OP 9. Faculty Faculty Employment Hearings

OP 9.1 Overview of Faculty Hearings. In accordance with the provisions outlined in Chapter VI of The UNC Code, a faculty member may contest an adverse employment decision (sections 603, 604, 605) or present a grievance about matters directly related to the terms and conditions of the faculty member’s employment (section 607). These processes are designed to provide the faculty member fair assessment of the circumstances and parameters under which these rights apply.

OP 9.2 Hearing and Assistance Committees

OP 9.2.1 Faculty Hearing Committee (FHC). The FHC functions as the elected standing committee to hear cases in accordance with the hearing rights provided to faculty members in Chapter VI of The UNC Code. Each case shall be heard by an appropriately constituted panel seated from among the overall membership of the FHC.

OP 9.2.1.1 Composition of the FHC. The FHC shall be constituted of fifteen (15) members: five (5) members from each of the ranks of Professor and Associate Professor, three (3) from the rank of Assistant Professor, one (1) Special Faculty member and one (1) FHC Coordinating Chair. There shall be broad representation among colleges and schools, when possible.

OP 9.2.1.2 Faculty Ineligible to serve on the FHC. No faculty member holding an appointment as a "Senior Academic and Administrative Officer" (SAAO) (see The UNC Policy Manual, 300.1.1), or as a Department Chair shall be eligible to serve on the FHC. Special Faculty members whose continuous service to the University is less than three years are ineligible to serve on the FHC. No faculty member of the FHC may be on less than a one-year contract.

OP 9.2.1.3 Election and Terms of the FHC. The voting-eligible members of the General Faculty shall elect the thirteen (13) tenured and tenure-track faculty members to serve on the FHC. Members shall serve for a three-year staggered term. In the first Faculty Senate meeting of each academic year, the Faculty Senate shall elect the Special Faculty member to serve on the FHC for a one-year term. Members may serve an unlimited number of terms, but no more than two terms or a total of six years consecutively. Any mid-term or unexpired term vacancies shall be filled by a majority vote of the Faculty Senate.

OP 9.2.1.4 Faculty Eligible to serve as the FHC Coordinating Chair. To be eligible to serve as the FHC Coordinating Chair, the faculty member must be: (1) eligible to serve on the FHC; (2) a tenured faculty member at the rank of Professor; and (3) have at least three (3) years of prior experience serving on the FHC or the Faculty Assistance Committee (FAC). The same length of service on the Faculty Grievance Hearing
Committee, the Due Process Committee, or Faculty Grievance Assistance Committee also qualifies as appropriate experience.

**OP 9.2.1.5 Election and Term of the FHC Coordinating Chair.** The Faculty Senate Committee on Committees shall solicit applications from the General Faculty for the role of the FHC Coordinating Chair every three (3) years and bring to the Faculty Senate the names of candidates who meet these criteria. The FHC Coordinating Chair shall be selected by a majority vote of the Faculty Senate. Any mid-term or unexpired term vacancies shall be filled by a majority vote of the Faculty Senate. The term of the FHC Coordinating Chair is three (3) years. There are no term limits on the position of FHC Coordinating Chair.

**OP 9.2.1.6 Duties of the FHC Coordinating Chair.** The FHC Coordinating Chair shall be responsible for: (a) collaborating with the Senior Vice Provost and Office of General Council to ensure all members of the FHC and FAC receive annual training; (b) seating and charging appropriately constituted hearing panels when necessary including the selection of the hearing panel chair; (c) facilitating any communications between faculty member making the request for a hearing and respondents; (d) resolving any questions about process or procedure raised by participants, or FHC/FAC members before, during, or after hearings; (e) compiling a yearly report on the FHC and FAC activities for the Faculty Senate and with consultation of the Senior Vice Provost, including the information outlined in OP 9.3.9; and (f) collaborating with the Senior Vice Provost on policy and procedure review.

**OP 9.2.1.7 FHC Training.** All members of the FHC shall complete annual training on the policies and regulations governing all types of faculty employment issues and hearings, the procedures for faculty hearings, as well as training on evaluating evidence, the standards of evidence utilized in different cases, reporting findings and shaping recommendations, and other elements pertinent to their service. This training shall be organized by the Senior Vice Provost in consultation with the FHC Coordinating Chair and Office of General Counsel.

**OP 9.2.2 Faculty Assistance Committee (FAC).** Members of the FAC shall provide information to faculty on available options for employment dispute resolution. FAC members may assist in the preparation of a request for any type of hearing or appeal, indicate the types of evidence that might support a claim, and describe the relevant procedures. FAC members may, if asked by a faculty member, agree to serve as observers in meetings with administrators and/or serve in the role of faculty advocate in a hearing where permissible. If FAC members decline these latter roles, they shall provide options for locating support from other qualified faculty members. If questions of policy or law arise, FAC members should consult with the Senior Vice Provost or Office of General Counsel.
OP 9.2.2.1 Composition of the FAC. The FAC shall be constituted of five (5) members of the tenure-track and tenured faculty. At least three (3) shall be tenured faculty. There shall be broad representation among colleges and schools, when possible.

OP 9.2.2.2 Faculty Eligible to serve on the FAC. Only faculty with previous service on the FHC, except those holding an appointment as a "Senior Academic and Administrative Officer" (SAAO) (see The UNC Policy Manual, 300.1.1) or as a Department Chair, shall be eligible for service on the FAC.

OP 9.2.2.3 Election of the FAC. The Faculty Senate Committee on Committees shall solicit applications from the General Faculty for membership to the FAC and bring to the Faculty Senate the names of candidates who meet the criteria. All members of the FAC shall be elected by a majority vote of the Faculty Senate for three-year staggered terms. Members may serve two terms or a total of six years consecutively. Any mid-term or unexpired term vacancies shall be filled by a majority vote of the Faculty Senate.

OP 9.2.2.4 FAC Training. All members of the FAC shall complete annual training on the policies and regulations governing all types of faculty employment issues and hearings, the procedures for faculty hearings, as well as training on evaluating evidence, the standards of evidence utilized in different cases, reporting findings and shaping recommendations, and other elements pertinent to their service. This training shall be organized by the Senior Vice Provost, in consultation with the FHC Coordinating Chair and the Office of General Counsel.

OP 9.3 General Procedures for 603, 604, and 607 Faculty Hearings (Exceptions for 607 hearings are noted). These include the following: Disciplinary Hearings under Section 603 of The Code; Campus Based Reviews of decisions to not reappoint, deny tenure and/or promotion under Section 604 of The Code; and faculty grievances directly related to the faculty members terms and conditions of employment in accordance with Section 607 of The Code. The following general procedures apply to 603, 604 and 607 (except where noted) hearings. Specifics related to particular kinds of hearings shall be in the section on a given type of hearing.

OP 9.3.1 Access to Policies and Processes. The FHC Coordinating Chair shall provide the faculty member requesting a hearing with all policies and procedures relevant to the conduct of the type of hearing requested within five (5) calendar days of receiving such a request. The FHC Coordinating Chair shall also, when appointing a FHC panel and the FHC Panel Chair, provide these policies and procedures to the panel members and panel chair. The Senior Vice Provost shall ensure that the administration has access to these policies and procedures.

OP 9.3.2 Scheduling. Once a panel of the FHC is seated and charged in accord with the requirements by hearing type, the FHC Coordinating Chair shall: (a) inform all participants in the hearing of who is on the panel and (b) work with the FHC Panel Chair and the Senior Vice Provost, to establish a hearing date that
accords with the timeline for the type of case and takes into account, as much as is possible, the schedules of the participants and witnesses and any required recorder/transcriptionists.

**OP 9.3.3 Objections to Panel Members.** If any party wishes to assert that a hearing panel member would be unable to accord with the standards for professionalism in personnel decision making (see OP 2.1) and thus should not be part of the hearing procedures, that party must submit this assertion and the reason in writing to the FHC Coordinating Chair no later than three (3) calendar days after receiving notice of the panel membership. It shall be up to the FHC Coordinating Chair to determine whether to recuse the person(s) in question and how to reconstitute the panel. The FHC Coordinating Chair shall provide written notification of the decision to the person(s) filing the objection and provide a copy for the record. All other parties shall receive notice of any changes to the panel membership.

**OP 9.3.4 Submission of Documentary Materials and Witness Lists.** The faculty member requesting the hearing and any respondent(s) shall submit to the FHC Coordinating Chair all documentary evidence to be presented at the hearing as well as a list of any witnesses. The FHC Coordinating Chair shall set the date for this submission no more than ten (10) calendar days and no less than five (5) calendar days prior to the hearing and inform all parties of that date in writing at least ten (10) calendar days prior to the deadline.

