UNC regulatory requirements.
* Clarified administrative reconsideration for non-reappointment vs. denial of tenure/promotion. Confused the timing of Provost and Chancellor decisions/notices.
* §1.2.3.2 – new provision requiring that petitions for review be filed with the Provost. General confusion about who to file with – since faculty may not know the chair of the FHC requests sometimes are filed with the Provost, which complicates timeframes and administrative matters.
* 1.2.4 – new provision regarding “Review Panel” selection
* 1.2.5 – new provision clarifying conflicts of interest. This situation arose last year-complicated things a bit
* 1.2.7 – expanded timeframes. Will make things easier for all involved.
* 1.2.8 – new provision clarifying pre-hearing obligations, including document exchange
* 1.2.9 & 1.2.10 – new, clear, and simple provisions regarding hearing procedures. **Please note - I recommend that the FHC not employ the “burden shifting” procedures currently used**.
* Serious sanctions procedures tweaked to comply – in a simpler way – with procedures outlined in UNC Code Section 603

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**10-17-13**

### By-laws of the General Faculty

### ARTICLE V The Faculty Hearing Committee

It is recommended that Article V be replaced in its entirety by the following new Article V.

Section 1. Committee Responsibilities

V.1.1 The Faculty Hearing Committee (“FHC”) is authorized to: (i) hear petitions for the review of negative reappointment and tenure/promotion decisions in accordance with Sections 602 and 604 of the Code of The Board of Governors of The University of North Carolina (the “Code”); (ii) to hear requests for review of intended discharge of or the imposition of a serious sanction on a tenured faculty member (or a faculty member serving a stated term) in accordance with Section 603 of the Code; and (iii) to hear requests for reconsideration of termination due to financial exigency or the major curtailment or elimination of a program in accordance with Section 605 of the Code. The central role of the FHC is to gather and preserve evidence, make findings of fact, and provide recommendations and advice to the Chancellor on the merits of the faculty member’s allegations. [UNC Policy 101.3, Section II.C]

Section 2. Membership and Terms

V.2.1 The FHC shall consist of twelve (12) tenured associate or full professors elected by the general faculty in accordance with the bylaws and procedural regulations of the general faculty. At least one (1) tenured faculty member from each College of the University shall be elected and serve.

V.2.2 No administrative officer may serve on the FHC. For purposes of this Section V.2.2, the term “administrative officer” means the Provost, an Assistant or Associate Provost, a Dean, an Assistant or Associate Dean or a Department Head.

V.2.3 Acceptance of an appointment to an administrative officer position during an FHC member’s term of service shall be deemed a voluntary resignation from the FHC.

V.2.4 FHC members are elected to an initial four (4) year term and will be eligible for immediate re-election to an additional four-year term Terms shall be staggered so that approximately one- fourth of the FHC members are elected each year. After serving two consecutive four-year terms, a faculty member can become eligible to be elected to serve on the FHC after the passage of one (1) year.

Section 3. Chair and Vice Chair; Terms

V.3.1 The officers of the FHC shall be the Chair and the Vice Chair appointed from among and by the FHC membership. Each officer shall serve a one (1) year term and shall be eligible for re-election. In the event the Chair is unable to complete his/her duties or appointment, the Vice Chair may serve in his/her place.

Section 4. Review Panels

V.4.1 A Review Panel is a sub-committee comprised of members of the FHC selected by the Chair to review specific petitions. A Review Panel shall not include any faculty member who has participated in a reappointment, tenure or promotion decision that is the subject of review.

V.4.2 Upon receiving a written petition for review, the Chair of the FHC will select five (5) members of the FHC to serve on a Review Panel, and shall appoint one (1) member to serve as Chair of that Review Panel. When contacting potential Review Panel members, the Chair of the FHC shall inquire whether the proposed members have any conflicts of interest with any of the parties (i.e., the faculty member requesting the review or the administrators involved in the decision being reviewed) or prior knowledge about the contested matter such that the members cannot maintain objectivity.

Section 5. Training

V.5.1 In accordance with UNC Policy 101.3.1, Section II.C.i, members of the FHC shall be trained annually by the University Legal Counsel’s Office. A member of the FHC must have attended training as a pre-requisite to serving on a Review Panel.

[end By-laws revisions]

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**10-17-13**

It is recommended that the following procedures replace Section 4.10 – prefatory paragraphs and Sections 4.10(A) and 4.10(B).

## 4.10 Review of Reappointment, Tenure, and Promotion Decisions

All university policies relating to tenure are subject to and must be consistent with the Code and Policies of the Board of Governors of The University of North Carolina (the “Code” and “UNC Policy/ies” respectively). The Code and UNC Policies may be accessed in their entirety at: <http://www.northcarolina.edu/policy/index.php>

Faculty members may seek review of negative reappointment, tenure, and promotion decisions in accordance with the policies described in Sections 4.01 through 4.10 of the Faculty Handbook (hereinafter referred to as the “Tenure Policies”). Review procedures set forth in the Tenure Policies apply to the following cases:

1. Review of negative reappointment decisions for tenure-track faculty (Section 604 of the Code);
2. Review of negative tenure and/or promotion decisions (Sections 602 and 604 of the Code);
3. Review of negative early tenure decisions;
4. Review of intended discharge of or imposition of serious sanction on a tenured faculty member (or a faculty member serving a stated term) (Section 603 of the Code); and
5. Reconsideration of termination due to financial exigency or the major curtailment or elimination of a program (Section 605 of the Code).

