

## OP 9. 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 in accordance with the definition of a "Grievance" found at [The UNC Code, section 607; 101.3.1.3\(R\), IV. B.](#)

**OP 9.1.1 Non-Retaliation.** Faculty members have the right to use the adverse employment and grievance procedures free from threats or acts of retaliation, coercion, restraint, discrimination, or reprisal. This right includes requesting an adverse employment process or the hearing of a grievance as well as participating in a hearing or an appellate process. Similarly, faculty serving on the FAC (Faculty Assistance Committee) or on an FHC (Faculty Hearing Committee) Panel, or participating in any capacity, such as a witness, in a hearing have the right to be a part of such proceedings free from threats or acts of retaliation, coercion, restraint, discrimination, or reprisal. This same right shall extend to any other employee or any student of Appalachian State University.

## 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 9.2.1.5.1 Short-Term Replacement of the FHC**

**Coordinating Chair.** In the event the FHC Coordinating Chair is unable to carry out the duties due to a short-term issue or conflict of interest with a case, the FHC Coordinating Chair shall ask the Faculty Senate Committee on Committees to appoint a qualified member of the Faculty Assistance Committee or the Faculty Hearing Committee to step into the role until the FHC Coordinating Chair's return (or until the conclusion of the hearing in the case of a conflict of interest). In the case of a conflict of interest in an individual case, if the Faculty Senate Committee on Committees cannot make a substitution within 24 hours of the request, the Faculty Senate Vice Chair may make the appointment. If the FHC Coordinating Chair is unable to make the request, the Senior Vice Provost shall request a replacement from the Faculty Senate Committee on Committees as soon as they are aware of the need for a replacement.

**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 Counsel 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 the faculty member making the request for a hearing and the named respondent(s); (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 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 permitted. If FAC members decline these latter roles, they shall provide options for locating support from other qualified faculty members. The FAC shall not provide any interpretation of the contents the *Faculty Handbook*, *The Code*, the *UNC System Policy Manual*, or applicable state or federal law. If any questions regarding interpretation of policy shall arise the FAC will consult with the Senior Vice Provost for Faculty Policies and Development.

**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 Faculty Hearings.** The following general procedures apply to 603, 604, 605 and 607 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 parties in the hearing of who is on the panel and (b) work with the FHC Panel Chair and the Senior Vice Provost, to schedule 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 parties and their advisors or counsel, panel members, 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 OP10.1) 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 less than ten (10) 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 complete and unedited in electronic format, with a clear numbering system and an index. Any party may use printed evidence or slides in the hearing, if necessary for presentation clarity.

**OP 9.3.4.1.1 Redacted Documents.** If necessary, documents may be redacted (e.g. because they might reveal confidential personnel information about someone other than the faculty member requesting the hearing), but all redactions should include a brief notation regarding the basis for a redaction.

**OP 9.3.4.1.2 Document Submission Support.** 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 fact 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 but should also not be discouraged from appearing. Any person named on the list should have agreed to appear on the established date and there should be an indication of whether the appearance will be in person or virtual. Instructions for virtual witnesses are in OP 9.3.4.6.11. If there are questions about the appropriateness of a witness 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 provide, via secure electronic transmission, all materials to both parties. The FHC Coordinating Chair shall store all submitted materials in a confidential secure electronic drive accessible solely, FHC panel members, and any paid recorder/transcriptionist, and the FHC Coordinating Chair. All materials shall be available to all parties and the Faculty Hearing Committee panel within 48 hours of the date established for submission (as in OP 9.3.4).

**OP 9.3.4.4 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. Access to such confidential materials is only allowable as provided by North Carolina law. All hearing panel members, the FHC Coordinating Chair, and the participating administrators are required to maintain confidentiality of all materials, deliberations, and reports. Violations of confidentiality may be subject to disciplinary action, in accordance with applicable University policy and North Carolina law.

**OP 9.3.4.5 Additional Materials and Witnesses.** If, there are extenuating circumstances after the exchange of information, and a party wants to add new documentary evidence or witnesses, that request should be made in writing to the FHC Coordinating Chair no less than five (5) 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 9.3.4.6 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 9.3.4.6.1 Decorum.** All hearing participants shall maintain a professional demeanor including muting phones or other electronic devices.