**OP 9.3.4.1 Documentary Evidence.** All documentary evidence must be available in electronic format, with a clear numbering system and an index. Any participant in a hearing shall receive, upon request to the FHC Coordinating Chair made at least five (5) calendar days prior to the due date, confidential staff support for compiling, scanning, or photocopying materials to be provided.

**OP 9.3.4.2 Witnesses.** All parties may include the testimony of relevant witnesses.

1. The witness list shall be electronic and included in the indexing of the documents.
2. Witnesses shall be called only to provide evidence directly related to the matter at hand and not otherwise available. Character witnesses and letters of reference shall not be permitted.
3. Witnesses cannot be compelled to appear and any person named on the list should have agreed to appear on the established date.
4. If there are questions about the appropriateness of a witness (e.g. student, staff member), the FHC Coordinating Chair shall make a determination about whether a witness can be called.

**OP 9.3.4.3 Availability of Materials.** The FHC Coordinating Chair shall store all submitted materials in a confidential secure electronic drive accessible solely to the faculty member, respondent(s), FHC panel members, any advocate(s) or lawyer(s) (depending on what is allowed by hearing type), any paid recorder/transcriptionist, and the FHC
Coordinating Chair. That material shall be available for all no less than five (5) calendar days before the hearing.

**OP 9.3.4.4 Confidentiality of the Hearing.** Due to the confidential information to be shared at the hearing, all disciplinary hearings shall be closed to the public and the evidence/record created of the hearing shall be confidential.

**OP 9.3.4.5 Confidentiality of Materials.** All hearing materials, including testimony, shall be considered part of the personnel file of the faculty member requesting the hearing and are confidential. The University is obligated to permit access to such materials by parties outside of the hearing process only as provided by law. All hearing panel members and the FHC Coordinating Chair are required to maintain confidentiality of all materials, deliberations, and reports.

**OP 9.3.4.6 Additional Materials and Witnesses.** If, after the exchange of information, any party wants to add documentary evidence or witnesses, that request should be made in writing to the FHC Coordinating Chair no less than three (3) calendar days before the hearing. If the FHC Coordinating Chair permits the addition(s), both sides shall be notified promptly. If in the course of a hearing, any party has documentary evidence or a witness that responds directly to an assertion made by the other side, the FHC panel Chair, in consultation with the FHC Coordinating Chair, may allow those additions to be made and shall indicate how that evidence shall be shared with both sides.

**OP 9.3.4.7 Conduct of the Hearing.** The FHC Panel Chair shall be charged with conducting the hearing according to these guidelines. If the FHC Panel Chair requires further information, the FHC Coordinating Chair shall be consulted.

**OP 9.3.4.7.1 Decorum.** All hearing participants shall maintain a professional demeanor. The FHC Panel Chair may limit, or prohibit, the use of phones, tablets, laptops, or other electronic devices by all parties during all or part of a hearing. Those limitations may be imposed at any time. If permitted, all electronic devices shall be muted. Food is permitted only on breaks.

**OP 9.3.4.7.2 Representation.** Faculty 603 hearings permit the faculty member and respondents to make use of an advocate for all or part of the presentation of a case, including the questioning of witnesses. In a 604 hearing, Faculty members shall be allowed to have an advisor or attorney present as an observer at the hearing; however, the faculty member shall not have the right to be represented by an advisor or attorney. If the faculty member elects to have an advisor or attorney present as an observer, the respondent may also have an advisor or attorney present as an observer. Attorneys and advisors are not permitted to speak or participate in the hearing, although a party may consult with her or
his attorney or advisor during breaks in the hearing as well as at any other stage in the process aside from the hearing. In a 607 grievance process, Faculty members do not have the right to be represented by either an attorney or an advisor in a Section 607 grievance process. Attorneys and advisors are not permitted to be present during the hearing, meeting, or series of meetings even as an observer. Only the faculty member, respondent administrator(s) and the FHC shall be present at any hearing, meeting, or series of meetings. Both parties are permitted to consult with their attorney or other advisor during breaks in the hearing, meeting or series of meetings, as well as at any other stage in the process. Additional information about the ability to use an attorney in this role is delineated under the procedures for each type of case and the FHC Panel Chair shall ensure that all representatives for a party follow the processes and procedures of the hearing.

OP 9.3.4.7.3 Requirements for Attendance. The faculty member requesting the hearing and respondent(s), or their designees, shall be present for the duration of any hearing.

OP 9.3.4.7.4 Absence of the faculty member requesting the hearing. If the faculty member requesting the hearing fails to appear at the hearing, the hearing will not move forward and the FHC Panel Chair shall inform the FHC Coordinating Chair. The FHC Coordinating Chair shall inform the faculty member requesting the hearing that the matter is considered closed and no further recourse through the hearing process is available.

OP 9.3.4.7.5 Absence of respondent(s). If a respondent or a respondent’s designee fails to appear at the hearing, the hearing shall continue. The FHC panel may consider the absence of the respondent or the respondent’s designee in its consideration.

OP 9.3.4.7.6 Absence of a FHC Panel member. All members of the FHC Panel, including the alternate, shall attend the hearing and all other relevant meetings (e.g. deliberations, report writing, etc.). If a member must be absent, that member shall be removed from the panel and replaced by the alternate.

OP 9.3.4.7.7 Order of Presentation. The party with the burden of proof shall present first in every phase of a hearing.

OP 9.3.4.7.8 Opening Statements. All parties in a hearing shall be granted the opportunity to make an opening statement at the outset for the purposes of providing an overview of the case and a preview of the materials to be presented. This statement shall outline what that party intends to demonstrate. No opening statement shall exceed twenty (20) minutes unless the FHC Panel Chair agrees in advance and affords all parties the same amount of time.
OP 9.3.4.7.9 Direct Testimony. The faculty member requesting the hearing and any respondent(s) may choose to offer direct testimony. If choosing to do so, this choice should be indicated on the witness list submitted. Direct testimony does not have to be in response to questions from a representative. Direct testimony serves to present evidence in support of the case. The FHC Panel Chair is responsible for ensuring direct testimony stays on course and speaks directly to the issue(s) under consideration. All direct testimony is subject to cross-examination by the opposing party or parties and/or their representative(s).

OP 9.3.4.7.10 Calling of Witnesses. FHC conducted hearings 603 and 604 shall permit the calling of witnesses. No witnesses shall take part in a 607 Grievance Hearing. No witness may be compelled to appear. No affidavits from witnesses who do not appear shall be submitted as evidence.

OP 9.3.4.7.11 Virtual Testimony. Witness testimony may be made using Zoom or a similar platform, providing that security of any confidential information shall be assured. Any witness appearing via Zoom or similar technology shall attest at the outset that the testimony is being given via a password protected network in a private space where no one else can hear the proceedings. The witness shall attest that no recording any portion of the proceedings is being made. The FHC Panel Chair shall host any virtual meeting.

OP 9.3.4.7.12 Calling the Opposing Party as Witness. A faculty member requesting a hearing or a respondent in a faculty hearing may be called by the opposing party to provide testimony. No person may be compelled to testify, but any refusal to do so may be evaluated by the panel in determining its findings.

OP 9.3.4.7.13 Questioning of Witnesses. The party with the burden of proof shall call all of their witnesses first, and every witness called may be cross-examined by the opposing party and/or their representative. The opposing party witnesses shall follow, and every witness called may be cross-examined. During examination or cross-examination of any witness, witnesses shall be instructed only to answer the questions posed.

OP 9.3.4.7.14 Witnesses and Confidentiality. Where witnesses are allowed, witnesses may be called upon to share confidential personnel information and/or information regarding confidential proceedings (e.g. APT Committee meetings, search committee meetings, etc.) within the confines of the hearing if the information pertains directly to the case. Witnesses shall be permitted to share such information. This extension of confidentiality is only allowed within the confines of the hearing.
OP 9.3.4.7.15 Questioning of Witnesses by the FHC panel. During questioning or cross-examination of any witness, members of the FHC panel may ask for simple clarifications only. Members of the FHC panel are permitted to ask any relevant questions after both sides have completed questioning a witness.

OP 9.3.4.7.16 Objections to Questions Posed to Witnesses. During questioning or cross-examination of any witness, no objections to questions shall be raised by either party. The FHC Panel Chair alone is empowered to disallow questions that do not directly apply to the matter being heard.

OP 9.3.4.7.17 Refusal to Answer Questions. Any witness may opt not to answer a question posed. The FHC Panel may consider such refusal(s) in its consideration.

