

4.08 Post-Tenure Review

A. Introduction

Post-tenure review (PTR) is a comprehensive, formal, periodic evaluation of all tenured faculty. The purpose of this review is to support continuing faculty development, to promote faculty vitality, and to encourage excellence among tenured faculty. This is achieved by recognizing and rewarding faculty performance, offering suggestions to enhance performance, providing a clear plan and timetable for improvement of faculty members whose performance is found less than satisfactory, and providing for the imposition of appropriate sanctions for those whose performance remains deficient. Post-tenure review shall be consistent with the University of North Carolina Board of Governors' policy of giving teaching primary consideration.

B. Faculty to Be Reviewed

PTR is required of all tenured faculty whose primary responsibilities (50% or more) involve teaching, scholarship, and/or service.

C. Timetable

A tenured faculty member may elect to undergo PTR during any academic year. Faculty for whom PTR is required must undergo a review no later than the fifth academic year following the most recent of any of the following review events: award of tenure or promotion at Western Carolina University, prior post-tenure review, or return to faculty status following administrative service. Exceptions shall be made in the following cases: 1) when on leave from duties, that period shall not be included as part of the five years between mandatory review events and/or 2) when temporarily assigned to duties away from Cullowhee/Asheville during the period of a required review, PTR occurs upon return.

D. Materials to Be Submitted for Review

A faculty member being reviewed will provide the four most recent annual faculty evaluations and a current curriculum vitae (CV).

E. Procedures

Performance to be reviewed is limited to the five years preceding review or to the period subsequent to the prior review event, whichever is less.

The tenured faculty of each department shall establish a procedure for post-tenure review. These procedures must be approved by the dean of the college and the Provost. Each department establishes a PTR committee with at least three tenured departmental colleagues, excluding the department head. Whenever a department finds it impossible to form a committee containing at least three tenured faculty, the matter will be referred to the Provost. The Provost, in consultation with the tenured faculty of the department and the dean of the college, will, by selecting tenured faculty from similar departments, constitute a committee of three tenured faculty for the department.

Peer reviewers shall present their written evaluations to the department head. The department head shall provide a copy of this evaluation to the faculty member and shall meet with the faculty member to discuss the review. The department head shall then append his/her evaluation relative to the mission of the University, college/school/library, and program. The faculty member then has the option of attaching a written response. In the library the role of the department head will be performed by the University Librarian. When a department head is reviewed, the dean shall perform the roles ordinarily performed by the department head.

F. Criteria

Criteria for acceptable faculty performance include professional competence, conscientious execution of duties—taking into account distribution of workload as developed by the department head—and efforts to improve performance. Exemplary faculty performance, as determined by the department, involves sustained excellence in teaching, scholarship, and service.

G. Outcomes

In the case of a satisfactory review, results are documented for university award and merit pay decisions. In addition, suggestions to enhance performance may be provided.

In the case of an unsatisfactory review, the department head, in consultation with the faculty member, PTR committee, and dean of the faculty member's college, will create a three-year development plan within one month of the review. The plan shall include (1) specific improvements to be accomplished within three years, (2) resources to be committed to the improvement efforts, and (3) other support provided by the administration. The department head and PTR committee will monitor the faculty member's progress relative to the development plan and provide verbal and written feedback to the faculty member semi-annually.

The plan shall also include a clear statement of consequences should adequate progress not occur by the end of the third year. The consequences may range from suspension of pay raises to, in the most extreme cases, reduction in rank, temporary suspension of employment, or termination of employment.

H. Appeals

The Faculty Post-Tenure Review Appeals Committee shall consider problems and appeals that arise from PTR.