**OP 9.3.4.6.2 Representation.** Faculty are permitted to utilize advocates or attorneys to advise them in preparation for any type of hearing, however, the ability to use an advocate or attorney to represent the faculty member during the hearing or mediation process is delineated under the procedures for each type of case as provided below. The FHC Panel Chair shall ensure that all representatives for a party follow the processes and procedures of the hearing. Attorneys and advisors are not permitted to participate in the hearing, although a party may consult with her or his attorney or advisor during breaks in the hearing.

**OP 9.3.4.6.3 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 9.3.4.6.4 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 9.3.4.6.5 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 9.3.4.6.6 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 9.3.4.6.7 Order of Presentation.** The party with the burden of proof shall present first in every phase of a hearing.

**OP 9.3.4.6.8 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 9.3.4.6.9 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.

**OP 9.3.4.6.10 Calling of Witnesses.** All FHC conducted hearings shall permit the calling of witnesses. No affidavits from witnesses who do not appear shall be submitted as evidence.

**OP 9.3.4.6.11 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 of any portion of the proceedings is being made. The FHC Panel Chair shall host any virtual meeting.

**OP 9.3.4.6.12 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. 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 9.3.4.6.13 Witnesses and Confidentiality.** 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 9.3.4.6.14 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 9.3.4.6.15 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 9.3.4.6.16 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 OP 9.4, 9.5, 9.6, or 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 regarding burden of proof, rationale, and recommendations. The report shall be made in accordance with the time frame and to the appropriate individuals as outlined in OP 9.4, 9.5, 9.6 or 9.7.

**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 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 without differentiation of type;
3. the number of hearings 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.

**9.3.10 Requesting Accommodations:** All hearing participants requesting a reasonable accommodation on the basis of a disability shall do so through the Office of Access & Opportunity: Equal Opportunity. It is recommended that requests be made at least two weeks in advance, when possible. The Office of Access & Opportunity will consult with the FHC Coordinating Chair if it is necessary to implement the accommodation.

## **OP 9.4 DISCIPLINARY DISCHARGE , SUSPENSION, OR DEMOTION (Section 603)**

**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. In accordance with *The Code*, a faculty member serving a stated term shall be regarded as having tenure until the end of the specified term contract. During the period of such guarantees the faculty member may be discharged from employment, suspended without pay, or demoted in rank for the reasons provided in UNC Policy 101.3.1.1[R].

**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 employment decisions covered by *Sections 604, 605 or 607 of The Code*, 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 the 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 (i.e. university email or certified mail).

**OP 9.4.2.2 Administrative Leave with Pay.** 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 the notice of intent to impose formal discharge, suspension or demotion, the faculty member may request a disciplinary hearing by submitting [this form](#) to the FHC Coordinating Chair. If the faculty member fails to make a written request within the fourteen (14)

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

**OP 9.4.3.1 FHC Hearing Panel for a Disciplinary Hearing.** If the faculty member makes a timely request for the 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 9.4.3.2 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 9.4.3.3 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 (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 complete written record of the evidence presented at the hearing and make a recommendation to the Chancellor regarding whether or not the University met the burden of proof to show there was a permissible basis for the discharge, suspension or demotion.

**OP 9.4.3.4 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, provide additional time for preparation, however the committee may not extend the 14-day timeframe to request a disciplinary hearing. 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. 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 9.4.3.5 Closed Hearing.** The disciplinary hearing shall be closed to

the public.

**OP 9.4.3.6 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 permitted. 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. Attorneys and advisors are not permitted to participate in the hearing, although a party may consult with her or his attorney or advisor during breaks in the hearing.

**OP 9.4.3.7 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. The University shall cover the cost of the court reporter. If a faculty member requests a copy of the written transcript, a copy 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 9.4.3.8 Burden of Proof.** The University shall show by a standard of clear and convincing evidence that there is a permissible basis for the intended discharge, suspension or demotion in accordance with *Section 603(1) of The Code* (i.e., incompetence, neglect of duty, or misconduct).

**OP 9.4.3.9 FHC Recommendations.** The FHC Panel shall forward its written report to the FHC Coordinating Chair, who shall forward the report to the faculty member subject to the 603 disciplinary hearing and the Senior Vice Provost, who shall forward the report to 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 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 of proof to show that there is a permissible basis for the formal discharge, suspension, or demotion.

**OP 9.4.3.10 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 notifies the faculty

member of the final decision and the institution's obligation to continue paying the faculty member's salary shall cease upon issuance of the chancellor's decision.