OP 9.3.4.7.18 Closing Statements. All hearings shall permit all parties the opportunity to make a closing statement for the purposes of providing a review of the case and how the materials provided establish the contentions of that party. This statement may be argumentative (i.e. it draws inferences or conclusions). No new information may be introduced in closing arguments. The closing statement shall not exceed thirty (30) minutes unless the FHC Panel Chair agrees in advance and affords all parties the same amount of time.

OP 9.3.5 Transcript or Audio Recording. If a court reporter, paid by the University, is not present to create a transcript of a hearing, an audio recording of the hearing shall be made by the FHC Panel Chair. The FHC Coordinating Chair, in cooperation with the Senior Vice Provost shall assist with the appropriate technology for that recording and the production of a transcript.

OP 9.3.6 Deliberations. FHC panels shall deliberate following each hearing in accordance with the timeline and rules for the type of case before it as indicated in Academic Affairs Standard Operating Procedures (see OP 9.4, 9.5, 9.6, 9.7). The committee’s deliberations, in whatever form(s) the committee determines to deliberate, must include all members and are confidential. The purpose of deliberation is to reach consensus on a final report.

OP 9.3.7 FHC Panel Report. The FHC Panel Report shall consist of its determinations, rationale, and recommendations. The report shall be made in accordance with the time frame outlined in Academic Affairs Standard Operating Procedures (see OP 9.4, 9.5, 9.6 and 9.7) and sent to the appropriate administrator and the faculty member requesting the hearing, with a copy to the FHC Coordinating Chair for the official record.

OP 9.3.7.1 Determinations. FHC panel determinations shall consist of simple statements (e.g., “The panel determined, by a vote of [X-Y], that the faculty member [established/did not establish] by [evidentiary standard relevant for the case] that “[determination] (as defined by section [X] of the The Code.”).
**OP 9.3.7.2 Rationale.** FHC panel rationales shall thoroughly explain the basis in the evidence on which each determination was reached.

**OP 9.3.7.3 Recommendations.** Recommendations shall set forward remedies and/or other instructions (e.g., how remedies are to be enacted, considerations for any future changes to policy on similar cases, etc.) pertinent to the disposition of the case.

**OP 9.3.8 Debriefings Post-Hearing.** At the conclusion of every hearing, the FHC panel shall meet with the FHC Coordinating Chair and the Senior Vice Provost, as well as any members of the FAC who had direct involvement in the case, to review the hearing process (not any facts or findings about the case) and to determine if any improvements in process might be made for the future. Any suggested changes or variations in procedures or rules shall be forwarded to the appropriate committees or offices (e.g., Faculty Governance Committee of the Faculty Senate, Office of the Provost, etc.) for consideration.

**OP 9.3.9 Annual Report.** The FHC Coordinating Chair shall submit, no later than 30 June of each year, an Annual Report to the Faculty Senate with a copy to the Senior Vice Provost. This report shall include the following (without disclosing any identifiable material):

1. the number of contacts received by the FAC seeking support/guidance;
2. the number of requests/petitions for hearings, meetings or series of meeting held without differentiation of type;
3. the number of hearings, meetings or series of meetings without differentiation of type;
4. recommendations for any changes in the processes or guidance going forward.

The FHC Coordinating Chair and the Senior Vice Provost shall present to the Faculty Senate at a fall meeting of the Faculty Senate a review of the Annual Report and any related recommendations.

**OP 9.4 603 DISCIPLINARY DISCHARGE, SUSPENSION, OR DEMOTION**

**OP 9.4.1 Overview and Grounds for Disciplinary Discharge Suspension or Demotion.** A faculty member who is the beneficiary of institutional guarantees of academic tenure shall enjoy protection against unjust and arbitrary application of formal discharge, suspension, or demotion. The process of discharge or the imposition of formal discharge, suspension, or demotion must be fundamentally fair to the faculty member. For impositions of formal discharge, suspension, or demotion under this section of *The Code*, a faculty member serving a stated term shall be regarded as having tenure until the end of that term. During the period of such guarantees the faculty member may be discharged from employment, suspended without pay, or demoted in rank for reasons of:
1. **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;

2. **Neglect of duty**, including but not limited to, the sustained failure to: meet assigned classes, respond to communications from individuals within the faculty member’s supervisory chain, report to their employment assignment and by continuing to be absent for fourteen (14) consecutive calendar days without being excused by their supervisor, or to perform other essential duties of their position; or

3. **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 or engaging in other unethical conduct; violation of university policy or law; mistreatment of students or employees; research misconduct; financial or other fraud; or criminal, or other illegal or inappropriate conduct. To justify formal discharge, suspension, or demotion, such misconduct should be either (i) sufficiently related to a faculty member’s responsibilities as to disqualify the individual from effective performance of job duties, or (ii) sufficiently serious as to adversely reflect on the individual's honesty, trustworthiness or fitness to be a faculty member.

**OP 9.4.2 Procedures for the Imposition of Discharge, Suspension, or Demotion.** Formal discharge, suspension, or demotion may be imposed only in accordance with the procedures prescribed in this section. These procedures shall not apply to Non-Reappointment, Denial of Tenure, and Denial of Promotion as provided in Section 604, Separation Due to Financial Exigency or Program Curtailment as provided in Section 605, a grievance as provided in Section 607, or any other lesser employment action that is not a formal discharge, suspension, or demotion.

**OP 9.4.2.1 Notice of Intent to Discharge, Suspend, or Demote.** The Provost and Executive Vice Chancellor shall send the faculty member a written notice of intention to discharge, suspend, or demote a faculty member. The letter must include: (i) the proposed date of discharge, suspension, or demotion; (ii) specific reasons for discharge, suspension, or demotion; (iii) the faculty member’s right to request a disciplinary hearing; and (iv) the deadline and process for the faculty member to request a disciplinary hearing in writing. The notice shall be provided in such a manner that provides proof of delivery.

**OP 9.4.2.2 Administrative Leave.** At any point during these procedures, the chancellor or the Provost and Executive Vice Chancellor shall have the discretion to either reassign the faculty member to other duties or to place the faculty member on administrative leave with pay. Reassignment or placement of a faculty member on administrative leave with pay is not a disciplinary action and is not grievable. *[The UNC Code 603: The UNC Policy Manual 101.3.1.1][R]*
OP 9.4.2.3 Request for a Disciplinary Hearing. Within fourteen (14) calendar days of receiving notice of intent to impose discharge, suspend, or demote, a faculty member may request a disciplinary hearing by submitting this form to the FHC Coordinating Chair. If the faculty member makes a timely written request for a disciplinary hearing, that hearing shall be timely accorded before an FHC Hearing Panel. However, if within fourteen (14) calendar days after receiving the notice, the faculty member makes no written request for a disciplinary hearing, the discharge, suspension, or demotion, shall be final and without recourse to any institutional grievance or appellate procedure. In computing any period of time, the day in which notice is received is not counted but the last day of the period being computed is to be counted.

OP 9.4.3 Purpose of a Disciplinary Hearing and Burden of Proof. The primary role of the FHC panel in a disciplinary hearing committee is to provide the opportunity for the faculty member and the Provost and Executive Vice Chancellor chief (or designee(s)) to present relevant evidence. The hearing shall follow the General Procedures for Faculty Hearings (see OP 9.3) as well as any provisions specific to this section. The disciplinary hearing committee shall create a clear, permanent written record of the evidence presented at the hearing and make a recommendation to the chancellor of whether to impose a discharge, suspension, or demotion.

OP 9.4.3.1 Procedures for a Disciplinary Hearing. The hearing shall be on the written specification of reasons for the discharge, suspension, or demotion only and shall follow the General Procedures for Faculty Hearings (see OP 9.3) as well as any provisions specific to this section.

OP 9.4.3.2 FHC Hearing Panel for a Disciplinary Hearing. If the faculty member makes a timely request for a Disciplinary Hearing, the FHC Coordinating Chair shall seat a panel of five (5) members and one alternate from the FHC, all of whom have permanent tenure.

OP 9.4.3.3 FHC Hearing Panel Chair for a Disciplinary Hearing. The FHC Coordinating Chair shall also designate a Chair of the FHC Panel. Because hearing panels may present complex and difficult questions of fact, policy, and law, and because of the central role of the hearing panel in gathering and preserving the evidence upon which determinations and recommendations related to the matter shall be based, the FHC Coordinating Chair shall appoint a FHC Panel Chair at the rank of Professor.