**1.** **Review of Negative Reappointment Decisions for Tenure-track Faculty**

1.1 Administrative Reconsideration of Provost’s Negative Decision.

1.1.1 A faculty member who would like the Provost to reconsider his/her negative reappointment decision must file a written request for administrative reconsideration within fourteen (14) calendar days from the date of receipt of the decision. The written request shall consist of a short statement detailing the faculty member’s reasons/grounds for challenging the negative decision. ***Administrative reconsideration is a condition precedent to further institutional review, and the failure to file the written request in a timely manner constitutes a waiver of the faculty member’s right to a hearing before the Faculty Hearing Committee or one of its Review Panels.***

1.1.2 The Provost shall meet with the faculty member within seven (7) calendar days of receipt of the faculty member’s written request for administrative reconsideration. The faculty member may not submit to the Provost any documents or records that were not originally included in his/her dossier. The Provost’s reconsideration will be limited to the dossier and matters considered during the original collegial review process.

1.1.3 After meeting with the faculty member, the Provost may consult with the dean, department head, and/or others involved in the collegial review process.

1.1.4 The Provost shall provide his/her written reconsideration decision to the faculty member within fourteen (14) calendar days following their meeting.

1.2 Faculty Hearing Committee Review of Provost’s Negative Decision.

1.2.1 Grounds for Review.

1.2.1.1 The review procedures set forth in this Section 1.2 pertain to the next level of campus-based review following the Provost’s administrative reconsideration. The faculty member who seeks review of a negative reappointment decision is referred to as the “Petitioner” (and also may be referred to as a “party”).

1.2.1.2 Review of a negative reappointment decision may proceed only if the Petitioner - (1) timely requested the Provost’s administrative reconsideration pursuant to Section 1.1 above; ***and*** (2) contends that the procedures followed to reach the negative reappointment decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision not to reappoint; ***and/or*** (3) that the negative reappointment decision was based on one (1) or more “Impermissible Grounds”. [Section 604.B of the Code]

Impermissible Grounds under UNC Policy are the following: (i) the exercise by the Petitioner of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution; (ii) the Petitioner’s race, color, national origin, creed, religion,  sex , age,  gender identity or expression, genetic information, sexual orientation, veteran status, disability, political affiliation or other forms of discrimination prohibited under policies adopted by WCU’s Board of Trustees; or (iii) personal malice, which is defined by UNC Policy to mean dislike, animosity, ill-will or hatred based on personal characteristics, traits or circumstances of an individual that are not relevant to valid university decision-making. [UNC Policy 101.3.1]

1.2.2 Filing a Petition for Review.

1.2.2.1 In the event the Provost’s administrative reconsideration decision is adverse to the Petitioner, he/she may file a petition for review of the negative reappointment decision within fourteen (14) calendar days following receipt of the reconsideration decision.

1.2.2.2 The petition must be filed electronically via official University email with the Provost and must include the following information:

1. A statement that the Petitioner requested Provost’s administrative reconsideration and that decision was adverse to the Petitioner; and
2. A statement of specific facts to support a claim that the negative reappointment decision was based on one (1) or more specified Impermissible Grounds or that the review procedures materially deviated from prescribed procedures; and
3. The name of the person(s) responsible for the alleged impermissible decision or the material deviation from procedure (the “Respondent(s)” and also a “party” or “parties”). The term Respondent shall also refer to the academic administrator who presents the University’s case at the hearing if he/she has not been identified as the responsible person(s).

1.2.3 Purposes of Review.

1.2.3.1 The purpose of the campus-based review of a negative reappointment decision is to determine whether the decision was based on Impermissible Grounds, and/or whether the procedures followed to reach the negative reappointment decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision: it is not to second-guess professional judgments of colleagues based on permissible considerations during the collegial review process. [Section 604.D (1)(d) of the Code]

1.2.3.2 The Faculty Hearing Committee (“FHC”) and its Review Panels (see the By-laws of the General Faculty, Article V, Section 4) are responsible for receiving relevant evidence, making findings of fact, and providing recommendations and advice to the Chancellor on the merits of the Petitioner’s allegations. The role of the FHC is to create a clear, permanent record of the evidence presented at the hearing and to advise the Chancellor whether or not the Petitioner has demonstrated, by a preponderance of the evidence, that the decision not to reappoint the Petitioner was materially procedurally flawed or was based in significant part on Impermissible Grounds.

1.2.4 Initial Steps by the Provost and Chair of the Faculty Hearing Committee.

1.2.4.1 The Provost shall promptly forward the petition to the Chair of the FHC and send an acknowledgement of receipt to the Petitioner.

1.2.4.2 The Chair of the FHC shall form a sub-committee (hereinafter referred to as “Review Panel”) for each case. Review Panels shall be selected from the membership of the FHC, and shall consist of five (5) members. The Chair of the FHC shall appoint the Chair of the Review Panel, who shall be a voting member of the panel. The Chair of the FHC may serve as Chair of a Review Panel.