**OP 9.4.3.11 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 as soon as practicable. If the Chancellor decides to discharge, suspend or demote the faculty member, the Chancellor's letter must inform the faculty member of the following: (a) the permissible grounds for appeal pursuant to *Section 603 of The Code*; (b) that the faculty member has fourteen (14) calendar days to request an appeal through the Chancellor's Office to the Chair of the Board of Trustees in accordance with *Section 603(2)(g) of The Code*; and (c) that any written request for appeal must include a brief statement of the basis for the appeal (i.e. process was materially flawed, result reached by Chancellor was clearly erroneous, or the decision was contrary to controlling law or policy).

**OP 9.4.3.12 Consideration of the Request for Appeal.** The Board of Trustees shall first review any request for an appeal to determine whether the issues raised by the faculty member fall within one of the three grounds for appeal. 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 9.4.3.13 Deference Given to Chancellor's Decision.** The Board of Trustees shall consider the appeal based on the record of the hearing and subject to the policies, regulations or guidelines adopted by the Board of Trustees, President of the UNC System, or the Board of Governors. Consistent with *The Code*, deference shall be given to the Chancellor's decision. *Section 101.3.1.1.R III B.*

**OP 9.4.3.14 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. After review on appeal, the Board may affirm the Chancellor's decision; or if the Board finds that the procedures or decision had material procedural errors, was clearly erroneous or was contrary to controlling law or policy, such that but for the errors, the outcome would have been different, the Board may, in its sole discretion, remand the matter to provide for a new hearing or supplemental review inquiry. 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 conclude the University's appeal process.

## **OP 9.5 Non-Reappointment, Denial of Tenure, and Denial of Promotion (Section 604)**

**OP 9.5.1 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) other violation of applicable University policies for reappointment, promotion, and tenure.

**OP 9.5.2 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 receipt of the Provost's Decision to request a review of the decision to not reappoint, deny tenure and/or promotion on the ground 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 9.5.2.1 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.

**OP 9.5.3 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 9.5.3.1 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 9.5.3.2 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 9.5.3.3 Purpose of the Review of a Non-Reappointment, Denial of Tenure, or Denial of Promotion 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 regarding whether or not the faculty member has met their burden of proof to show that the decision was based on an Impermissible Basis. The FHC Panel must also create a complete record of the evidence received.

**OP 9.5.3.4 Timing of the Review Hearing.** The FHC panel shall endeavor to schedule the review within thirty (30) days of receiving the request and 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 9.5.3.5 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 9.5.3.6 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 participate in the hearing, although a party may consult with her or his attorney or advisor during breaks in the hearing.

**OP 9.5.3.7 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 9.5.3.8 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 North Carolina law.

**OP 9.5.3.9 Copy of the Transcript 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 9.5.3.10 FHC Report.** The FHC panel shall forward its written report to the FHC Coordinating Chair, who shall forward the report to the faculty member who requested the 604 hearing and the Senior Vice Provost, who shall forward the 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 parties, 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 9.5.3.11 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.

**OP 9.5.3.12 The Chancellor's Notice.** The Chancellor shall notify the faculty member and the respondent(s) of their decision in writing by a

method which produces adequate evidence of delivery (i.e. university email or certified mail) as soon as practical. 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) that the faculty member has fourteen (14) calendar days to request an appeal through the Chancellor's Office to the Chair of the Board of Trustees in accordance with *Section 604(C)(2) of The Code*; and (3) that any written request for appeal must include a brief statement of the basis for the appeal (i.e. process was materially flawed, result reached by Chancellor was clearly erroneous, or the decision was contrary to controlling law or policy).

**OP 9.5.3.13. Consideration of the Request for Appeal.** The Board of Trustees shall first review any request for an appeal to determine whether the issues raised by the faculty member fall within one of the three grounds for appeal. 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 9.5.3.14 Deference Given to Chancellor's Decision.** The Board of Trustees shall consider the appeal based on the record of the hearing and subject to the policies, regulations or guidelines adopted by the Board of Trustees, President of the UNC System, or the Board of Governors. Consistent with *The Code*, deference shall be given to the Chancellor's decision. *Section 101.3.1.1.R III B.*

**OP 9.5.3.15 Board of Trustees Decision.** After review on appeal, the Board of Trustees may affirm the Chancellor's decision; or if the Board finds that the campus-based process or decision had material procedural errors, was clearly erroneous, or was contrary to controlling law or policy, the Board may remand the matter to the Chancellor to provide for a new hearing or a supplement review inquiry. The remedy available on appeal is never an award by the Board of Trustees of the conferral of tenure, reappointment, a new contract, or promotion.