I. Due Process

"A faculty member, who is the beneficiary of institutional guarantees of tenure, shall enjoy protection against unjust and arbitrary application of disciplinary penalties. During the period of such guarantees the faculty member may be discharged or suspended from employment or diminished in rank only for reasons of incompetence, neglect of duty or misconduct of such a nature as to indicate that an individual is unfit to continue as a member of the faculty" (*Code of the University of North Carolina*, Chapter VI, Section 603). Disciplinary actions for noncompliance with the development plan are limited to those established in Chapter VI of the *Code of the University of North Carolina*. Due process and the right of appeal as specified in the *Code of the University of North Carolina* and the "Tenure Policies and Regulations of Western Carolina University" in the Faculty Handbook shall be guaranteed.

b. Hearing procedure

The hearing shall begin with the faculty member's presentation of contentions, limited to those grounds specified in the request for hearing and supported by such proof as the faculty member desires to offer. The Chancellor or the Chancellor's representative may then present in rebuttal of the faculty member's contentions, or in general support of the decision to terminate the faculty member's employment, such testimonial or documentary proofs as he/she desires to offer, including his/her own testimony.

At the end of this presentation, the Faculty Hearing Committee shall consider the matter in executive session and shall make its written recommendations to the Chancellor within 10 days after its hearing concludes. The burden is on the faculty member to satisfy the committee that the faculty member's contention is true to a substantial certainty.

c. Procedure after hearing

If the Faculty Hearing Committee determines that the faculty member's contention has not been established, it shall, by a simple, unelaborated written statement, so notify the faculty member and the Chancellor. The faculty member may then appeal the decision to terminate the faculty member's employment in the manner provided by the *Code of the University of North Carolina*.

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If the Faculty Hearing Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify the faculty member and the Chancellor in writing. The committee shall also provide written recommendation for corrective action to the Chancellor.

Within 10 days after receiving the recommendation, the Chancellor shall send to the faculty member and the Chair of the Faculty Hearing Committee written notice of what modification, if any, the Chancellor will make with respect to the original decision to terminate the faculty member's employment. If the Chancellor does not reverse the original decision, the faculty member may appeal the termination in the manner provided by the *Code of the University of North Carolina*. If the Chancellor concurs in a recommendation of the Faculty Hearing Committee that is favorable to the faculty member, the Chancellor's decision is final.

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C. The Faculty Post-Tenure Review Appeals Committee

1. Membership and chair

- a. The Faculty Post-Tenure Review Appeals Committee shall consist of nine elected faculty members, each of whom shall have tenure. No officer of administration shall serve on the committee. For purposes of this section, "offices of administration" shall be deemed to include department heads. Appointment to department head or to a higher-level administrative position during a committee member's term of service shall force resignation from the committee.
- b. At least one faculty member from each of the colleges and the library of the University shall serve, but no more than one-third of the members shall be from any one college. At least two members from each of the academic ranks of professor and associate professor shall serve on the committee. A member's promotion in rank during a term of office shall not terminate membership.
- c. Each member shall serve a three-year term, the terms staggered so that three members are elected each year.

- d. The chair shall be elected by and from the membership of the committee and shall serve for one year. The chair may be elected to successive terms.
2. Duties and responsibilities
 - a. The committee is authorized to hear, mediate, and advise with respect to the adjustment of grievances of faculty members of the general faculty who have concerns relating to the post-tenure review. The power of the committee is solely to hear representations by the persons directly involved in the appeal, to mediate voluntary adjustments by the parties, to hold a hearing if necessary, and to inform appropriate administrative officials. The decision of the Post-Tenure Review Appeals Committee will be binding. Adjustment in favor of an aggrieved faculty member will be given to the Chancellor only after the dean, department head, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time.
 - b. Appeals within the province of this committee include all those matters related to the faculty member's post-tenure review status.
 3. Principle procedures
 - a. Preface

Faculty members are encouraged to pursue an informal resolution of any matter that might be the subject of an appeal before utilizing these procedures.
 - b. Scope

These procedures are to be used only for post-tenure review appeals
 - c. Grievance policy and procedure
 - 1) Initiation of grievance