1.2.5 Selection of Review Panel / Conflicts of Interest.

1.2.5.1 A conflict of interest occurs in the hearing context if a member of a Review Panel: (i) is potentially beneficially or adversely affected by the outcome of the hearing; (ii) has particular knowledge about the matter to be reviewed (e.g., served on a department, college, and/or university collegial review committee that considered the Petitioner’s dossier); or (iii) may otherwise be viewed as biased in hearing the matter.

1.2.5.2 A member of a Review Panel is obligated to disclose any potential conflict of interest to the Chair of the FHC and recuse him/herself from the Review Panel if the conflict of interest could affect his/her ability to decide the case in an objective manner.

1.2.5.3 The Chair of the FHC has the authority to remove a member of the Review Panel upon the disclosure of a conflict of interest or upon a request by the Petitioner that a member be removed for cause (i.e., undisclosed conflict of interest). The Chair of the FHC will replace a removed member with another eligible member of the FHC.

1.2.6 Chair of the Review Panel.

1.2.6.1 The Chair of the Review Panel shall determine if the petition was timely filed and if it contains the information specified in Section 1.2.2.2 above. The Chair of the Review Panel may ask the Petitioner for more information or for clarification, which includes permitting the Petitioner to file an amended petition if necessary. If the Review Panel has jurisdiction over the matter, the Chair shall schedule a hearing. If the petition was not timely filed or does not contain the information specified in Section 1.2.2.2, the Review Panel does not have jurisdiction to hear the matter. In that event, the Chair of the Review Panel shall submit a written report to the Chancellor recommending dismissal of the petition, with copies to the Petitioner, Respondent, and the Provost.

1.2.6.2 The Chair of the Review Panel shall determine all procedures for the review process consistent with the requirements set forth in Sections 1.2.9 and 1.2.10 below. He/she shall set the date and time for the hearing, the order of presentation at the hearing, and shall coordinate logistics (e.g., reserving appropriate rooms for the hearing and witnesses, and scheduling a court reporter) with the assistance of administrative staff in the Provost’s Office.

1.2.6.3 The Chair of the Review Panel shall instruct the parties on the hearing procedures. He/she may make procedural rulings such as the number of witnesses a party may call or the length of each party’s presentation. The Chair of the Review Panel may explore whether the parties can agree to stipulate to certain facts that could reduce the time required to hear the matter. Stipulated facts must be documented and introduced as a joint exhibit at the hearing.

1.2.6.4 The Chair of the Review Panel is ultimately responsible for receiving records of the hearing and shall ensure that all original documents and exhibits forming the record of the hearing have been provided to the court reporter.

1.2.6.5 The Chair of the Review Panel is responsible for writing a report to the Chancellor of the Review Panel’s findings of fact, conclusions, and recommendations.

1.2.7 Scheduling the Hearing.

The Chair of the Review Panel shall schedule the hearing as soon as practicable and shall provide written notice to the parties of the date, time, and location of the hearing, with copies to the Provost’s Office and the Legal Counsel’s Office. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. Notice of the hearing shall be provided no fewer than seven (7) calendar days prior to the scheduled date and time, but no more than twenty-one (21) calendar days prior to the scheduled date and time. A hearing may be continued upon request of a party for good cause.

1.2.8 Pre-hearing Procedures / Exchange of Witness Lists and Proposed Exhibits.

At least five (5) calendar days before a scheduled hearing, the Petitioner and Respondent shall exchange witness lists and copies of exhibits (documentary evidence) that the parties intend to introduce into the record at the hearing. The parties are responsible for making sufficient copies of exhibits for all of the members of the Review Panel, the court reporter, and the opposing party. Exhibits should be clearly marked by the parties (e.g., Petitioner’s Exhibit 1, 2, 3, etc.).

1.2.9 General Hearing Procedures.

1.2.9.1 North Carolina law provides that personnel records are confidential, and all participants must not disclose information acquired during the hearing except as provided by law.

1.2.9.2 The hearing is closed to the public.

1.2.9.3 Witnesses in the proceeding shall be sequestered in separate witness rooms until such time as they testify and are dismissed.

1.2.9.4 Each party may bring one (1) advisor. Advisors may not participate in the hearing or be a witness for a party. Attorneys are not permitted to attend or participate in the hearing, in any capacity, including as an advisor.

1.2.9.5 Hearing testimony must be recorded by a court reporter, and a copy of the hearing transcript will be provided to the Petitioner upon written request to the Legal Counsel’s Office.

1.2.9.6 Hearings are informal; rules of evidence do not apply in the proceeding. The Chair of the Review Panel will make determinations of whether evidence is unduly repetitious, irrelevant or immaterial and should be excluded.

1.2.9.7 Ex parte communications are prohibited (i.e., communications between either the Petitioner or the Respondent and members of the Review Panel).

1.2.9.8 The Petitioner has the burden of proof by a preponderance of the evidence (the greater weight of evidence). [Section 604.D (1)(c) of the Code]

1.2.10 Order of Hearing Procedures.

1.2.10.1 The Chair of the Review Panel will commence the hearing with a summary of the hearing procedures and order of presentation of evidence.

1.2.10.2 The Chair of the Review Panel will read the Petition into the hearing record or ensure that an accurate and complete copy of the Petition is introduced as an exhibit.