## **OP 9.6 Separation Due to Financial Exigency or Program Curtailment (Section 605) 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 Determination of Financial Exigency.** 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. 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.

**9.6.1.2 Consultation with Faculty and Administrative Officers.** When 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.

**9.6.1.3 Approval of Financial Exigency Determination.** The determination of financial exigency 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.

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

##### **OP 9.6.2.1 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 program that is consistent with the functions and responsibilities of the University.

**OP 9.6.2.2 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:

1. one who has permanent tenure shall be given not less than twelve (12) months' notice;
2. one who was appointed to a probationary or specified term and does not have permanent tenure shall be given notice as follows:
  1. 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;
  2. 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;

3. 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 9.6.2.3 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 in OP 9.6.2.2.

**OP 9.6.2.4 Content 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 adequate proof of delivery (i.e., university email or certified mail). 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;

**OP 9.6.2.5 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 if they allege the decision to terminate was arbitrary or capricious 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 on the date specified in the notice and the faculty member shall have no other right to a grievance or appeal.

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

**OP 9.6.3.1 FHC Hearing Panel for a Reconsideration.** If a request is received in a timely fashion, the FHC Coordinating Chair shall seat a Reconsideration Hearing panel of three (3) members and one alternate from the FHC, at least two of whom have permanent tenure.

**OP 9.6.3.2 Chair of the FHC Hearing Panel.** 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 with tenure.

**OP 9.6.3.3 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 9.6.3.4 Timing of a Reconsideration Hearing.** The FHC Coordinating Chair shall ensure that the reconsideration hearing happens within thirty (30) days of the receipt of the request except under extenuating 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 9.6.3.6 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 9.6.3.7 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 North Carolina law.

**OP 9.6.3.8 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 9.6.3.9 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*) to the FHC Coordinating Chair, who shall forward the report to the faculty member who requested the reconsideration hearing and the Senior Vice Provost, who shall forward the report to 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 parties, 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 9.6.3.10 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 9.6.3.11 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.

**OP 9.6.3.12 The Chancellor's Notice.** 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 9.6.3.13 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 within fourteen (14) calendar days of receipt of the Chancellor's Decision.

**OP 9.6.4 Institutional Assistance to Faculty Following Termination.** When requested in writing by an employee whose employment has been terminated, the University shall give the employee reasonable assistance (such as letters of reference) in finding other employment. Chapter VI, The UNC Code, Section 605.

**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 Faculty Grievance Process (Section 607)**

**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 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](#). The 607 grievance process is available to actively employed members of an institution. A faculty member whose employment ends during the pendency of a grievance proceeding is not entitled to continue the grievance.

**OP 9.7.3 Definition of Grievances.** "Grievances" within the province of the grievance committee's power shall include matters directly related to a faculty member's terms and conditions of employment. 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 101.3.2[R]. *Section 101.3.1.1.R III B. See Chapter VI, Section 607, 3.*

#### **OP 9.7.4 Procedures for the Grievance Process.**

**OP 9.7.4.1 Initiating the Grievance Process.** If any faculty member has a grievance as defined in this section, the faculty member may submit the “petition for a faculty grievance hearing” within 45 days of the grievable event 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.

**OP 9.7.4.1.1 Mediation.** *See Mediation OP 9.8 for the University’s Mediation Procedure.* Mediation is required as a first step for Faculty Success Plan issues before initiating a formal grievance process. Faculty members shall attempt mediation before proceeding. When initiating a grievance, the faculty member must indicate whether mediation has been attempted and provide relevant documentation. If mediation was not successful, the grievance process may proceed.

While mediation is not required to initiate a grievance process related to other issues, 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 9.7.4.2 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 9.7.4.3 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 9.7.4.4 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 FHC Coordinating Chair, who will inform the faculty member and the respondent(s), using [this template](#). The FHC Panel may either direct the parties to mediation 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 FHC Coordinating Chair, who will inform the faculty member using [this template](#) and the matter shall be considered closed. In cases where the FHC Panel determines that there is insufficient basis for a grievance, the FHC Coordinating Chair will provide copies of the 607 petition and the determination form to the Senior Vice Provost for record maintenance.

**OP 9.7.4.5 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 9.7.4.5.1 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 9.7.4.5.2 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 indicating the mediation has ended in impasse.