A faculty member shall institute the appeal procedure by submitting a written appeal to the lowest level academic administrator with authority to correct or pursue adjustment of the situation precipitating the grievance. The appeal must be filed within 15 working days*after the faculty member has been given written notification of the unsatisfactory results of the post-tenure review and/or improvement plan. If no grievance is filed within this period, the faculty member will have no further right to an internal appeal procedure. An appeal may be made upon each review of the faculty member's performance.
 - 2) The appeal shall be a concise statement setting out the following:
 - Description of the evidence which supports the faculty member's appeal.
 - The specific corrective action requested by the faculty member.
 - 3) Review of the statement
 - a) The administrator receiving the formal appeal shall immediately notify the Provost and shall immediately send the Provost a copy of the faculty member's appeal.

- b) Within 10 working days after receipt of the grievance, the administrator shall meet with the faculty member to discuss the matter. The administrator may, with the faculty member's agreement, ask other administrators to attend the meeting.
- c) Within 10 working days after the meeting with the faculty member, the administrator shall deliver to the faculty member a written response to the appeal. The written response shall notify the faculty member of the faculty member's right to appeal to the Post-Tenure Review Appeal Committee and opportunity to obtain assistance through the faculty member's own efforts and at the faculty member's own expense. Enclosing a copy of these procedures shall be adequate notification of appeal rights.

d. Appeal to the Post-Tenure Review Committee

- 1) If the faculty member desires to appeal the decision of the administrator, a written statement of appeal shall be delivered by the faculty member to the Chair of the Faculty Post-Tenure Review Appeal Committee within 10 working days following the faculty member's receipt of the administrative supervisor's decision. The statement of appeal shall include the original appeal, a written summary of any additional facts or arguments that are said to support the original grievance, and the written response from the administrator. If no appeal is filed within the prescribed period, the employee has no further right to internal appeal procedures.

2) Committee procedure

- a) Members of the committee may decline to serve in a particular case for personal reasons. Members directly involved in an appeal shall not serve.
- b) The committee shall meet and decide whether mediation will be attempted or whether the appeal merits a hearing.
- c) Upon receipt of a petition, the committee first may offer its services as mediator, if the dispute apparently is amenable to such an approach and if the parties to the dispute express their willingness to cooperate with such an effort. Neither party is obliged to engage in mediation; it is a consensus undertaking.

The Faculty Post-Tenure Review Committee's offer to serve as mediator should be made no later than 20 working days after the committee chair receives the appeal from the grievant. As mediator, the committee's role is limited to efforts at facilitating communication between the parties and encouraging the discovery of a mutually agreeable basis for voluntary resolution of the dispute. Mediation does not entail evidentiary hearings, findings of fact, or recommendations to responsible administrators for resolving the dispute.

When mediation succeeds, the appeal is withdrawn and the parties may implement the solution they have achieved. When performing its mediation role, the Faculty Post-Tenure Review Committee should designate one or more of its members to serve as mediator, while insuring that a quorum of the committee membership is reserved to function as a hearing body in the event mediation does not succeed.

Mediation may be terminated by either party or the mediators by filing a simple written notice of termination with the chair of the Faculty Post-Tenure Review Appeal Committee.

- d) If mediation is not deemed appropriate to the case or if it fails to produce a voluntary resolution, the Faculty Post-Tenure Review Appeal Committee must hold a hearing in response to the statement of appeal.
- e) If a hearing is held, the following procedure shall apply:
 - 1.) The hearing shall be held no later than 20 working days after the committee chair receives the appeal from the grievant unless mediation is attempted or an extension is issued by the Committee chair. The committee chair has authority to grant extensions on the chair's own motion or the motion of any of the parties. An extension may be issued only for good cause as determined by the committee chair. An extension may not exceed 10 working days in length; however, more than one extension may be granted.
 - 2.) The committee shall serve a Notice of Hearing on the grievant, the administrator(s) who has been identified as a party to the grievance and/or the departmental peer committee no later than 10 working days before the hearing. The notice shall include the date, time and place of the hearing, the grievant's request for appeal, the composition of the hearing body after mediators have been excused and any potential conflicts have been resolved, the names of all parties to the grievance, and the issues to be considered by the committee.
 - 3.) Each party shall have a maximum of two challenges without cause and an unlimited number of challenges with cause. Challenges shall be filed in writing with the committee chair at least five working days in advance of the hearing. The unchallenged committee members shall have the authority to decide whether a committee member challenged for cause should be disqualified. If the chair is thus removed, the committee shall elect a new chair after committee replacements, if any, have been appointed. A minimum of five members is required for any action taken. In the event that fewer than five members remain after challenges are allowed, the secretary of the faculty shall make temporary appointments in accordance with 1.7.2(e) of the *Faculty Constitution of Western Carolina University*.