1.2.10.3 The Chair should remind the parties of any applicable time limitations.

1.2.10.4 The hearing begins with the Petitioner’s presentation of his/her case. The Petitioner may start with an opening statement. The Petitioner may testify on his/her own behalf and call witnesses, all of whom may be questioned by the Review Panel and cross-examined by the Respondent. The Petitioner may introduce documentary evidence.

1.2.10.5 At the close of the Petitioner’s case, the Respondent will present his/her case in the same manner as described in Section 1.2.10.4 above.

1.2.10.6 At the close of the Respondent’s case, the Petitioner may present evidence to rebut the Respondent’s case.

1.2.10.7 At the end of the Petitioner’s rebuttal, if any, the Chair may permit the parties to provide brief closing statements, summarizing the key points of their case.

1.2.11 Review Panel Deliberations.

The Review Panel’s deliberations take place in closed session after completion of the hearing. The Review Panel Chair will facilitate discussion, and is a voting member of the Review Panel. The Review Panel should: (i) consider all relevant evidence presented by the parties but only that evidence presented at the hearing; (ii) evaluate conflicting evidence and assign appropriate weight to the evidence presented; (iii) determine whether the Petitioner proved, by a preponderance of the evidence, that the reappointment decision was impermissibly based and/or materially flawed; (iv) make findings of fact; and (v) make recommendations concerning the disposition of the matter.

1.2.12 Review Panel Report.

The Chair of the Review Panel is responsible for preparing the panel’s written report, which should include the hearing date, the Review Panel members hearing the matter, the nature of the Petitioner’s allegations, findings of fact/statement of the evidence supporting the panel’s decision, and the Review Panel’s decision and recommendations. The report shall be provided to the Chancellor, with copies to the Petitioner and the Respondent(s), within fourteen (14) calendar days from completion of the hearing. The Chair of the Review Panel shall ensure that a complete record of the hearing is provided to the Chancellor with the report.

1.2.13 Chancellor’s Decision.

The Chancellor shall base his/her decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in his/her discretion, consult with the Review Panel. While the findings and recommendations of the Review Panel are entitled to appropriate deference, the final campus-based decision is the Chancellor’s.

Within forty-five (45) calendar days after receiving the Review Panel’s report, the Chancellor shall notify the Petitioner and the Respondent(s) of his/her decision. The Chancellor’s written decision must set out the Petitioner’s appeal rights to the UNC Board of Governors.

1.2.14 Appeals to the UNC Board of Governors.

If the Chancellor concurs with a recommendation of the Review Panel that is favorable to the Petitioner, the Chancellor’s decision shall be final. If the Chancellor either declines to accept a recommendation that is favorable to the Petitioner or concurs in a recommendation that is unfavorable to the Petitioner, the Petitioner may appeal the decision by filing a written notice of appeal with the UNC Board of Governors, by submitting such notice to the UNC President, by certified mail, return receipt requested, or by another means that provides proof of delivery, within fourteen (14) calendar days after receipt of the Chancellor’s decision. The notice must contain a brief statement of the basis for the appeal. The purpose of appeal to the Board of Governors is to assure: (i) that the campus-based process for reviewing the decision was not materially flawed, so as to raise questions about whether the Petitioner’s contentions were fairly and reliably considered; (ii) that the result reached by the Chancellor was not clearly erroneous; and (iii) that the decision was not contrary to controlling law or policy. [Section 604.D (2) of the Code]

**2**. **Review of Negative Tenure and/or Promotion Decisions**

2.1 Administrative Reconsideration of Provost’s Negative Recommendation.

2.1.1 A faculty member who would like the Provost to reconsider his/her negative tenure and/or promotion recommendation must file a written request for administrative reconsideration within fourteen (14) calendar days from the date of receipt of the recommendation. The written request shall consist of a short statement detailing the faculty member’s reasons/grounds for challenging the negative decision. ***Administrative reconsideration is a condition precedent to further institutional review, and the failure to file the written request in a timely manner constitutes a waiver of the faculty member’s right to a hearing before the Faculty Hearing Committee or one of its Review Panels.***

2.1.2 The Provost shall meet with the faculty member within seven (7) calendar days of receipt of the faculty member’s written request for administrative reconsideration. The faculty member may not submit to the Provost any documents or records that were not originally included in his/her dossier. The Provost’s reconsideration will be limited to the dossier and matters considered during the original collegial review process.

2.1.3 After meeting with the faculty member, the Provost may consult with the dean, department head, and/or others involved in the collegial review process.

2.1.4 The Provost shall provide his/her written reconsideration decision to the faculty member, with a copy to the Chancellor, within fourteen (14) calendar days following their meeting.

2.1.5 Within thirty (30) calendar days from receipt of the Provost’s reconsideration decision, the Chancellor shall notify the faculty member in writing of his/her tenure and/or promotion decision.

2.2 Faculty Hearing Committee Review of Chancellor’s Negative Decision.

Upon receipt of a negative tenure and/or promotion decision from the Chancellor, the faculty member may file a petition for review of the negative decision by the Faculty Hearing Committee. The grounds for review, procedural requirements, and timeframes detailed in Section 1.2 pertaining to the review of negative reappointment decisions are applicable to negative tenure and/or promotion decisions, and should be referenced.