**OP 9.7.4.5.3 Process Post-Mediation .** Once the FHC Coordinating Chair is informed the mediation ended in impasse , the faculty member shall have the option to notify the FHC Coordinating Chair in writing within five (5) calendar days that they wish to move forward with a hearing. Upon receipt of the request to proceed with a hearing, meeting, or series of meeting the FHC Coordinating Chair shall inform the FHC Panel Chair, who shall proceed with scheduling. If the faculty member does not request to proceed within the five (5) calendar days, the FHC Coordinating Chair shall notify the parties that the matter is considered closed.

**OP 9.7.4.5.3 Use of Mediation Information in the Subsequent Hearing.** 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 9.7.5 Procedures for Conduct of the 607 Grievance Hearing.** The hearing, meeting or series of meetings shall follow the General Procedures for Faculty Hearings (see *OP 9.3*) as well as any provisions specific to this section.

**OP 9.7.5.1 Purpose of the Grievance Hearing/Meeting or**

**Series of Meetings.** 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 9.7.5.2 Burden of Proof.** The burden of proof is on the faculty member to establish by a preponderance of the evidence each of 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 provided in *Section 602 (6)(d) of The Code* and that reasonable steps were taken to avoid separation.

**OP 9.7.5.3 Advocates and Counsel.** Faculty shall not be permitted to be represented by an advocate or counsel at the hearing, meeting or series of meetings. However, faculty may seek guidance and advice from the FAC or counsel outside of the proceedings. Attorneys and advisors are not permitted to participate in the hearing, although a party may consult with her or his attorney or advisor during breaks in the hearing.

**OP 9.7.5.4 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, meetings, or series of meetings, 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 9.7.5.5 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 North Carolina law.

**OP 9.7.5.6 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 the FHC Coordinating Chair, who shall forward the report to the faculty member who requested the grievance hearing and the Senior Vice Provost, who shall forward the report to all parties to the 22 grievance, and the Chancellor within fourteen (14) calendar days after its hearing concludes or after the full transcript is received, whichever is later. The report shall indicate whether the faculty member has met their burden, and what if any, relief is recommended. In developing its report, the committee shall consider only the evidence presented by parties at the hearing, meeting or series of meetings and such written or oral arguments as the committee may allow.

**OP 9.7.5.7 The Chancellor's Decision.** Following receipt of the FHC panel's written report, the Chancellor shall decide whether to accept, reject or modify the FHC finding and recommendation. The Chancellor's decision shall be based on the record.

**OP 9.7.5.8 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. The notification to the parties shall include a notice of any available appeal rights and the timeline for any available appeal.

**OP 9.7.5.9 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 receipt of the Chancellor's decision.

**OP 9.7.5.10 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 9.8 Mediation Procedure**

**OP 9.8.1 Introduction.** Mediation is a process in which the disputing parties enlist the assistance of a neutral party to help them achieve a voluntary, mutual agreement that finally and definitively resolves all or portions of a grievance. Any such mediated agreement between the parties shall be reduced to a written resolution agreement.

**OP 9.8.2 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.

**OP 9.8.3 Qualifications of the Mediator.** Any mediator chosen by the University must have successfully 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 in a 607 process may not be a faculty member who serves on the FAC or FHC.

**OP 9.8.4 Participant Roles.** 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 in good faith a settlement agreement that will be mutually satisfying for both sides, if possible.

All parties are responsible for attending a scheduled mediation and informing the Senior Vice Provost should unavoidable circumstances arise that prevent attendance. All parties are expected to make a good faith effort to resolve the issues under consideration. The party initiating the mediation process must provide clear and concise information regarding the issues under consideration and the remedies sought.

**OP 9.8.5 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 9.8.6 Participants to Mediation.** Only the person(s) initiating mediation, the

respondent(s), and the mediator may attend the mediation.

**OP 9.8.7 Right to Consultation with Counsel/Advisor.** The participants 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. That consultation may be via phone or electronic communication. The mediator shall determine the length of any breaks.

**OP 9.8.8 Location and Time Allocation for the Mediation.** The manner in which the mediation is conducted, either virtually, telephonic or in-person, shall be approved by the Senior Vice Provost. The mediation shall be scheduled for an amount of time determined by the mediator(s) to be sufficient. Mediation may be recessed by the mediator(s) and reconvened at a later time.

**OP 9.8.9 Confidentiality of Mediation.** All documents generated during mediation and any communications shared in connection with mediation are confidential.

**OP 9.8.10 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 9.8.11 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 9.8.12 Notification to FHC Chair of Outcome of Mediation.** The mediator is required to notify the parties, the FHC Coordinating Chair, and any relevant administrators of the outcome of the mediation within twenty-four (24) hours of the completion of mediation.