The formal rules of evidence shall not apply; however, the committee chair has the authority to reject evidence that is repetitive or has no relevance to the issues. The issues to be heard are limited to those raised by the written grievance. The hearing will be open to the public unless any party to the grievance requests that it be private. Attorneys are not authorized to participate at the hearing on behalf of the parties. However, each party may select one faculty member to provide assistance; the assisting faculty member may not be an attorney. The parties may present the testimony of witnesses and other evidence may confront and cross-examine adverse witnesses and may examine

all documents and other adverse demonstrative evidence. Committee members may question any witness and may call witnesses when the committee deems such action appropriate. A "record" of the hearing shall be kept. Upon request, a copy of the "record" shall be furnished to the appealing faculty member.

- 4.) The grievant presents evidence, through documentation or testimony, that is the basis for the appeal. The administrator(s) named as a party may then present documentation or testimony in response. Rebuttal may be allowed at the discretion of the committee.
 - 5.) The committee chair shall have complete authority to ensure a full and fair hearing including, but not limited to, the authority to grant extensions, recesses and adjournments, require the taking of oaths, require witnesses to stay outside the hearing room before or after testifying, set time limits for arguments, and terminate or recess the proceeding if it becomes unproductive due to disruptive behavior. Normally, however, the hearing should be concluded no later than 10 working days after it begins.
 - 6.) In developing its recommendations, the committee shall consider only the evidence presented at the hearing and such written or oral arguments as the committee in its discretion may allow. The committee shall also make findings of fact to support its recommendation(s).
 - 7.) The chair shall report the committee's findings of fact and recommendations to the grievant, the other parties and the Provost within five working days following the termination of the hearing.
 - 8.) The administrator/party with authority to resolve the matters raised by the committee recommendations shall have five working days to serve a written response to the committee's recommendations upon the grievant and the committee chair.
- f) If the grievant is not satisfied with the disposition of the grievance, the grievant shall have five working days to serve a simple statement of appeal upon the Chancellor and the Faculty Hearing Committee. Upon receipt of the statement of appeal, the committee chair shall forward to the Chancellor the record of the hearing, if a hearing was conducted, and all matters of record prepared and collected by the committee including the written grievance, the committee's findings of fact, the committee's recommendation(s), the administrator's written response and all evidence gathered. Upon review of the committee's recommendations, the Chancellor shall notify the faculty member, the committee, and the other parties of the Chancellor's decision in a timely fashion.

e. Outside appeal privilege

The faculty member may appeal pursuant the *Code of the University of North Carolina* provided that the appeal is transmitted through the Chancellor within 10 consecutive calendar days after receipt of written notice to the Chancellor.

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f. Changes to the post-tenure review appeal procedures shall be made in the following manner:

- 1) Substantive changes (as defined by the Rules Committee of the Faculty Senate) shall be approved by the general faculty according to procedures in Article VII of the *Bylaws of the General Faculty of Western Carolina University*
- 2) Changes due to directives from general administration shall be made automatically with the general faculty being informed by the Chair of the Faculty.
- 3) Minor changes (as defined by the Rules Committee of the Faculty Senate) shall be made by the Faculty Senate with the general faculty being informed by the Chair of the Faculty.

D. Faculty Grievance Committee

See Article IV of the Bylaws of the General Faculty