OP 9.4.3.4 Purpose of a Disciplinary Hearing and Burden of Proof. The primary role of the FHC panel in a disciplinary hearing committee is to provide the opportunity for the faculty member and the Provost and Executive Vice Chancellor chief (or designee(s)) to present relevant evidence. The hearing shall follow the General Procedures for Faculty Hearings (see OP 9.3) as well as any provisions specific to this section.
The disciplinary hearing committee shall create a clear, permanent written record of the evidence presented at the hearing and make a recommendation to the chancellor of whether to impose a discharge, suspension, or demotion.

**OP 9.4.3.5 Timing of a Disciplinary Hearing.** The hearing committee shall accord the faculty member at least thirty (30) calendar days from the time it receives the faculty member’s written request for a disciplinary hearing to schedule the hearing. The hearing committee may, upon the faculty member’s written request and for good cause, extend any campus-imposed deadline by written notice to the faculty member. The disciplinary hearing committee will ordinarily endeavor to complete the disciplinary hearing within ninety (90) calendar days except under unusual circumstances such as when a disciplinary hearing request is received during official university breaks and holidays and despite reasonable efforts the disciplinary hearing committee cannot be assembled. To meet this deadline, faculty 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 or more sessions.

**OP 9.4.3.6 Closed Hearing.** The disciplinary hearing shall be closed to the public.

**OP 9.4.3.7 Counsel or Advocate.** The faculty member requesting the hearing shall be permitted the opportunity to have counsel who is able to represent the faculty member’s interests before the disciplinary hearing committee if the faculty member so chooses. If an attorney will be representing the faculty member during the hearing, then the campus should provide legal counsel for the institution. Legal counsel for the institution may be provided by in-house campus counsel, counsel from another constituent institution, a member of the Attorney General’s Office, counsel from the System Office, or outside counsel. If the faculty member requesting the hearing does not use counsel, the faculty member or an advocate may represent the faculty member’s interests before the hearing committee and the Provost and Executive Vice Chancellor or designee (not counsel) may represent the university.

**OP 9.4.3.8 Written Transcript.** A professional court reporter, or a similarly reliable means, should be used to enable the production of a verbatim written transcript of the disciplinary hearing and to maintain a record of the documents received by the disciplinary hearing committee. Any such record shall be considered part of the faculty member’s personnel file and is confidential. Access to such materials is only allowable as provided by law. A copy of the transcript shall be furnished to the faculty member requesting the hearing at the institution's expense.
OP 9.4.3.9 Burden of Proof. The university (here represented by the Provost and Executive Vice Chancellor (or designee(s)) must show by a standard of clear and convincing evidence that there is a permissible basis for the discharge, suspension, or demotion (e.g. – incompetence, neglect of duty, or misconduct (as defined by Section 603 of The Code and Section II.A 101.3.1.1 [R] in the UNC Policy Manual)).

OP 9.4.3.10 FHC Recommendations. The FHC Panel shall forward its written report to the Chancellor (formulated and distributed as indicated in OP 9.3.7 of Academic Affairs Standard Operating Procedures) within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. In developing its report, the FHC panel shall consider only the evidence presented at the disciplinary hearing and such written or oral arguments as the committee, in its discretion, may allow. This recommendation shall be based on a finding as to whether the University met its burden and there is a permissible basis for the discharge, suspension, or demotion.

OP 9.4.3.11 The Chancellor’s Decision. Following receipt of the hearing committee’s written recommendations, the decision whether to discharge, suspend, or demote the faculty member is the Chancellor’s. The decision shall be effective as of the date of the Chancellor’s decision and the institution’s obligation to continue paying the faculty member’s salary shall cease upon issuance of the chancellor’s decision.

OP 9.4.3.12 The Chancellor’s Notice. The Chancellor shall notify the faculty member, the Provost and Executive Vice Chancellor and relevant administrators of the Chancellor’s decision in writing within fourteen (14) calendar days. Notice of the decision is to be conveyed to the faculty member requesting the hearing by a method which produces adequate evidence of delivery and shall be copied to relevant administrators. In the event of a decision against the faculty member requesting the hearing, the Chancellor’s notice of the decision must inform the faculty member: (1) of the permissible grounds for appeal pursuant to Section 603 of The Code; (2) of the time limit within which the faculty member may file a notice of appeal within fourteen (14) calendar days through the Chancellor requesting review by the board of trustees; (3) that a written notice of appeal with a brief statement of the basis (Material procedural error; Clearly erroneous; or Contrary to law or policy) for the appeal is all that is required within the fourteen (14) day period; and (4) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. For record keeping purposes, the Chancellor shall also notify the FHC Coordinating Chair that a decision has been issued.

OP 9.4.3.13 Appeal to the Board of Trustees. See OP 9.8 on “Procedures for Appeal to the Board of Trustees.”
OP 9.5 604 Non-Reappointment, Denial of Tenure, and Denial of Promotion

OP 9.5.1 Overview of Non-Reappointment, Denial of Tenure, and Denial of Promotion. Within the University, important faculty personnel decisions are based on evaluations of performance rendered by a candidate's colleagues and supervisors, who are in the best position to make such judgments. These decisions must reflect careful exercises of discretion, in which the faculty colleagues draw on their own academic knowledge, experience, and perceptions to evaluate the candidate's qualifications and performance. These decisions are entitled to great deference and weight and, as such, must be based on considerations that are relevant to the candidate's performance and potential to contribute to the good of the institution.

OP 9.5.1.1 This procedure is only for tenured or tenure track faculty members seeking review of a decision regarding non-reappointment, denial of tenure, and denial of promotion.

OP 9.5.2 Impermissible Reasons for Non-Reappointment, Denial of Tenure, and Denial of Promotion. A decision not to reappoint, to deny tenure, or to deny promotion shall not be based upon (1) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution; (2) the faculty member's membership in a group protected from discrimination under state or federal law; (3) other violation of state or federal law; or (4) material violation of applicable university policies for reappointment, promotion, and tenure that materially affected the decision.

OP 9.5.3 Meetings with Relevant Administrators or FAC Member. A faculty member under consideration for reappointment, tenure, or promotion may request a meeting with relevant administrator(s) such as the Department Chair, Dean, or Provost prior to that administrator's independent recommendation regarding any alleged impermissible at an earlier state in the process. The relevant administrator may consider that information in the writing of their recommendation. That faculty member also has a right to have an observer at any such meeting and may seek advice from a member of the FAC.

OP 9.5.4 Timeline for Filing a Request for a Review of a Non-Reappointment, Denial of Tenure, and Denial of Promotion Decision. The faculty member has thirty (30) calendar days from the date of the Provost's Decision to request a review of the decision to not reappoint, deny tenure and/or promotion on the grounds that the decision was based on an Impermissible Basis. If the faculty member does not request a review within the thirty days, the decision shall be final without recourse to any further review or appeal.

OP 9.5.4.1 Review Request Form. All requests for a review of a non-reappointment, denial of tenure, or denial of promotion decision must be made on this form and submitted to the FHC Coordinating Chair with a copy to the Provost and Executive Vice Chancellor. The FHC Coordinating Chair shall notify any respondent(s) within five (5) calendar
days of the receipt of the request. This form requires the following information:

a. State the reason for the grievance (i.e. non-reappointment, denial of tenure and/or promotion);

b. Name the party or parties that the faculty member is claiming made the decision based on an impermissible ground;

c. Identify the impermissible ground or material procedural flaw (including identifying the state law, federal law, University policy or procedure that was violated) that is the basis of the request for review;

d. Summarize the evidence that the faculty member is prepared to submit to support their request for review; and

e. If applicable, a request for mediation.

OP 9.5.4.2 Allegations of Discrimination. If a review request includes allegations of discrimination, harassment or retaliation in violation of Appalachian State University Policies, the FHC Coordinating Chair shall refer the matter to the Office of Access and Equity. All 604 processes are delayed until those allegations have been properly directed and, if necessary, investigated and determination made. Once the University has met its obligations with regard to the allegations, the Office of Access and Equity shall notify the FHC Coordinating Chair the process has concluded. The FHC Coordinating Chair shall then ask the faculty member making the request whether to continue with the existing or a modified review request.

OP 9.5.5 Procedures for Review of a Non-Reappointment, Denial of Promotion, or Denial of Tenure Decision. The hearing shall follow the General Procedures for Faculty Hearings (see OP 9.3) as well as any provisions specific to this section

OP 9.5.5.1 Scheduling the Campus Based Review Hearing. The FHC shall schedule the campus-based review hearing within thirty (30) calendar days from receipt of the petition from the faculty member. In the event mediation is requested, the campus-based review hearing shall be scheduled only if the mediation is unsuccessful. The FHC shall ensure that the campus-based review hearing is completed within ninety (90) days, except under unusual circumstances including when a hearing request is received during official university breaks (i.e. summer and winter breaks) or holidays.