**3.** **Review of Negative Early Tenure/Promotion Decisions**

3.1 Negative early tenure and promotion decisions (i.e., tenure and promotion decisions not involving reappointment) shall be reviewed in accordance with faculty grievance procedures set forth in Section \_\_\_\_\_\_\_\_\_ of the Faculty Handbook.

**4.** **Review of Intended Discharge or Imposition of Serious**

4.1 Grounds for Discharge or Imposition of a Serious Sanction.

In accordance with Section 603 of the Code, a faculty member who is the beneficiary of institutional guarantees of tenure shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged from employment, suspended, or demoted in rank for reasons of:

(i) incompetence, including significant, sustained unsatisfactory performance after the faculty member has been given an opportunity to remedy such performance and fails to do so within a reasonable time; or

(ii) neglect of duty, including sustained failure to meet assigned classes or to perform other significant faculty professional obligations; or

(iii) misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty, including violations of professional ethics, mistreatment of students or other employees, research misconduct, financial fraud, criminal, or other illegal, inappropriate or unethical conduct. To justify serious disciplinary action, such misconduct should be either sufficiently related to a faculty member’s academic responsibilities as to disqualify the individual from effective performance of university duties, or sufficiently serious as to adversely reflect on the individual’s honesty, trustworthiness or fitness to be a faculty member.

For purposes of this Section, a faculty member serving a stated term shall be regarded as having tenure until the end of that term in accordance with Section 6.03 of the Code.

4.2 Notice of University Intention / Suspension Prior to Final Decision.

4.2.1 The Provost, as the charging party, shall send the faculty member a written notice of the University’s intention to discharge the faculty member or impose a serious sanction, which must include a written specification of the reasons (“Specifications”). The notice and Specifications shall be sent by certified mail, return receipt requested. The notice shall include notice of the faculty member’s right to request a hearing before the FHC. [Section 603(2) of the Code]

4.2.2 In accordance with Section 603(10) of the Code, when a faculty member has been notified of the University’s intention to discharge the faculty member, the Chancellor may reassign the individual to other duties or suspend the individual at any time until a final decision concerning discharge has been reached in accordance with the procedures set forth in this Section. Suspension shall be exceptional and shall be with full pay.

4.3 Filing a Request for Review.

4.3.1 The faculty member may file a written request for review of the University’s intention to discharge or impose a serious sanction within fourteen (14) calendar days following receipt of the notice and Specifications. The request must be filed electronically via official University email with the Chair of the Faculty.

4.3.2 If, within fourteen (14) calendar days after receiving the notice and Specifications, the faculty member makes no written request for a hearing, the faculty member may be discharged or a serious sanction imposed without recourse to any institutional hearing, grievance or appellate procedure. [Section 603(3) of the Code]

4.4 Purposes of Review.

4.4.1 The Review Panel is responsible for receiving relevant evidence, making findings of fact, and providing recommendations and advice to the Chancellor on the merits of the Provost’s Specifications. The role of the Review Panel is to create a clear, permanent record of the evidence presented at the hearing and to advise the Chancellor whether or not the Provost has demonstrated, by clear and convincing evidence, that the Specifications for discharge or imposition of a serious sanction have a reasonable basis in fact and are consistent with Section 603 of the Code, the Tenure Policies, and applicable state and federal law.

4.5 Initial Steps by the Provost and Chair of the Faculty Hearing Committee.

4.5.1 The Provost shall promptly forward the request for review to the Chair of the FHC, with a copy to the General Counsel, and send an acknowledgement of receipt to the faculty member.

4.5.2 The Chair of the FHC shall form a Review Panel to hear the matter. The Chair of the FHC is encouraged to serve as the voting Chair of the Review Panel.

4.6 Selection of Review Panel / Conflicts of Interest.

4.6.1 A conflict of interest occurs in the hearing context if a member of a Review Panel: (i) is potentially beneficially or adversely affected by the outcome of the hearing; (ii) has particular knowledge about the matter to be reviewed (e.g., served on any department, college and/or university collegial review committee that evaluated the faculty member’s performance ); or (iii) may otherwise be viewed as biased in hearing the matter.

4.6.2 A member of a Review Panel is obligated to disclose any potential conflict of interest to the Chair of the FHC and recuse him/herself from the Review Panel if the conflict of interest could affect his/her ability to decide the case in an objective manner.

4.6.3 The Chair of the FHC has the authority to remove a member of the Review Panel upon the disclosure of a conflict of interest or upon a request by the faculty member that a member be removed for cause (i.e., undisclosed conflict of interest). The Chair of the FHC will replace a removed member with another eligible member of the FHC.

4.7 Chair of the Review Panel.

4.7.1 The Chair of the Review Panel shall determine all procedures for the review process consistent with the requirements of Sections 4.10, 4.11, and 4.12 below. He/she shall set the date and time for the hearing, the order of presentation at the hearing, and shall coordinate logistics (e.g., reserving appropriate rooms for the hearing and witnesses, and scheduling a court reporter) with the assistance of administrative staff in the Provost’s Office.