OP 9.5.5.2 FHC Hearing Panel for a Non-Reappointment, Denial of Tenure, or Denial of Promotion Review. If a faculty member makes a timely request for a review, the FHC Coordinating Chair shall seat a panel
consisting of three (3) members and one alternate from the FHC. All members shall have permanent tenure.

**OP 9.5.5.3 FHC Hearing Panel Chair.** The FHC Coordinating Chair shall also designate a Chair of the FHC Panel. Because hearing panels may present complex and difficult questions of fact, policy, and law, and because of the central role of the hearing panel in gathering and preserving the evidence upon which determinations and recommendations related to the matter shall be based, the FHC Coordinating Chair shall appoint a FHC Panel Chair at the rank of Professor, when possible.

**OP 9.5.5.4 Purpose of the Review of a Non-Reappointment Decision.** The review hearing provides the opportunity for both parties to present relevant evidence and the FHC Panel to provide a recommendation to the chancellor on the merits of the faculty member’s contentions. The FHC Panel creates a clear, permanent record of the evidence received and makes a recommendation to the chancellor. The FHC panel shall endeavor to complete the review within ninety (90) calendar days except under unusual circumstances (e.g. when a request is received during official university breaks and holidays or, despite reasonable efforts, the FHC panel cannot be assembled).

**OP 9.5.5.5 Burden of Proof.** The faculty member must demonstrate, by a preponderance of the evidence, that the decision was made based on an Impermissible Basis.

**OP 9.5.5.6 Right to Counsel.** Faculty members shall be allowed to have an advisor or attorney present as an observer at the hearing; however, the faculty member shall not have the right to be represented by an advisor or attorney. If the faculty member elects to have an advisor or attorney present as an observer, the respondent may also have an advisor or attorney present as an observer. Attorneys and advisors are not permitted to speak or participate in the hearing, although a party may consult with her or his attorney or advisor during breaks in the hearing as well as at any other stage in the process aside from the hearing.

**OP 9.5.5.7 Written Record.** It is essential that all testimony and other evidence received by a FHC panel be preserved for review by the parties to the proceeding (i.e. the Chancellor, and, if applicable, the Board of Trustees). In these hearings, the University shall employ a professional court reporter, or a similarly reliable means to enable the production of a verbatim written transcript of the hearing and to maintain a record of the documents received by the FHC panel.

**OP 9.5.5.8 Location of the Written Record.** The written record of the hearing shall be considered part of the faculty member’s personnel file and is confidential. Access to such materials is only allowable as provided by law.
**OP 9.5.5.9 Copy of the Written Record to the Faculty Member.** If a faculty member requests a copy of the written transcript, one shall be provided to the faculty member at the University’s expense. If the faculty member requests an official transcript directly from the court reporter, the faculty member shall pay the court reporter directly for the official transcript.

**OP 9.5.5.10 FHC Report.** The FHC panel shall forward its written report to the Chancellor (formulated and distributed as indicated in OP 9.3.7) within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. In developing its report, the committee shall consider only the evidence presented by the faculty member, including the written record of the decision at the hearing and such written or oral arguments as the committee, in its discretion, may allow.

**OP 9.5.5.11 The Chancellor’s Decision.** Following receipt of the FHC panel’s written report, the Chancellor must make a decision based on a thorough review of: (1) the record of evidence from the hearing, and (2) the recommendation of the faculty committee. While the chancellor should give appropriate deference to the advice of the faculty committee, the final decision is the Chancellor’s. If the Chancellor is considering taking an action that is inconsistent with the recommendation of the hearing committee, the Chancellor may consult with the hearing committee, either in person or in writing, before making a decision.

**OP 9.5.5.12 The Chancellor’s Notice.** Notice of the decision is to be conveyed to the faculty member requesting the hearing by a method which produces adequate evidence of delivery and shall be copied to relevant administrators. In the event of a decision against the faculty member requesting the hearing, the Chancellor’s notice of the decision must inform the faculty member: (1) of the permissible grounds for appeal pursuant to Section 604 of The Code; (2) of the time limit within which the faculty member may file a notice of appeal through the chancellor requesting review by the board of trustees; (3) that a written notice of appeal with a brief statement of the basis for the appeal is all that is required within the 14 calendar days period; and (4) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. For record keeping purposes, the Chancellor shall also notify the FHC Coordinating Chair that a decision has been issued.

**OP 9.5.5.13 Appeal to the Board of Trustees.** See Section on Procedures for Appeal to the Board of Trustees.

**OP 9.6 605 Separation Due to Financial Exigency or Program Curtailment**

9.6.1 Termination of Faculty Employment for Financial Exigency or Major Curtailment or Elimination of a Program.
The employment of a faculty member with permanent tenure or of a faculty member appointed to a fixed term may be terminated by Appalachian State University because of (1) demonstrable, bona fide institutional financial exigency or (2) major curtailment or elimination of a teaching, research, or public service program. Below are the procedures applicable to this type of separation.

9.6.1.1 Financial Exigency Defined. Financial exigency is defined as a significant decline in the financial resources of the institution that is brought about by the decline in institutional enrollment or by other action or events that compel a reduction in the institution’s current operations budget.

9.6.1.2 Determination of Financial Exigency. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or elimination of a teaching, research, or public service program shall be made by the Chancellor, after consulting with the academic administrative officers and faculty.

9.6.1.3 Approval of Financial Exigency Determination. This determination is subject to concurrence by the UNC System President and then approval by the Board of Governors. If the financial exigency or curtailment or elimination of program is such that the institution’s contractual obligation to a faculty member cannot be met, the employment of the faculty member may be terminated in accordance with this section.

9.6.1.4 Consultation with Faculty and Administrative Officers. If it appears that the University will experience a financial exigency or needs to seriously consider a major curtailment or elimination of a teaching, research, or public-service program, the Chancellor or their designee shall first seek the advice and recommendations of the faculty and the administrative officers of the department(s) or other units that might be affected.

9.6.1.5 Consideration of Whose Employment will be Terminated. In determining which faculty member(s) employment will be terminated, the Chancellor shall consider tenure status, years of service to the University, and other factors deemed relevant. However, the primary consideration shall be the maintenance of sound and balanced educational programs that is consistent with the functions and responsibilities of the University.

OP 9.6.2 Procedures for Termination Due to Financial Exigency or Program Curtailment.

OP 9.6.2.1 Timely Notice of Termination Due to Major Curtailment or Elimination of a Program.

When a faculty member’s employment is to be terminated because of major curtailment or elimination of a teaching, research, or public service program and
such curtailment or elimination of program is not due to financial exigency, the faculty member shall be given timely notice:

a. one who has permanent tenure shall be given not less than twelve (12) months' notice;
b. one who was appointed to a probationary or specified term and does not have permanent tenure shall be given notice as follows:
   i. During the first year of service to the University, the faculty member shall be given not less than sixty (60) calendar days’ written notice before the employment contract expires;
   ii. During the second year of continuous service to the University, the faculty member shall be given not less than ninety (90) calendar days’ written notice before the employment contract expires;
   iii. After two or more years of continuous service to the University, the faculty member shall be given not less than twelve (12) months’ written notice before the employment contract expires.

OP 9.6.2.2 Timely Notice of Termination Due to Financial Exigency. When a faculty member’s employment is to be terminated because of financial exigency, the University will make every reasonable effort, consistent with the need to maintain sound educational programs and within the limits of available resources, to give the same notice as in provided above.

OP 9.6.2.3 Type of Notice. The Chancellor or the Chancellor’s designee shall send the faculty member whose employment is to be terminated notice of this fact in writing. This notice shall be sent in such a manner that provides proof of delivery. This notice shall include:

1. a statement of the conditions requiring termination of the faculty member’s employment;
2. a general description of the procedures followed in making the decision;
3. a disclosure of pertinent financial or other data upon which the decision was based;
4. a statement of the faculty member’s right, upon request, to a reconsideration procedure that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious; and
5. the contact information for the FHC Coordinating Chair.

OP 9.6.2.4 Requesting a Reconsideration Hearing. Within fourteen (14) calendar days after receiving written notice of termination due to financial exigency or major curtailment or elimination of a teaching,
research, or public service program, the faculty member may make a written request for a reconsideration hearing to the FHC Coordinating Chair by using this form. If the faculty member does not request a reconsideration hearing within fourteen (14) calendar days of receiving the written notice of termination due to financial exigency or major curtailment or elimination of a teaching, research, or public service program, the faculty member may be terminated and no further reconsideration is available.

**OP 9.6.3 Procedures for a 605 Reconsideration Hearing.**

**OP 9.6.3.1 FHC Hearing Panel for a Reconsideration.** If a faculty member timely files a request for a reconsideration hearing and the faculty member has provided enough information to show that the decision was arbitrary or capricious, the Chancellor or their designee shall submit the request to a faculty committee for a hearing. The committee shall be appointed by the Provost and Executive Vice Chancellor. The committee shall make a recommendation to the Chancellor upon review of the facts presented at hearing and any oral or written arguments permitted by the committee.

**OP 9.6.3.2 Purpose of a Reconsideration Hearing.** A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious, that is, if the decision has no reasonable basis or is without reasonable grounds or adequate consideration of the circumstances.

**OP 9.6.3.3 Timing of a Reconsideration Hearing.** The FHC Coordinating Chair in coordination with the Senior Vice Provost shall ensure that the reconsideration hearing happens within thirty (30) days of the receipt of the request except under unusual circumstances (e.g. when a reconsideration request is received during official university breaks and holidays or, despite reasonable efforts, the FHC panel cannot be assembled).

**OP 9.6.3.4 Written Record.** The FHC creates a clear, permanent record of the evidence presented. It is essential that all testimony and other evidence received by a faculty committee be preserved for review by the parties to the proceeding, the Chancellor, and, if applicable, the Board of Trustees. A reliable means, should be used to enable the production of a verbatim written transcript of the reconsideration hearing and properly to maintain a record of the documents received by the FHC panel.

**OP 9.6.3.5 Location of the Written Record.** Any such record shall be considered part of the faculty member’s personnel file and is confidential. Access to such materials is only allowable as provided by law.
OP 9.6.3.6 Copy of the Written Record to the Faculty Member. A copy of the written transcript shall be provided, at the University’s expense, to the faculty member upon written request to the FHC Coordinating Chair.

OP 9.6.3.7 FHC Report. The FHC panel shall forward its written report (formulated and distributed as indicated OP 9.3.7 of Academic Affairs Standard Operating Procedures) within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. In developing its report, the committee shall consider only the evidence presented by the faculty member, including the written record of the decision at the hearing and such written or oral arguments as the committee, in its discretion, may allow.

OP 9.6.3.8 Burden of Proof. The faculty member must demonstrate by a preponderance of the evidence that the decision to terminate was arbitrary or capricious, that is, if the decision has no reasonable basis or is without reasonable grounds or adequate consideration of the circumstances.

OP 9.6.3.9 The Chancellor’s Decision. Following receipt of the FHC panel’s written report, the Chancellor must make a decision based on a thorough review of: (1) the record of evidence from the hearing, and (2) the recommendation of the faculty committee. While the chancellor should give appropriate deference to the advice of the faculty committee, the final decision is the Chancellor’s. If the Chancellor is considering taking an action that is inconsistent with the recommendation of the hearing committee, the Chancellor may consult with the hearing committee, either in person or in writing, before making a decision.

OP 9.6.3.10 The Chancellor’s Notice. Notice of the decision is to be conveyed to the faculty member requesting the hearing by a method which produces adequate evidence of delivery and shall be copied to relevant administrators. In the event of a decision against the faculty member requesting the hearing, the Chancellor's notice of the decision must inform the faculty member: (1) of the permissible grounds for appeal pursuant to Section 604 of The Code; (2) of the time limit within which the faculty member may file a notice of appeal through the chancellor requesting review by the board of trustees; (3) that a written notice of appeal with a brief statement of the basis for the appeal is all that is required within the 14-day period; and (4) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. For record keeping purposes, the Chancellor shall also notify the FHC Coordinating Chair that a decision has been issued.

OP 9.6.3.11 Appeal to the Board of Trustees. If the Chancellor’s decision is to continue with termination of employment, the faculty member may appeal the reconsideration decision to the Board of Trustees. See OP 9.9 for a specific process for 605 BOT appeals.
OP 9.6.4 Institutional Assistance to Faculty Following Termination. If a faculty member is terminated due to financial exigency or program curtailment, the University, when requested by the faculty member in writing, shall give reasonable assistance in finding other employment for a faculty member whose employment has been terminated. For up to two years, that faculty member may make a request to the Chancellor or the Chancellor’s designee that the institution give the employee assistance (e.g., letters of reference) in finding other employment.

OP 9.6.5 First Right of Refusal of New Positions. For a period of two years after the effective date of termination of a contract of a faculty member for any of the reasons specified in this section, the University shall not replace the faculty member without first offering the position to the person whose employment was terminated. Any offer to a former faculty member pursuant to this section shall be in such a manner that provides proof of delivery. The faculty member shall be given thirty (30) calendar days after receiving the offer to accept or reject it.

OP 9.7 607 Faculty Grievance Process

OP 9.7.1 Purpose of the Grievance Process. Section 607 of The Code provides a process for faculty members to seek redress concerning employment related decisions made by an administrator in a supervisory role over the faculty member which directly relate to a faculty member’s terms and conditions of employment.

OP 9.7.2 Initial Procedures for Review. A faculty member aggrieved about a term or condition of employment shall before filing any grievance discuss the matter with their supervisor(s). The faculty member shall first meet with their Chair. If a satisfactory resolution is not obtained through the discussion with the Chair, the faculty member shall seek a meeting with the Dean. If a successful resolution cannot be reached with the Dean, the faculty member shall seek to discuss the matter with the Provost and Executive Vice Chancellor. Meetings should be scheduled as expeditiously as possible but in no event more than fourteen (14) calendar days after the request for a meeting. Faculty members are encouraged to make every attempt to resolve the dispute without filing a grievance. Before any grievance is submitted, the faculty member must show evidence that they have met with the relevant administrators in an attempt to reach resolution.

OP 9.7.3 Overview of the Faculty Grievance Process. Faculty may grieve matters directly related to the terms and conditions of the faculty member’s employment, including a non-disciplinary separation as defined in Section 602 (6)(d) of The Code. A faculty member whose employment ends during the pendency of a grievance proceeding is not entitled to continue the grievance. However, the chancellor may, in their sole discretion, determine that it is in the best interest of the constituent institution to continue the grievance.
**OP 9.7.4 Definition of Grievances.** Grievances must be based upon a decision made by an administrator in a supervisory role over the faculty member. The grievance must allege that the decision was in violation of federal or state law, or UNC Policy or Regulation, or constituent institution policy or regulation and that the faculty member was negatively affected by such decision. However, the grievance committee may not consider a matter that is subject to Section 603, Section 604, or Section 605 of The Code, or a matter that is not grievable as defined in [UNC Policy 101.3.3[R]].

**9.7.4.1 Non-Grievable Actions.** A Grievance may not include a matter that is subject to the jurisdiction of another standing committee of the faculty or subject to another institution process as may be required under applicable law (i.e. Title IX proceedings, research misconduct investigation, equal employment opportunity (EEO) claims, workplace violence, etc.) For clarity, a grievance shall not include disputes between faculty colleagues, disputes between faculty and staff members, disputes between faculty and students, decisions that do not directly affect the faculty member’s terms and conditions of employment, decision on teaching workloads or assignments, business decisions about the allocation of university resources other than the faculty member’s compensation, the reassignment of faculty duties or placing a faculty member on administrative leave with pay.

**9.7.4.2 Examples of Grievable Actions.** Grievances are limited to matters related to the terms and conditions of a faculty member’s employment including the following: graduate faculty status, merit pay, annual performance reviews, post tenure reviews, determinations regarding conflicts of interest, conflict of interest management plans, or determinations of noncompliance with the conflict of interest and commitment policy.

**OP 9.7.5 Procedures for the Grievance Process.**

**OP 9.7.5.1 Initiating the Grievance Process.** If any faculty member has a grievance as defined in this section, the faculty member may submit the grievance to the FHC Coordinating Chair for redress using [this form](#). The faculty member must allege facts that, if true, constitute the basis for a grievance. In the form the following should be included:

a. State the action taken by an administrator in a supervisory role over the faculty member that relates directly to the faculty member’s term and conditions of employment;

b. Name the administrator(s) in a supervisory role that the faculty member is filing the dispute against;

c. Identify with specificity the federal law, state law, UNC Code, UNC Policy or University policy that allegedly was violated by the administrator in a supervisory role and how that violation negatively affected the faculty member in their employment;
d. Summarize the evidence that the faculty member is prepared to submit in support of their grievance; and

e. Provide dates of all previous attempts to reach resolution with the Chair, Dean and Provost and affirm that all previous attempts at resolution have been unsuccessful.