4.7.2 The Chair of the Review Panel shall instruct the parties and their counsel, if applicable, on the hearing procedures. The Chair may make procedural rulings, such as the number of witnesses a party may call or the length of each party’s presentation, provided that the Chair’s rulings are not inconsistent with Section 603 of the Code, the Tenure Policies, and applicable state and federal law. The Chair may explore whether the parties can agree to stipulate to certain facts that could reduce the time required to hear the matter. Stipulated facts must be documented and introduced as a joint exhibit at the hearing.

4.7.3 The Chair of the Review Panel is ultimately responsible for receiving records of the hearing and shall ensure that all original documents and exhibits forming the record of the hearing have been provided to the court reporter.

4.7.4 The Chair of the Review Panel is responsible for writing a report to the Chancellor of the Review Panel’s findings of fact, conclusions, and recommendations.

4.8 Scheduling the Hearing.

4.8.1 The hearing shall be on the Specifications for the intended discharge or imposition of a serious sanction. The Review Panel shall accord the faculty member at least thirty (30) calendar days from the time it receives the faculty member’s written request for a hearing to prepare a defense. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. [Section 603(5) of the Code]

4.8.2 The Chair of the Review Panel will consult with the Review Panel, the parties and their counsel, if applicable, to identify several potential dates and times for the hearing. To meet this deadline, the parties and the members of the Review Panel are encouraged to consider scheduling hearings during the evening, weekend, or other non-class time. It is strongly recommended that several days and times be established for the hearing when scheduling the first day, for the eventuality that the hearing may take two (2) or more sessions. [See fn 12 to Section 603(5) of the Code]

4.8.3 The Chair of the Review Panel may, upon the faculty member’s written request and for good cause, extend this time by written notice to the faculty member, with a copy to the Provost. The Review Panel will ordinarily endeavor to complete the hearing within ninety (90) calendar days except under unusual circumstances such as when a hearing request is received during official University breaks and holidays, and despite reasonable efforts, the Review Panel cannot be assembled. [Section 603(5) of the Code]

4.9 Representatives of the Parties.

4.9.1 The parties may be represented by counsel. The Chair of the Review Panel shall contact the faculty member to determine whether he/she is represented by counsel and, if so, the Chair of the Review Panel will forward legal counsel’s contact information to the University’s General Counsel. [Section 603(6) of the Code]

4.9.2 The University Legal Counsel Office shall arrange for the provision of counsel to the Provost upon request.

4.10 Notification of Pre-hearing Meeting; Exchange Witness Lists and Proposed Exhibits.

4.10.1 The Chair of the Review Panel shall notify the parties and their counsel, if applicable, of the date, time, and location of a pre-hearing meeting and will instruct the parties as to the purpose of the meeting. The parties shall bring calendars for scheduling purposes and shall exchange proposed witness lists, including brief descriptions of the expected testimony and the estimated time for each witness’ testimony. The parties should bring copies of exhibits (i.e., documentary evidence) that the parties intend to introduce into the record at the hearing. The parties are responsible for making sufficient copies of exhibits for the members of the Review Panel, the court reporter, and the opposing party. Exhibits should be clearly marked by the parties (e.g., Petitioner’s Exhibit 1, 2, 3, etc.)

4.11 General Hearing Procedures.

4.11.1 North Carolina law provides that personnel records are confidential, and all participants must not disclose information acquired during the hearing except as provided by law.

4.11.2 The hearing is closed to the public unless the faculty member and the Review Panel agree that it may be open. [Section 603(6) of the Code]

4.11.3 Witnesses in the proceeding shall be sequestered in separate witness rooms until such time as they testify and are dismissed.

4.11.4 Hearing testimony must be recorded by a court reporter, and a copy of the hearing transcript will be provided to the faculty member upon written request to the Legal Counsel’s Office.

4.11.5 Hearings are informal; rules of evidence do not apply in the proceeding. The Chair of the Review Panel will make determinations of whether evidence is unduly repetitious, irrelevant or immaterial and should be excluded.

4.11.6 Ex parte communications are prohibited (i.e., communications between either the faculty member or the Provost and members of the Review Panel).

4.11.7 The Provost presents the University’s case and has the burden of proof, by clear and convincing evidence (evidence that is *substantially* more likely than not true), to show that permissible grounds for discharge or the imposition of a serious sanction exist and are the basis for the recommended action. [Section 603(8) of the Code]

4.12 Order of Hearing Procedures.

4.12.1 The Chair of the Review Panel will commence the hearing with a summary of the hearing procedures, including any applicable time limitations, and order of presentation of evidence.

4.12.2 The Chair of the Review Panel will read the Specifications into the hearing record.

4.12.3 The hearing begins with the Provost’s presentation of the University’s case. The Provost may start with an opening statement. The Provost may testify and call witnesses, all of whom may be questioned by the Review Panel and cross-examined by the faculty member and/or counsel. The Provost may introduce documentary evidence.

4.12.4 At the close of the Provost’s case, the faculty member will present his/her case in the same manner as described in Section 4.12.3 above.

4.12.5 At the close of the faculty member’s case, the Provost may present evidence to rebut the faculty member’s evidence.

4.12.6 At the end of the Provost’s rebuttal, if any, the Chair of the Review Panel may permit the parties to provide brief closing statements, summarizing the key points of their case.

4.13 Review Panel Deliberations.

The Review Panel’s deliberations take place in closed session after completion of the hearing. The Review Panel Chair will facilitate discussion, and is a voting member of the Review Panel. The Review Panel should: (i) consider all relevant evidence presented by the parties but only that evidence presented at the hearing; (ii) evaluate conflicting evidence and assign appropriate weight to the evidence presented; (iii) determine whether the Provost proved, by clear and convincing evidence, that permissible grounds for discharge or the imposition of a serious sanction exist and are the basis for the recommended action; (iv) make findings of fact; and (v) make a recommendations concerning the disposition of the matter. The Review Panel shall make its written report to the Chancellor within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later.

4.14 Review Panel Report.

The Chair of the Review Panel is responsible for preparing the panel’s written report, which should include the hearing date, the Review Panel members hearing the matter, a summary of the Specifications, findings of fact/statement of the evidence supporting the panel’s decision, and the Review Panel’s decision and recommendations. The report shall be provided to the Chancellor, with copies to the Provost, faculty member, and counsel, if applicable, within fourteen (14) calendar days from the hearing or after the full transcript is received, whichever is later. The Chair of the Review Panel shall ensure that a complete record of the hearing is provided to the Chancellor with the report.

4.15 Chancellor’s Decision.

The Chancellor shall base his/her decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in his/her discretion, consult with the Review Panel. While the findings and recommendations of the Review Panel are entitled to appropriate deference, the final campus-based decision is the Chancellor’s. If the Chancellor concurs in a recommendation of the Review Panel that is favorable to the faculty member, the Chancellor’s decision shall be final. If the Chancellor either declines to accept a Review Panel recommendation that is favorable to the faculty member or concurs in a recommendation that is unfavorable to the faculty member, the faculty member may appeal the Chancellor's decision to the Board of Trustees. [Section 603(9) of the Code]

4.16 Appeals to the Board of Trustees.

Appeals to the University Board of Trustees shall be transmitted through the Chancellor and addressed to the Chair of the Board. Notice of appeal shall be filed within fourteen (14) calendar days after the faculty member receives the Chancellor's decision. The appeal to the Board of Trustees 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 of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the Review Panel, but it may, in its discretion, hear such other evidence as it deems necessary. The Board of Trustees' 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. [Section 603(9) of the Code]

4.17 Appeals to the UNC Board of Governors.

The Board of Trustees’ decision shall be final except that the faculty member 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 Board of Governors if the faculty member alleges that one (1) or more specified provisions of the Codehave been violated. Any such appeal to the Board of Governors shall be transmitted through the President.

**5**. **Reconsideration of Termination Due to Financial Exigency or Program Curtailment or Elimination**

5.1 Reasons for Review.

A faculty member terminated based upon financial exigency or the major curtailment or elimination of a program pursuant to Section 4.09.E of the Faculty Handbook may request reconsideration if the faculty member alleges that the decision to terminate was arbitrary or capricious.

5.2 Request for Reconsideration Hearing.

5.2.1 Within fourteen (14) calendar days after receiving the notice of termination from the Chancellor, the faculty member may request by certified mail, return receipt requested, a reconsideration of the decision to terminate the faculty member's employment if he/she alleges that the decision was arbitrary or capricious. [Section 605.C(4) of the Code]

5.2.2 The request shall be submitted to the Provost and shall specify the grounds upon which it is alleged that the decision to terminate employment was arbitrary or capricious, and shall include a statement of facts that support his/her allegations. The faculty member must support his/her allegations with sufficient evidence, and, by requesting reconsideration, represents that his/her allegations are supported by sufficient evidence/facts.

5.2.3 If the faculty member makes no written request for a reconsideration hearing within fourteen (14) calendar days after receipt of the notice of termination, the faculty member's employment shall be terminated at the date specified in the termination notice without recourse to any University grievance or appellate procedure.

5.3 Initial Steps by the Provost and Chair of the Faculty Hearing Committee.

5.3.1 The Chancellor shall promptly forward the request for reconsideration to the Chair of the FHC and send an acknowledgement of receipt to the faculty member.

5.3.2 The Chair of the FHC shall form a Review Panel to hear the matter, and shall ensure that panel members do not have a conflict of interest. The Chair of the FHC shall appoint the Chair of the Review Panel, who shall be a voting member of the panel. The Chair of the FHC may serve as Chair of a Review Panel.

5.4 Chair of the Review Panel.

5.4.1 The Chair of the Review Panel shall determine if the request for reconsideration was timely filed and if it contains the information specified in Section 5.2.2 above. If the Review Panel has jurisdiction over the matter, the Chair of the Review Panel shall schedule a hearing. Reconsideration shall be limited solely to a determination whether the termination was arbitrary or capricious. The Review w Panel’s jurisdiction does not extend to a reconsideration of whether a financial exigency exists or a program should be curtailed or eliminated. If the request was not timely filed or does not contain the information required, the Review Panel does not have jurisdiction to hear the matter. In that event, the Chair shall submit a written report to the Chancellor recommending denial of the request, with a copy to the faculty member.

5.4.2 The Chair of the Review Panel shall determine all procedures for the review process consistent with the requirements set forth in Sections 5.7 and 5.8 below. The Chair shall set the date and time for the hearing, the order of presentation at the hearing, and shall coordinate logistics (e.g., reserving appropriate rooms for the hearing and witnesses, and scheduling a court reporter) with the assistance of administrative staff in the Provost’s Office.