**OP 9.7.5.1.1 Mediation.** See Mediation OP 9.11 for the University’s Mediation Program. While mediation is not required to initiate a grievance process, it is strongly encouraged as an option. Initiating a grievance process will require indicating whether mediation has been attempted or if the faculty member initiating the grievance is willing to attempt mediation.

**OP 9.7.5.2 FHC Panel.** If a faculty member initiates the grievance process, the FHC Coordinating Chair shall seat a panel of three (3) faculty members and one (1) alternate; at least one (1) faculty member shall have permanent tenure and at least one (1) faculty member shall be at the rank (or closest equivalent) of the faculty member making the request.

**OP 9.7.5.3 Chair of the FHC Panel.** The FHC Coordinating Chair shall also designate a Chair of the FHC Panel. The Chair of the FHC Panel shall have permanent tenure.

**OP 9.7.5.4 FHC Panel Consideration and Outcome.** The FHC Panel shall convene within fourteen (14) calendar days to consider the grievance.

1. If the faculty member has alleged facts that, if true, constitute the basis for a grievance, the FHC Panel Chair shall inform the faculty member, the respondent(s) and the FHC Coordinating Chair, using this template. The FHC Panel may either direct the parties to mediation (if mediation has not already been attempted) or schedule a hearing.

2. If the FHC panel determines that the alleged facts, if true, do not constitute a basis for a grievance or fall under the auspices of another committee, the FHC Panel Chair shall inform the faculty member and the FHC Coordinating Chair using this template and the matter shall be considered closed.

**OP 9.7.5.5 Mediation Outcome (if applicable).** If mediation is recommended, the FHC Coordinating Chair and the Senior Vice Provost for Academic Affairs shall work with the faculty member initiating the request and the respondent(s) to determine if all parties are willing to participate and to schedule mediation. A decision by either party not to pursue mediation will not be held against that party in any way and no fault will attach to either party if mediation does not produce a settlement.

**OP 9.7.5.5.1 Mediation Agreement Notice.** If mediation is agreed upon and an agreement is reached in the mediation, the mediator will provide the FHC Coordinating Chair and the Senior
Vice Provost with a simple, unelaborated statement and the matter shall be considered closed.

**OP 9.7.5.5.2 Notice of No Mediation Agreement.** If a mediation is held but an agreement is not reached, the mediator will provide the FHC Coordinating Chair and the Senior Vice Provost with a simple, unelaborated statement and the FHC Coordinating Chair will determine if the faculty member initiating the grievance wants to move forward to a hearing and inform the FHC Panel Chair and the Senior Vice Provost who will provide the additional notifications.

**OP 9.7.5.5.3 Mediation in the Subsequent Hearing.** If the matter goes to hearing following mediation, no record of a failed mediation process will be produced by the mediator other than an unelaborated written statement to the appropriate authority necessary to invoke the next step in the grievance process. In addition, the mediator may not be called as a witness in any subsequent proceeding and nothing done or said by either party during a mediation process may be referred to or used against a party in any subsequent proceeding.

**OP 9.7.6 Procedures for Conduct of the 607 Grievance Hearing.**

**OP 9.7.6.1 Purpose of the Grievance Hearing.** The hearing provides the opportunity for both parties to present evidence and for the FHC Panel to collect and review the relevant information and facts. The FHC Panel provides a recommendation to the chancellor on the merits of the faculty member’s contentions.

**OP 9.7.6.2 Burden of Proof.** The burden of proof is on the faculty member to establish by a preponderance of the evidence the allegation(s) in the grievance and that the faculty member is entitled to relief. The exception to this rule are cases of non-disciplinary separation as defined in Section 602 (6)(d) of The Code which require the university to show by a preponderance of evidence that the faculty member was unavailable based on the grounds in subsection (d) and that the university took reasonable steps to avoid separation.

**OP 9.7.6.3 Confidentiality in Grievance Process.** Any hearing, meeting or series of meetings held to gather evidence during the grievance process shall be closed to the public and the evidence/record created during the process shall be confidential. Any such record shall be considered part of the faculty member’s personnel file and access to such materials is only allowable as provided by North Carolina law. All information regarding the grievance process including the evidence presented, any transcript of the hearing, meeting or series of meetings, and the recommendation of the FHC shall be confidential and any
employee who shares any information related to the grievance process, the records, evidence submitted, petition, committee deliberations, or the recommendation of the committee shall result in disciplinary action, up to and including termination, in accordance with the applicable University policy. Counsel and Advocates.

**OP 9.7.6.4 Written Record.** It is essential that all testimony and other evidence received by a FHC panel be preserved for review by the parties to the proceeding (i.e. the Chancellor, and, if applicable, the Board of Trustees). In these hearings, the FHC panel shall maintain a complete transcript of the proceedings and a record of the evidence received. The Senior Vice Provost and FHC Coordinating Chair shall work together to support the FHC Panel in producing that transcript.

**OP 9.7.6.5 Location of the Written Record.** The written record of the hearing shall be considered part of the faculty member’s personnel file and is confidential. Access to such materials is only allowable as provided by law.

**OP 9.7.6.6 Copy of the Written Record to the Faculty Member.** If a faculty member requests a copy of the written transcript, one shall be provided to the faculty member at the University’s expense.

**OP 9.7.6.7 FHC Report.** The FHC panel shall forward its written report (formulated and distributed as indicated in OP 9.3.7 of *Academic Affairs Standard Operating Procedures*) to all parties to the grievance and the chancellor within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. In developing its report, the committee shall consider only the evidence presented by the faculty member, including the written record of the decision at the hearing and such written or oral arguments as the committee, in its discretion, may allow.

**OP 9.7.6.8 The Chancellor’s Decision.** Following receipt of the FHC panel’s written report, the Chancellor must make a decision based on a thorough review of: (1) the record of evidence from the hearing, and (2) the recommendation of the faculty committee. While the chancellor should give appropriate deference to the advice of the faculty committee, the final decision is the Chancellor’s. If the Chancellor is considering taking an action that is inconsistent with the recommendation of the hearing committee, the Chancellor may consult with the hearing committee, either in person or in writing, before making a decision.

**OP 9.7.6.9 The Chancellor’s Notice.** The Chancellor shall notify the faculty member and the respondent administrator(s) with a
copy to the Provost and Executive Vice Chancellor of the Chancellor’s decision in writing. In the event of a decision against the faculty member requesting the hearing, the Chancellor's notice of the decision must inform the faculty member: (1) of the permissible grounds for appeal pursuant to Section 604 of The Code; (2) of the time limit fourteen (14) calendar days within which the faculty member may file a notice of appeal through the chancellor requesting review by the board of trustees; (3) that a written notice of appeal with a brief statement of the basis for the appeal is all that is required within the 14-day period; and (4) that, thereafter, a detailed schedule for the submission of relevant documents will be established if such notice of appeal is received in a timely manner. For record keeping purposes, the Chancellor shall also notify the FHC Coordinating Chair that a decision has been issued

**OP 9.7.6.10 Appeal to the Board of Trustees.** A decision in favor of the faculty member may not be appealed. A decision not in favor of the faculty member may be appealed to the Board of Trustees within fourteen (14) calendar days after the Chancellor delivers their decision. The Board may delegate to a designated committee of the Board the authority to review appeals and make final decisions of appeals under this section.

**OP 9.7.6.11 Standard for BOT Review.** In order for the Board to reverse or modify the Chancellor’s decision, the faculty member must demonstrate that the Chancellor’s decision was clearly erroneous, violated applicable law or policy, or that the process used in deciding the grievance was materially flawed. See more on the Review process in OP 9.10.

**OP 9.8 Appeal Process to the Board of Trustees for 603 or 604 Hearings.**

**OP 9.8.1 Purpose of the Appeal to the Board of Trustees.** The Board of Trustees considers whether the procedures or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy, such that but for the error(s), the outcome would have been different.

**OP 9.8.2 Grounds for Appeal to the Board of Trustees.** The grounds for appeal to the board of trustees are as follows:

1. Material procedural error. A faculty member may allege on appeal that the hearing conducted by the hearing committee, or the process followed by the institution included a material procedural error that, but for the error, could have resulted in a different decision. The board may review allegations that FHC Panel and/or the institution 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, they 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.

2. Clearly erroneous. A faculty member may allege on appeal that the
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 faculty member 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 of trustees
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 of trustees 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.

3. Contrary to law or policy. A faculty member may allege on appeal that,
during the hearing process, controlling law or University policy was
disregarded, misinterpreted, or misapplied to the facts of the case.