5.4.3 The Chair of the Review Panel shall instruct the parties on the hearing procedures. The Chair may make procedural rulings such as the number of witnesses a party may call or the length of each party’s presentation.

5.4.4 The Chair is ultimately responsible for receiving records of the hearing and shall ensure that all original documents and exhibits forming the record of the hearing have been provided to the court reporter.

5.4.5 The Chair is responsible for writing a report to the Chancellor of the Review Panel’s findings of fact, conclusions, and recommendations.

5.5 Scheduling the Hearing.

The Chair of the Review Panel shall schedule the hearing as soon as practicable and shall provide written notice to the Chancellor and the faculty member of the date, time, and location of the hearing. Hearings shall not be scheduled during official University breaks, including the summer break, or holidays. Notice of the hearing shall be provided no fewer than seven (7) calendar days prior to the scheduled date and time, but no more than twenty-one (21) calendar days prior to the scheduled date and time. A hearing may be continued upon request of a party for good cause.

5.6 General Hearing Procedures.

5.6.1 The hearing is closed to the public.

5.6.2 Each party may bring one (1) advisor. Advisors may not participate in the hearing or be a witness for a party. Attorneys are not permitted to attend or participate in the hearing, in any capacity, including as an advisor.

5.6.3 Hearing testimony must be recorded by a court reporter, and a copy of the hearing transcript will be provided to the faculty member upon written request to the Legal Counsel’s Office.

5.6.4 Hearings are informal; rules of evidence do not apply in the proceeding. The Chair of the Review Panel will make determinations of whether evidence is unduly repetitious, irrelevant or immaterial and should be excluded.

5.6.5 Ex parte communications are prohibited (i.e., communications between either the faculty member or the Chancellor and members of the Review Panel).

5.6.6 The faculty member has the burden of proof, by a preponderance of the evidence (the greater weight of evidence), in the hearing.

5.7 Order of Hearing Procedures.

5.7.1 The Chair of the Review Panel will commence the hearing with a summary of the hearing procedures and order of presentation of evidence.

5.7.2 The Chair of the Review Panel will read the faculty member’s request for reconsideration into the hearing record or ensure that an accurate and complete copy of the request is introduced as an exhibit.

5.7.3 The Chair should remind the parties of any applicable time limitations.

5.7.4 The hearing begins with the faculty member’s presentation of his/her case. The faculty member may testify on his/her own behalf and call witnesses, all of whom may be questioned by the Review Panel and cross-examined by the Chancellor. The faculty member may introduce documentary evidence.

5.7.5 At the close of the faculty member’s case, the Chancellor or his/her designee will present his/her case in the same manner as described in Section 5.8.4 above, which includes the presentation of evidence to rebut the faculty member’s case and provide University evidence concerning the termination decision.

5.7.6 At the close of the Chancellor’s case, the faculty member may present evidence to rebut the Chancellor’s case.

5.7.7 At the end of the faculty member’s rebuttal, if any, the Chair of the Review Panel may permit the parties to provide brief closing statements, summarizing the key points of their case.

5.8 Review Panel Deliberations.

The Review Panel’s deliberations take place in closed session after completion of the hearing. The Review Panel Chair will facilitate discussion, and is a voting member of the Review Panel. The Review Panel should: (i) consider all relevant evidence presented by the parties but only that evidence presented at the hearing; (ii) evaluate conflicting evidence and assign appropriate weight to the evidence presented; (iii) vote on whether the faculty member proved, by a preponderance of the evidence, that the decision was arbitrary or capricious; (iv) make findings of fact; and (v) make recommendations concerning the disposition of the matter.

5.9 Review Panel Report.

The Chair of the Review Panel is responsible for preparing the panel’s written report, which should include the hearing date, the Review Panel members hearing the matter, the nature of the faculty member’s allegations, findings of fact/statement of the evidence supporting the panel’s decision, and the Review Panel’s decision and recommendations. The report shall be provided to the Chancellor, with a copy to the faculty member, within fourteen (14) calendar days from the hearing. The Chair of the Review Panel shall ensure that a complete record of the hearing is provided to the Chancellor with the report.

5.10 Chancellor’s Decision.

The Chancellor shall base his/her decision on the report of the Review Panel and the record evidence from the hearing. The Chancellor may, in his/her discretion, consult with the Review Panel. Within forty-five (45) calendar days after receiving the Review Panel’s report, the Chancellor shall notify the faculty member of his/her decision.

5.11 Appeals to the Board of Trustees.

In the event the Chancellor’s decision is adverse to the faculty member, the faculty member may appeal the decision to the Board of Trustees in accordance with Section 605.C (6) of the Code. Appeals shall be transmitted through the Chancellor and be addressed to the Chair of the Board of Trustees. Notice of appeal shall be filed within fourteen (14) calendar days after the faculty member receives the Chancellor's decision. The appeal to the Board of Trustees 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 of Trustees, or its committee, shall consider the appeal on the written transcript of hearings held by the Review Panel, but it may, in its discretion, hear such other evidence as it deems necessary. The Board of Trustees' 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 decision of the Board of Trustees is the final decision.