**OP 9.8.3 Process for Appeal to the Board of Trustees.**

**OP 9.8.3.1 Transmittal of Appeal.** If a faculty member elects to appeal
the Chancellor’s decision to the Board of Trustees, this appeal shall be
transmitted through the Chancellor and be 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 by a method
that provides proof of delivery.

**OP 9.8.3.2 Format of the Appeal.** The appeal shall be made using this
form, which indicates one or more of the grounds for appeal (stated
above) and offers a succinct statement of the issues that are relevant to
the basis/bases of appeal claimed. The appeal may also highlight in
outline form specific items in the transcript or other items of evidence that
support the appeal.

**OP 9.8.3.3 Additional Steps.** The Board of Trustees, in its own
discretion, may request additional information or for the faculty member to
appear.

**OP 9.8.3.4 Notice.** Once the appeal has been considered in accordance
with the appropriate provisions from *The Code* and *The UNC Policy
Manual*, the Board of Trustees shall notify the chancellor and the faculty
member of the outcome.
OP 9.9 Appeal Process to the Board of Trustees for 605 Hearings.

OP 9.9.1 Chancellor Decision. The Chancellor shall notify the faculty member and relevant administrators of their decision in writing within thirty (30) calendar days. Notification to the faculty member should be conveyed via a method that produces adequate evidence of delivery.

OP 9.9.2 Appeal to the Board of Trustees. If the Chancellor’s decision is to continue with termination of employment, the faculty member may appeal the reconsideration decision to the Board of Trustees.

OP 9.9.3 Request for Appeal to the Board of Trustees. A request for appeal to the Board of Trustees shall be sent to the Chancellor’s Office addressed to the Chair of the Board of Trustees within fourteen (14) calendar days of receipt of the Chancellor’s decision. Requests for appeals shall be sent via certified mail, return receipt requested. The Request for Appeal shall contain a brief statement that alleges how the decision was arbitrary or capricious.

OP 9.9.4 Consideration of the Request for Appeal. The first step in any request for an appeal shall be an evaluation of the written ground for appeal to determine whether the issues raised by the faculty member show sufficient facts to demonstrate that the decision was arbitrary or capricious. If the request for appeal does not present issues that fall within the established grounds for appeal, the Board of Trustees may dismiss the appeal without further proceedings.

OP 9.9.5 Deference Given to Chancellor’s Decision. The Board of Trustees shall consider the appeal, provided that significant deference shall be given to the Chancellor’s decision.

OP 9.9.6 Board of Trustees 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 an initial review to a standing or ad hoc committee of at least three members. The Board of Trustees decision shall be made as soon as reasonably possible after their receipt of the request for an appeal. This decision shall be final and no further appeal rights shall be granted to the faculty member.

OP 9.10 Appeal Process to the Board of Trustees for 607 Grievance Hearings.

OP 9.10.1 Chancellor Decision. The Chancellor shall decide whether to accept, reject or modify the FHC finding and recommendation. The Chancellor shall base their decision on the record. The Chancellor may, at their sole discretion, consult with the FHC before making a decision, but is not required to do so. The decision of the Chancellor is the final administrative decision.

OP 9.10.2 Notification of Chancellor Decision. The Chancellor shall notify the faculty member and the respondent administrator(s) with a copy to the Provost of the Chancellor’s decision in writing. The notification to the parties shall include a notice of any available appeal rights and the timeline for any available appeal.

OP 9.10.3 Appeal to the Board of Trustees. A decision in favor of the faculty member may not be appealed. A decision not in favor of the faculty member may be appealed to the Board of Trustees within fourteen (14) calendar days after the
Chancellor delivers their decision. The Board may delegate to a designated committee of the Board the authority to review appeals and make final decisions of appeals under this section.

**OP 9.10.4 Standard for BOT Review.** In order for the Board to reverse or modify the Chancellor’s decision, the faculty member must demonstrate that the Chancellor’s decision was clearly erroneous, violated applicable law or policy, or that the process used in deciding the grievance was materially flawed.

**OP 9.11. Mediation Procedure**

**OP 9.11.1 Introduction.** Mediation is the process where a faculty member and the University representative(s) use the assistance of a neutral third party to explore options for reaching a mutually acceptable resolution of a dispute. The focus is on reaching an agreement based on each party’s interest rather than making a decision as to who is right or wrong. The expectation is that the parties will enter into mediation in good faith with the goal of reaching an agreement.

**OP 9.11.2 Mediator Role.** A mediator serves as the neutral third party whose role is to guide the mediation process, facilitate communication, and to help the parties generate and evaluate possible outcomes. A mediator does not act as a judge, give advice, or render decisions regarding any matter. The mediator will begin mediation in an open session with both parties and then may meet separately with the participants during the mediation to further the communication process. The mediator is responsible for ensuring breaks, if needed, are provided for the parties and to allow designated times for consultation with the participant’s attorney or advisor over the phone.

**OP 9.11.3 Qualifications of the Mediator.** Any mediator chosen by the University must have completed formal mediation training equivalent to that required for certification by the North Carolina Administrative Office of the Courts or have been formally trained in mediation specifically designed for use in a university setting. The mediator may be an available campus mediator, trained members of the faculty or staff, outside mediators from the community or mediators from another UNC System campus. The mediator may not be a faculty member who serves on the FAC or FHC.

**OP 9.11.4 Participant Role.** Both parties (the faculty member and University representative(s)) should come to mediation prepared to tell their version of what happened, prepared to listen to the views of the other side, prepared to clearly state their requirements for resolving the grievance, and to be willing to negotiate a settlement agreement that will be mutually satisfying for both sides, if possible.

**OP 9.11.5 Scheduling and Paying for Mediation.** Mediation shall be scheduled by the University through Academic Affairs. The University will cover the expense of a mediator. Mediation shall be scheduled within twenty (20) days of receipt of dispute under **Section 604 or Section 607 of The Code**, except in extenuating circumstances.
**OP 9.11.6 Participants to Mediation.** Attorneys are prohibited from participating in the mediation process or attending as an observer. Only the faculty member, University representative(s), and the mediator may attend the mediation. The parties have the right to consult with counsel or other advisors during recesses and before committing to any agreement via telephone or other forms of communication.

**OP 9.11.7 Right to Consultation with Counsel/Advisor.** The faculty member and University representative(s) will have the option to request a recess at any time during the mediation in order to obtain legal advice or consult with anyone they feel would be helpful as alternatives for resolution are discussed and to review the mediation agreement. It is vital that both the faculty member and the University representative(s) make prior arrangements with those individuals to be available for consultation via phone, other forms of communication (i.e. email), or in person during the scheduled mediation. If Counsel/Advisor does meet in person with their client, consultation rooms must be soundproof and sufficiently separated from the mediation room as to provide privacy for the consultations.

Both parties may have their legal counsel or other advisors review the mediation agreement prior to signing. Due to time constraints, recesses will typically be limited to no more than fifteen (15) minutes, however, the mediator has the ability to extend that time as necessary.

**OP 9.11.8 Time Expectations for Mediation.** There is no time limit on the length of the mediation process; however, sessions typically last three (3) to eight (8) hours. The mediation session will typically be scheduled early in the morning in the event the entire day is needed. If the parties are close to reaching agreement, mediation may be reconvened for another date if additional time is needed beyond the eight (8) hours.

**OP 9.11.9 Confidentiality of Mediation.** Under no circumstances may the mediator be called as a witness in any subsequent proceeding, nor may any statements made during mediation be used against either party in any hearing or other forum. The mediator will dispose of any documents used in the process. In the event the mediator receives through mediation reports of abuse, threats of physical harm to self or others, and/or threats to cause significant damage to real or personal property, the mediator is required to provide that information to the appropriate authorities.

**OP 9.11.10 Resolution through Mediation.** If a mutually agreeable resolution is reached through mediation, a written statement will be produced by the mediator detailing the agreement and will be signed and dated by all parties to the mediation. Any agreement proposing to obligate Appalachian State University must be signed by a university official with delegated signature authority for it to be binding.

**OP 9.11.11 Impasse.** If a mutually agreeable resolution cannot be reached through mediation. The mediator will let both parties know that they have reached an impasse and will end the mediation.
**OP 9.11.12 Notification to FHC Chair of Outcome of Mediation.** The mediator is required to notify the parties and the FHC Chair of the outcome of the mediation within twenty-four (24) hours of the completion of mediation.

**OP 9.11.13 Next Steps.** In the event the dispute is not resolved through mediation, the faculty member will be required to let the FHC Chair know within five (5) business days if they want to proceed with the next steps in the Section 604 or Section 607 process.